

CHAPTER 3
SERVICES AND INVESTMENT

SECTION 3.1
GENERAL PROVISIONS ON SERVICES AND INVESTMENT

ARTICLE 3.1

Scope

1. This Chapter does not apply to:
 - (a) activities performed in the exercise of governmental authority; and
 - (b) audio-visual services.
2. This Chapter does not apply to any measure of a Party with respect to procurement by a Party.
3. Except for Article 3.10 (Performance Requirements), this Chapter does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurances.
4. This Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of another Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
5. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, 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 another Party under the terms of this Chapter.¹³
6. This Chapter does not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

¹³ The sole fact of requiring a visa for natural persons of a Party shall not be regarded as nullifying or impairing benefits accrued under this Chapter.

- (a) repair or maintenance services on an aircraft or a part thereof during which the aircraft or the part is withdrawn from service, excluding so-called line maintenance;
 - (b) selling and marketing of air transport services;
 - (c) computer reservation system services;
 - (d) specialty air services;¹⁴
 - (e) airport operation services; and
 - (f) ground handling services.
7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which the United Kingdom and one or more EEA EFTA States are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.
8. If the United Kingdom and one or more EEA EFTA States have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

ARTICLE 3.2

Definitions

1. For the purposes of this Chapter:
- (a) “activities performed in the exercise of governmental authority” means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;
 - (b) “airport operation services” means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

¹⁴ Subparagraph (d) shall be subject to compliance with the Parties’ respective laws and regulations governing the admission of aircraft to, departure from and operation within, the Party.

- (c) “computer reservation system services” means the supply of a service by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) “covered enterprise” means an enterprise established in a Party, directly or indirectly, by an investor of another Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;
- (e) “cross-border trade in services” or “cross-border supply of services” means the supply of a service:
 - (i) from within a Party into another Party; or
 - (ii) within a Party to the service consumer of another Party;
- (f) “economic activity” means any activity of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;
- (g) “enterprise” means a legal person, or a branch or a representative office of a legal person;
- (h) “establishment” means the setting-up, acquisition, or expansion of an enterprise;
- (i) “ground handling services” means the supply of a service on a fee or contract basis for: airline representation, administration and supervision, ground administration and supervision, including load control and communications; passenger handling; baggage handling; ramp services; cargo and mail handling; fuel and oil handling; aircraft line maintenance; flight operations, crew administration and flight planning; aircraft servicing and cleaning; surface transport; and catering services. Ground handling services do not include: self-handling; security services; fixed intra-airport transport systems; aircraft repair and maintenance; or the operation or management of centralised airport infrastructure such as baggage handling systems, de-icing facilities, or fuel distribution systems;
- (j) “investor of another Party” means:
 - (i) a natural person of a Party;
 - (ii) a legal person of a Party; or
 - (iii) a Party

that seeks to establish, is establishing, or has established, an enterprise;

- (k) “legal person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (l) “legal person of a Party” means a legal person constituted or organised under the law of a Party and that carries out substantial business activities in that Party;¹⁵

For the purposes of Section 3.3 (Cross-Border Trade in Services) and Sub-Section 3.5.5 (International Maritime Transport Services), “legal person of a Party” includes a legal person of a non-Party owned or controlled by a person of a Party, if any of its vessels are registered in accordance with the law of that Party and flying the flag of that Party, when supplying services using those vessels;

- (m) “measure” means any measure by a Party, whether in the form of a law, regulation, rule procedure, decision, administrative action, requirement, practice or in any other form;¹⁶
- (n) “measures of a Party” means measures adopted or maintained by:
 - (i) central, regional or local governments or authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (o) “natural person of a Party” means:
 - (i) in respect of the United Kingdom, a British citizen in accordance with its applicable law;
 - (ii) in respect of the EEA EFTA States, a natural person who has the nationality of an EEA EFTA State in accordance with its applicable law;
- (p) “operation” means the conduct, management, maintenance, use, enjoyment and sale or other disposal of an enterprise;

¹⁵ A legal person shall be deemed to carry out substantial business activities in a Party if it has a genuine link to the economy of that Party. As to whether a legal person has a genuine link to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the legal person (a) has a continuous physical presence, including through ownership or rental of premises, in that Party; (b) has its central administration in that Party; (c) employs staff in that Party; and (d) generates turnover and pays taxes in that Party.

¹⁶ For greater certainty, the term “measure” includes failures to act.

- (q) “person” means a natural person or a legal person;
- (r) “person of a Party” means a natural person of a Party or a legal person of a Party;
- (s) “selling and marketing of air transport services” means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but does not include the pricing of air transport services or the applicable conditions;
- (t) “service supplier of a Party” means a person of a Party that supplies, or seeks to supply, a service; and
- (u) “specialty air service” means a specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, aerial advertising, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

ARTICLE 3.3

Sub-Committee on Services and Investment

1. The Parties hereby establish a Sub-Committee on Services and Investment, which shall be responsible for the effective implementation and operation of this Chapter.
2. The Sub-Committee on Services and Investment shall have the following functions:
 - (a) reviewing and monitoring the implementation and operation of this Chapter and each Party’s Schedules in Annexes XVI to XIX;
 - (b) exchanging information and discussing regulatory or other issues relating to the supply of maritime transport services, including with respect to relevant laws and regulations, existing or proposed, and their implementation;
 - (c) exchanging information and discussing regulatory or other issues relating to the supply of delivery services, including with respect to relevant laws and regulations, existing or proposed, and their implementation;
 - (d) carrying out the functions provided for in Article 3.69 (International Mobile Roaming Services);

- (e) holding consultations referred to in paragraph 2 of Article 5.3 (Capital Movements) and paragraph 6 of Article 5.5 (Restrictions in Case of Balance of Payments and External Financial Difficulties) of Chapter 5 (Capital Movements, Payments and Transfers);
 - (f) exchanging information on any other matters related to this Chapter;
 - (g) examining possible improvements to this Chapter;
 - (h) discussing any issue related to this Chapter or Chapter 5 (Capital Movements, Payments and Transfers) as may be agreed upon between the representatives of the Parties; and
 - (i) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 2 (e) of Article 15.1 (Joint Committee) of Chapter 15 (Institutional Provisions).
3. The Sub-Committee on Services and Investment shall be composed of representatives of the Parties including officials of relevant ministries or agencies in charge of the issues to be addressed. The Sub-Committee on Services and Investment may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.

ARTICLE 3.4

Denial of Benefits

A Party may deny the benefits of this Chapter and Chapter 5 (Capital Movements, Payments and Transfers) to an investor or service supplier of another Party that is a legal person of that Party, or to a covered enterprise of that legal person, if:

- (a) a non-Party or a person of a non-Party owns or controls the legal person; and
- (b) the denying Party adopts or maintains a measure with respect to the non-Party or the person of the non-Party which is related to the maintenance of international peace and security, including the protection of human rights, and prohibits transactions with that legal person or covered enterprise, or which would be violated or circumvented if the benefits of this Chapter or Chapter 5 (Capital Movements, Payments and Transfers) were accorded to that legal person or its covered enterprise.

SECTION 3.2

INVESTMENT LIBERALISATION

ARTICLE 3.5

Scope

This Section shall apply to measures of a Party affecting the establishment of an enterprise to perform economic activities and the operation of such an enterprise by:

- (a) investors of another Party;
- (b) covered enterprises; and
- (c) with respect to Article 3.10 (Performance Requirements), all enterprises in the Party which adopts or maintains the measure.

ARTICLE 3.6

Market Access

A Party shall not adopt or maintain with respect to establishment of an enterprise by an investor of another Party or by a covered enterprise, or operation of a covered enterprise, a measure, whether it applies to the Party as a whole or to any division thereof, that:

- (a) imposes limitations on:¹⁷
 - (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;
 - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

¹⁷ Subparagraphs (a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural good.

- (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
 - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity, in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restricts or requires a specific type of legal entity or joint venture through which an investor of another Party may perform an economic activity.

ARTICLE 3.7

National Treatment

Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their enterprises with respect to the establishment or operation in that Party.

ARTICLE 3.8

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a non-Party and to their enterprises, with respect to establishment or operation in that Party.¹⁸
2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of another Party or to covered enterprises the benefit of any treatment resulting from measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licensing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.
3. For greater certainty, the “treatment” referred to in paragraph 1 does not include investor-to-state dispute settlement procedures provided for in other international agreements.

¹⁸ For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to investors (and to their enterprises) of territories for whose international relations the United Kingdom is responsible.

4. For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a non-Party, or the mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the “treatment” referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

ARTICLE 3.9

Senior Management and Boards of Directors

A Party shall not require a covered enterprise to appoint to senior management or board of director positions natural persons of a particular nationality or who are resident in the Party.

ARTICLE 3.10

Performance Requirements

1. A Party shall not, in connection with the establishment or operation of any enterprise in that Party, impose or enforce any requirement or enforce any commitment or undertaking:¹⁹
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use or accord a preference to goods produced or services supplied in that Party, or to purchase goods or services from a person in that Party;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that enterprise;
 - (e) to restrict sales of goods or services in that Party that the enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;
 - (f) to restrict exportation or sale for export;
 - (g) to transfer technology, a production process or other proprietary knowledge to a person in that Party;

¹⁹ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

- (h) to locate the regional or world headquarters of an enterprise in that Party;
- (i) to hire a given number or percentage of natural persons of that Party;
- (j) to achieve a given level or value of research and development in that Party;
- (k) to supply one or more of the goods produced or services supplied by such enterprise to a specific region or to the world market exclusively from that Party; or
- (l) to adopt:
 - (i) a rate or amount of royalty below a certain level; or
 - (ii) a given duration of the term of a licence contract;²⁰

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or legal person or any other entity in that Party, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of a non-judicial governmental authority of Party.²¹

2. A Party shall not, in connection with the establishment or operation of any enterprise in that Party, make the receipt or continued receipt of an advantage conditional upon compliance with any requirement:
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to goods produced or services supplied in that Party, or to purchase goods or services from a person in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that enterprise;
 - (d) to restrict sales of goods or services in that Party that the enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or

²⁰ A “licence contract” referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

²¹ For greater certainty, subparagraph (l) does not apply when the licence contract is concluded between the enterprise and a Party.

- (e) to restrict exportation or sale for export.
3. For greater certainty, nothing in paragraph 1 shall be construed as preventing the enforcement by a Party of an undertaking voluntarily given²² by a person in relation to a takeover or merger.
 4. Nothing in paragraph 2 shall be construed as preventing a Party, in connection with the establishment or operation of any enterprise in that Party, from making the receipt or continued receipt or an advantage conditional upon compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in that Party.
 5. Subparagraphs 1(a) to (c) and 2(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
 6. Subparagraphs 1(g) and (l) do not apply when:
 - (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court or administrative tribunal, or by a competition authority pursuant to a Party's competition law; or
 - (b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31*bis* of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.
 7. Subparagraph 1(l) does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.
 8. Subparagraphs 2(a) and (b) do not apply to requirements imposed or enforced by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
 9. This Article is without prejudice to the obligations of a Party under the Agreement on Trade-Related Investment Measures set out in Annex 1A to the WTO Agreement.
 10. For greater certainty, this Article does not preclude the enforcement of any requirement, commitment or undertaking between private parties, if a Party did not impose the requirement, commitment or undertaking.

²² An "undertaking voluntarily given" means that it is not required by a Party as a condition of the approval of the takeover or merger.

ARTICLE 3.11

Investment and Sustainable Development

1. The Parties recognise the importance of environmental protection in connection with the establishment and operation of enterprises and reaffirm the Parties' rights and obligations relating to the protection of the environment, including climate change, provided for in this Agreement.
2. The Parties recognise the importance of encouraging the adherence to responsible business practices by covered enterprises and reaffirm the Parties' obligations in this regard, as set out in Article 13.11 (Responsible Business Conduct) of Chapter 13 (Trade and Sustainable Development).

ARTICLE 3.12

Non-Conforming Measures

1. Articles 3.6 (Market Access), 3.7 (National Treatment), 3.8 (Most-Favoured-Nation Treatment), 3.9 (Senior Management and Boards of Directors) and 3.10 (Performance Requirements) do not apply to:
 - (a) an existing non-conforming measure that is maintained by a Party at the level of:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or
 - (iii) a local government;
 - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 3.6 (Market Access), 3.7 (National Treatment), 3.8 (Most-Favoured-Nation Treatment), 3.9 (Senior Management and Boards of Directors) or 3.10 (Performance Requirements).
2. Articles 3.6 (Market Access), 3.7 (National Treatment), 3.8 (Most-Favoured-Nation Treatment), 3.9 (Senior Management and Boards of Directors) and 3.10 (Performance Requirements) do not apply to a measure of a Party that is consistent with the reservations, conditions or

qualifications specified with respect to a sector, subsector or activity, as set out by that Party in its Schedule to Annex XVII (Future Measures).

3. In respect of intellectual property rights, a Party may derogate from subparagraph 1(g) of Article 3.10 (Performance Requirements) and Articles 3.7 (National Treatment) and 3.8 (Most-Favoured-Nation Treatment) if permitted by the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for all Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.
4. Notwithstanding Articles 3.7 (National Treatment) and 3.8 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party, or its covered enterprise, to provide information concerning that enterprise for informational or statistical purposes, provided that those requests are reasonable and not unduly burdensome. The Party shall protect confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered enterprise. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

SECTION 3.3

CROSS-BORDER TRADE IN SERVICES

ARTICLE 3.13

Scope

This Section shall apply to measures of a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
- (d) the provision of a bond or other form of financial security as a condition for the supply of a service.

ARTICLE 3.14

Market Access

A Party shall not adopt or maintain, a measure, whether it applies to the Party as a whole or to any division thereof, that:

- (a) imposes a limitation on:
 - (i) the number of services suppliers, whether in the form of a numerical quota, monopoly, exclusive service suppliers or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;²³ or

²³ Subparagraph (a)(iii) does not cover measures adopted or maintained by a Party which limits inputs for the supply of services.

- (b) restricts or requires a specific type of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 3.15

Local Presence

A Party shall not require a service supplier of another Party to establish or maintain an enterprise, or to be resident, in that Party as a condition for the cross-border supply of a service.

ARTICLE 3.16

National Treatment

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of another Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of another Party.
4. Nothing in this Article shall be construed as requiring a Party to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant services or service suppliers.

ARTICLE 3.17

Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.²⁴

²⁴ For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to services and service suppliers of territories for whose international relations the United Kingdom is responsible.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of another Party the benefit of any treatment resulting from measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.
3. For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a non-Party, or mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the “treatment” referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

ARTICLE 3.18

Non-Conforming Measures

1. Article 3.14 (Market Access), Article 3.15 (Local Presence), Article 3.16 (National Treatment), and Article 3.17 (Most-Favoured-Nation Treatment) do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or
 - (iii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 3.14 (Market Access), Article 3.15 (Local Presence), Article 3.16 (National Treatment) or Article 3.17 (Most-Favoured-Nation Treatment).
2. Article 3.14 (Market Access), Article 3.15 (Local Presence), Article 3.16 (National Treatment), and Article 3.17 (Most-Favoured-Nation Treatment) do not apply to any measure of a Party that is consistent with the reservations, conditions or qualifications specified with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex XVII (Future Measures).

SECTION 3.4

ENTRY AND TEMPORARY STAY OF NATURAL PERSONS

ARTICLE 3.19

General Provisions and Scope

1. This Section reflects the preferential trade relationship between the Parties as well as the desire of the Parties to facilitate entry and temporary stay of natural persons for business purposes on a reciprocal basis, and to ensure transparency of the process.
2. This Section applies to measures by a Party affecting entry into that Party by natural persons of another Party, who are business visitors for establishment purposes, intra-corporate transferees, contractual service suppliers, independent professionals and short-term business visitors and to measures affecting their business activities during their temporary stay in the former Party.
3. To the extent that commitments are not undertaken in this Section, all requirements provided for in the law of a Party regarding the entry and temporary stay shall continue to apply, including rules concerning the length of stay.
4. Notwithstanding the provisions of this Section, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including rules concerning minimum wages and collective wage agreements.
5. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in such a dispute or negotiation.
6. This Section does not apply to measures:
 - (a) affecting natural persons of a Party seeking access to the employment market of another Party; or
 - (b) regarding nationality or citizenship, residence or employment on a permanent basis.
7. This Section shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, 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 another Party under the terms of this Section.²⁵

8. This Section, Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors) and Annex XIX (Contractual Service Suppliers and Independent Professionals) only apply to a Party's territory described in subparagraph (1)(a) of Article 1.2 (Territorial Application) of Chapter 1 (General Provisions).

ARTICLE 3.20

Definitions

For the purposes of this Section:

- (a) "business visitors for establishment purposes" means natural persons working in a senior position within a legal person of a Party, who:
- (i) are responsible for setting up an enterprise of the same group in the Party granting entry;
 - (ii) do not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise; and
 - (iii) do not receive remuneration from a source located in the Party granting entry;
- (b) "contractual service suppliers" means natural persons employed by a legal person of a Party that:
- (i) is itself not an agency for placement and supply services of personnel and is not acting through such an agency;
 - (ii) is not established in the Party granting entry; and
 - (iii) has concluded a *bona fide* contract to supply a service to a final consumer in another Party, requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to supply the service in question;²⁶
- (c) "independent professionals" means natural persons who are engaged in the supply of a service and are established as self-employed in a Party who:

²⁵ Requiring a visa for natural persons of a certain country, and not for those of others, shall not in itself be regarded as nullifying or impairing benefits accrued under this Section.

²⁶ The contract to supply services referred to in subparagraph (b)(iii) shall comply with the requirements of the law that applies in the place where the contract is executed.

- (i) have not established in the Party granting entry; and
 - (ii) have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) to supply a service to a final consumer in the Party granting entry, requiring their presence on a temporary basis in the latter Party in order to fulfil the contract to supply the service in question;²⁷
- (d) “intra-corporate transferees” means natural persons who have been employed by a legal person of a Party or have been partners in it, for a period of not less than one year immediately preceding the date of their application for the entry and temporary stay, and who are temporarily transferred to a legal person in another Party, which forms part of the same group as the former legal person, including its representative office, subsidiary, branch or head company, provided that the natural person concerned belongs to one of the following categories:
- (i) “managers”: natural persons working in a senior position, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, and whose responsibilities include at least:
 - (aa) directing the enterprise or a department or subdivision thereof;
 - (ab) supervising and controlling the work of other supervisory, professional or managerial employees; or
 - (ac) having the authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions; or
 - (ii) “specialists”: natural persons who possess:
 - (aa) specialised knowledge essential to the enterprise’s products or services and its application in international markets; or
 - (ab) an advanced level of expertise or knowledge of the enterprise’s processes and procedures such as its

²⁷ The contract to supply services referred to in subparagraph (c)(ii) shall comply with the requirements of the law that applies in the place where the contract is executed.

production, research equipment, techniques, or management;²⁸ or

- (iii) “graduate trainees”: natural persons who:
 - (aa) possess a university degree at least at bachelor’s level; and
 - (ab) are temporarily transferred to an enterprise in the Party granting entry for career development purposes, or to obtain training in business techniques or methods, and are paid during the period of the transfer.

ARTICLE 3.21

General Obligations

1. A Party shall grant the entry and temporary stay to natural persons of another Party for business purposes in accordance with this Section, and Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors) and Annex XIX (Contractual Service Suppliers and Independent Professionals), provided that those persons comply with the immigration law of the former Party applicable to the entry and temporary stay.
2. Each Party shall apply its measures relating to the provisions of this Section consistently with the desire of the Parties set out in paragraph 1 of Article 3.19 (General Provisions and Scope), and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services, or establishment or operation under this Agreement.

ARTICLE 3.22

Application Procedures

1. The measures taken by each Party to facilitate and expedite procedures related to the entry and temporary stay of natural persons of another Party for business purposes shall be consistent with Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), Annex XIX (Contractual Service Suppliers and Independent Professionals) and this Article.

²⁸ In assessing such expertise or knowledge, the Parties will consider abilities that are unusual and different from those generally found in a particular industry and that cannot be easily transferred to another natural person in the short-term. Those abilities would have been obtained through specific academic, or equivalent, qualifications or extensive experience within the enterprise.

2. The Parties should ensure that the processing of applications for entry and temporary stay pursuant to their respective commitments in this Agreement follows good administrative practice. To that effect:
 - (a) the Parties shall ensure that fees charged by competent authorities for the processing of applications for the entry and temporary stay do not unduly impair or delay trade in goods or services or establishment or operation under this Agreement;
 - (b) subject to the competent authorities' discretion, documents required from the applicant for applications for the grant of entry and temporary stay of short-term visitors for business purposes should be commensurate with the purpose for which they are collected;
 - (c) if the competent authorities of a Party require additional information from the applicant in order to process the application, they shall endeavour to notify, without undue delay, the applicant of the required additional information;
 - (d) the competent authorities of a Party shall notify the applicant of the outcome of the application promptly after a decision has been taken; if the application is approved, the competent authorities of a Party shall notify the applicant of the period of stay and other relevant terms and conditions; if the application is denied, the competent authorities of a Party shall, upon request or upon their own initiative, make available to the applicant information on any available review or appeal procedures;
 - (e) each Party shall endeavour to accept and process applications in electronic format; and
 - (f) each Party shall, to the extent practicable, ensure that relevant application forms, guidance, eligibility requirements, costs and processing times are accessible through a single online portal.
3. To the extent practicable, the competent authorities of a Party shall adopt a decision on an application for entry and temporary stay of a natural person of a category outlined in paragraph 2 of Article 3.19 (General Provisions and Scope), or a renewal of it, and shall notify the decision to the applicant in writing, in accordance with the notification procedures under the relevant Party's law, as soon as possible but not later than 90 days after the date on which a complete application was submitted. Where it is not practicable for a decision to be made within 90 days, they shall endeavour to make the decision within a reasonable time thereafter.
4. Where information or documentation for the application is incomplete, and additional information is required to process the application, the competent authorities shall endeavour to notify the applicant without undue delay of the additional information that is required and set a reasonable deadline for

providing it. The period referred to in paragraph 3 shall be suspended until the competent authorities have received the required additional information.

ARTICLE 3.23

Cooperation on Return and Readmissions

The Parties acknowledge that the enhanced movement of natural persons following from Article 3.22 (Application Procedures) requires full cooperation from the relevant Parties to support the return and readmission of natural persons staying in a Party in contravention of its law for entry and temporary stay.

ARTICLE 3.24

Transparency

1. A Party shall make publicly available information relating to the entry and temporary stay by natural persons of another Party, referred to in paragraph 2 of Article 3.19 (General Provisions and Scope).
2. The information referred to in paragraph 1 shall include, where applicable, the following information:
 - (a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;
 - (b) documentation required and conditions to be met;
 - (c) method of filing an application and options on where to file, such as consular offices or online;
 - (d) application fees and an indicative timeframe of the processing of an application;
 - (e) the maximum length of stay under each type of authorisation described in subparagraph (a);
 - (f) conditions for any available extension or renewal;
 - (g) rules regarding accompanying dependents;
 - (h) available review or appeal procedures; and
 - (i) relevant law of general application pertaining to the entry and temporary stay of natural persons for business purposes.
3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to inform the other Parties of any changes in requirements

and procedures where such changes would affect the enjoyment by applicants for entry and temporary stay of the benefits of this Section.

ARTICLE 3.25

Business Visitors for Establishment Purposes and Intra-Corporate Transferees

1. Each Party shall grant entry and temporary stay to business visitors for establishment purposes and intra-corporate transferees in accordance with Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors).
2. Each Party shall allow the entry and temporary stay of business visitors for establishment purposes without requiring a work permit or other prior approval procedure of similar intent.
3. A Party shall not adopt or maintain limitations, whether they apply to the Party as a whole or to any division thereof, on the total number of natural persons granted entry in accordance with paragraph 1, in a specific sector or sub-sector, in the form of numerical quotas or the requirement of an economic needs test.
4. Each Party shall accord to business visitors for establishment purposes and intra-corporate transferees of another Party, during their temporary stay in that Party, treatment no less favourable than that it accords, in like situations, to its own natural persons.
5. Iceland, Liechtenstein and Norway shall allow the entry and temporary stay of the partners²⁹ and dependent children³⁰ of intra-corporate transferees from the United Kingdom in the category of managers and specialists for the same period as the period of temporary stay granted to the intra-corporate transferee.
6. The United Kingdom shall allow the entry and temporary stay of the partners³¹ and dependent children³² of intra-corporate transferees from

²⁹ For the purposes of this paragraph, “partner” means any spouse or civil partner of an intra-corporate transferee from the United Kingdom, including under a marriage, civil partnership or equivalent union or partnership, recognised as such in accordance with the law of Iceland, Liechtenstein or Norway, respectively. For the avoidance of doubt, this also includes any unmarried or same sex partner who, when accompanying an intra-corporate transferee from one Party, may be granted temporary entry and stay under the relevant law of Iceland, Liechtenstein or Norway, respectively.

³⁰ For the purposes of this paragraph, “dependent children” means children who are dependent on an intra-corporate transferee from the United Kingdom and recognised as such in accordance with the law of Iceland, Liechtenstein or Norway, respectively.

³¹ For the purposes of this paragraph, “partner” means any spouse or civil partner of an intra-corporate transferee from Iceland, Liechtenstein or Norway, respectively,, including under a marriage, civil partnership or equivalent union or partnership, recognised as such in accordance with the law of the United Kingdom. For the avoidance of doubt, this also includes any unmarried or same sex partner who, when accompanying an intra-corporate

Iceland, Liechtenstein or Norway, respectively, in the category of managers and specialists for the same period as the period of temporary stay granted to the intra-corporate transferee.

7. Unless otherwise specified in Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), each Party shall allow the partners and dependent children of intra-corporate transferees referred to in subparagraphs (d)(i) and (ii) of Article 3.20 (Definitions), to work in an employed or self-employed capacity for the duration of their permitted length of stay, and shall not require them to obtain a separate work permit.
8. For the avoidance of doubt, with respect to the partners and dependent children of intra-corporate transferees, paragraphs 5 to 7 are without prejudice to the law of each Party applicable to entry and temporary stay.

ARTICLE 3.26

Contractual Service Suppliers and Independent Professionals

1. Each Party shall grant entry and temporary stay to contractual service suppliers and independent professionals of another Party in accordance with Annex XIX (Contractual Service Suppliers and Independent Professionals).
2. Unless otherwise specified in Annex XIX (Contractual Service Suppliers and Independent Professionals), a Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of another Party granted entry and temporary stay, in the form of numerical quotas or the requirement of an economic needs test.
3. Each Party shall accord to contractual service suppliers and independent professionals of another Party, with regard to the supply of their services in that Party, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

ARTICLE 3.27

Short-Term Business Visitors

1. Each Party shall grant entry and temporary stay to short-term business visitors of another Party in accordance with Annex XVIII (Business

transferee from Iceland, Liechtenstein or Norway, respectively, may be granted temporary entry and stay under the relevant law of United Kingdom.

³² For the purposes of this paragraph, “dependent children” means children who are dependent on an intra-corporate transferee from Iceland, Liechtenstein or Norway, respectively, and recognised as such in accordance with the law of the United Kingdom.

Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term business Visitors), subject to the following conditions:

- (a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;
 - (b) the short-term business visitors do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily; and
 - (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a legal person that has not established in the Party where they are staying temporarily, and a consumer there, except as provided for in Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors).
2. Unless otherwise specified in Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), each Party shall grant entry of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.
3. If short-term business visitors of a Party are engaged in the supply of a service to a consumer in the Party where they are staying temporarily in accordance with Annex XVIII (Business Visitors for Establishment Purposes, Intra-Corporate Transferees, and Short-Term Business Visitors), that Party shall accord to them, with regard to the supply of that service, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

ARTICLE 3.28

Non-Conforming Measures

To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, paragraphs 3 and 4 of Article 3.25 (Business Visitors for Establishment Purposes, Intra-Corporate Transferees), paragraphs 2 and 3 of Article 3.26 (Contractual Service Suppliers and Independent Professionals), and paragraph 3 of Article 3.27 (Short-Term Business Visitors) do not apply to:

- (a) any existing non-conforming measure of a Party at the level of:
 - (i) the central government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);
 - (ii) a regional government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or

- (iii) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
- (c) an amendment of any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with paragraphs 3 and 4 of Article 3.25 (Business Visitors for Establishment Purposes and Intra-Corporate Transferees), paragraphs 2 and 3 of Article 3.26 (Contractual Service Suppliers and Independent Professionals), or paragraph 3 of Article 3.27 (Short-Term Business Visitors); or
- (d) any measure of a Party consistent with a condition or qualification specified in Annex XVII (Future Measures).

ARTICLE 3.29

Contact Points

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the effective implementation and operation of this Section and notify the other Parties of the contact details. The Parties shall promptly notify each other of any change of those contact details.

SECTION 3.5
REGULATORY FRAMEWORK
SUB-SECTION 3.5.1
DOMESTIC REGULATION

ARTICLE 3.30

Scope

1. Subject to paragraph 2, this Sub-Section applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, formalities, and technical standards that affect:
 - (a) cross-border trade in services;
 - (b) establishment or operation; or
 - (c) the supply of a service through the presence of a natural person of a Party in another Party of categories of natural persons as defined in Article 3.19 (General Provisions and Scope) and Article 3.20 (Definitions) of Section 3.4 (Entry and Temporary Stay of Natural Persons).

As far as measures relating to technical standards are concerned, this Sub-Section only applies to measures that affect trade in services. For the purposes of this Sub-Section, the term “technical standards” does not include regulatory or implementing technical standards for financial services.

2. This Sub-Section does not apply to licensing requirements and procedures, qualification requirements and procedures, technical standards and formalities pursuant to a measure:
 - (a) that does not conform with Article 3.6 (Market Access) or Article 3.7 (National Treatment) of Section 3.2 (Investment Liberalisation) and is referred to in subparagraphs 1(a) to (c) of Article 3.12 (Non-Conforming Measures) of Section 3.2 (Investment Liberalisation), or with Article 3.14 (Market Access) or Article 3.15 (Local Presence) or Article 3.16 (National Treatment) of Section 3.3 (Cross-Border Trade in Services) and is referred to in subparagraphs 1(a) to (c) of Article 3.18 (Non-Conforming Measures) of Section 3.3 (Cross-Border Trade in Services), or with Article 3.25 (Business Visitors for Establishment Purposes and Intra-Corporate Transferees) or Article 3.26 (Contractual Service Suppliers and Independent Professionals) or

Article 3.27 (Short-Term Business Visitors) and is referred to in Article 3.28 (Non-Conforming Measures) of Section 3.4 (Entry and Temporary Stay of Natural Persons); or

- (b) referred to in paragraph 2 of Article 3.12 (Non-Conforming Measures) of Section 3.2 (Investment Liberalisation) or paragraph 2 of Article 3.18 (Non-Conforming Measures) of Section 3.3 (Cross-Border Trade in Services).

ARTICLE 3.31

Definitions

For the purposes of this Sub-Section:

- (a) “authorisation” means the permission to pursue the activities set out in subparagraphs 1(a) to (c) of Article 3.30 (Scope) resulting from a procedure a natural or legal person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements, technical standards or formalities for the purposes of obtaining, maintaining or renewing that permission; and
- (b) “competent authority” means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in subparagraph (a).

ARTICLE 3.32

Submission of Applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

ARTICLE 3.33

Application Timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application for authorisation at any time throughout the year. If a specific time period for applying exists, the Party shall ensure that its competent authorities allow a reasonable period of time for the submission of an application.

ARTICLE 3.34

Electronic Applications and Acceptance of Copies

1. If a Party requires authorisation, it shall ensure that its competent authorities:
 - (a) to the extent possible, provide for applications to be completed by electronic means, including from within another Party; and
 - (b) accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

ARTICLE 3.35

Processing of Applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:
 - (a) process applications throughout the year. Where this is not possible, this information should be made public in advance, to the extent feasible;
 - (b) at the request of the applicant, confirm in writing³³ that an application has been received;
 - (c) to the extent practicable, provide a fixed or indicative timeframe for processing all applications. That timeframe shall be reasonable, to the extent practicable;
 - (d) where the fixed timeframe under subparagraph (c) has been provided, notify applicants of any extensions of that timeframe;
 - (e) at the request of the applicant, provide without undue delay information concerning the status of the application;
 - (f) to the extent practicable, ascertain, without undue delay, the completeness of an application for processing under the Party's laws and regulations;
 - (g) if they consider an application complete for processing under the Party's laws and regulations, within a reasonable period of time after the submission of the application, ensure that:

³³ "In writing" may include in electronic form.

- (i) where applicable, the processing of the application is completed within the stated timeframe; and
 - (ii) the applicant is informed of the decision concerning the application³⁴, to the extent possible in writing;
- (h) if they consider an application incomplete for processing under the Party's laws and regulations, ensure that they, to the extent practicable:
 - (i) inform the applicant that the application is incomplete;
 - (ii) at the request of the applicant, identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and
 - (iii) provide the applicant with the opportunity³⁵ to correct any deficiencies.

However, if it is reasonable to reject the application due to incompleteness, competent authorities shall ensure that they inform the applicant within a reasonable period of time; and

- (i) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision, and, if applicable, the procedures for resubmission of an application. An applicant shall not be prevented from submitting another application³⁶ solely on the basis of a previously rejected application.
2. The Parties shall ensure that their competent authorities grant an authorisation as soon as it is established, in light of an appropriate examination, that the applicant meets the conditions for obtaining it.
 3. The Parties shall ensure that their competent authorities ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.³⁷

³⁴ Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application.

³⁵ Such opportunity does not require a competent authority to provide extensions of deadlines.

³⁶ Competent authorities may require that the content of such an application has been revised.

³⁷ Competent authorities are not responsible for delays due to reasons outside their competence.

ARTICLE 3.36

Fees

1. For all the activities listed under subparagraphs 1(a) to (c) of Article 3.30 (Scope), each Party shall ensure that the authorisation fees³⁸ charged by its competent authorities are reasonable and transparent and do not in themselves restrict the pursuit of those activities and, to the extent practicable, are payable by electronic means.
2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

ARTICLE 3.37

Assessment of Qualifications

If a Party requires an examination to assess the qualifications of an applicant for authorisation, it shall ensure that its competent authorities schedule that examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall ensure that its competent authorities accept requests in electronic format to take those examinations and shall consider the use of electronic means in other aspects of the examination processes.

ARTICLE 3.38

Publication and Information Available

1. If a Party requires authorisation, it shall promptly publish³⁹ the information necessary for persons pursuing or seeking to pursue the activities referred to in subparagraphs 1(a) to (c) of Article 3.30 (Scope) for which the authorisation is required to comply with the requirements, formalities, technical standards and procedures for obtaining, maintaining, amending and renewing that authorisation. This information shall include, to the extent it exists:
 - (a) the licensing and qualification requirements, procedures and formalities;

³⁸ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

³⁹ For the purposes of this Article, "publish" means to include in an official publication, such as an official journal, or an official website.

- (b) contact information of relevant competent authorities;
 - (c) authorisation fees;
 - (d) applicable technical standards;
 - (e) procedures for appeal or review of decisions concerning applications;
 - (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences or qualifications;
 - (g) opportunities for public involvement, such as through hearings or comments;
 - (h) fixed or indicative timeframes for the processing of an application; and
 - (i) guidance on accessing public registers and databases on providers and services.
2. The Parties shall consolidate electronic publications into a single online portal or otherwise ensure that competent authorities make them easily accessible through alternative electronic means.
3. Each Party shall require each of its competent authorities to respond to any request for information or assistance.

ARTICLE 3.39

Technical Standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations⁴⁰ designated to develop technical standards, to use open and transparent processes.

ARTICLE 3.40

Conditions for Authorisation

1. Each Party shall ensure that measures relating to authorisation are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

⁴⁰ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties.

2. The criteria⁴¹ referred to in paragraph 1 shall be:
 - (a) objective;
 - (b) transparent;
 - (c) clear;
 - (d) impartial;
 - (e) made public in advance, to the extent practicable; and
 - (f) easily accessible.
3. If a Party adopts or maintains a measure relating to authorisation, it shall ensure that:
 - (a) the competent authority concerned processes applications, and reaches and administers its decisions objectively and impartially and in a manner independent of the undue influence of any person carrying out the economic activity for which authorisation is required;
 - (b) the procedures themselves do not prevent fulfilment of the requirements; and
 - (c) those measures do not discriminate between men and women.⁴²

⁴¹ Such criteria may include, but are not limited to, competence and the ability to supply a service or pursue an economic activity, including to do so in a manner consistent with the Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

⁴² Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by the Party of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

SUB-SECTION 3.5.2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 3.41

Review Procedures for Administrative Decisions

Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier of another Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions⁴³ that affect the pursuit of an activity referred to in subparagraphs 1(a) to (c) of Article 3.30 (Scope). Where these procedures are not independent of the competent authority entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

ARTICLE 3.42

Opportunity to Comment Before Entry into Force

1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party⁴⁴ shall publish in advance:
 - (a) any laws or regulations of general application it proposes to adopt; or
 - (b) documents that provide sufficient details about that possible new law or regulation to allow another Party to assess whether and how their interests might be significantly affected.
2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party is encouraged to apply paragraph 1 to procedures and administrative rulings of general application it proposes to adopt.
3. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall provide the other Parties with a reasonable opportunity to comment on those proposed measures or documents published under paragraphs 1 or 2.

⁴³ For the purposes of this Article, “administrative decisions” means a decision or action with legal effect and covers the failure to take an administrative decision or take such action when that is so required by a Party’s law.

⁴⁴ The Parties understand that paragraphs 1 to 4 recognise that each Party may have different systems to consult interested persons on certain measures before they are adopted, and that the alternatives set out in subparagraphs 1(a) and (b) reflect different legal systems.

4. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall consider comments received under paragraph 3.⁴⁵
5. In publishing the law or regulation referred to in subparagraph 1(a), or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Party is encouraged to explain the purpose and rationale of the law or regulation.
6. Each Party shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of the law or regulation referred to in subparagraph 1(a) and the date on which service suppliers must comply with the law or regulation.

ARTICLE 3.43

Regulatory Cooperation

1. To promote further services liberalisation, the Parties shall:
 - (a) consider cooperating on regulatory issues of mutual interest by:
 - (i) discussing regulatory approaches that underpin their criteria for authorisation;
 - (ii) sharing best-practices and expertise;
 - (iii) participating in international dialogues; and
 - (iv) sharing trade-related information.
 - (b) endeavour to encourage their competent authorities to consider cooperating with competent authorities of another Party on regulatory issues of mutual interest by the same means provided in subparagraphs (a)(i) to (iv).
2. This Article shall not apply with respect to financial services.

⁴⁵ This provision is without prejudice to the final decision of a Party that adopts or maintains any measure for authorisation for the supply of a service.

SUB-SECTION 3.5.3
FINANCIAL SERVICES

ARTICLE 3.44

Scope

1. This Sub-Section shall apply to measures of a Party affecting the supply of financial services in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter and Sub-Section 3.5.1 (Domestic Regulation) and Sub-Section 3.5.2 (Provisions of General Application) of this Section.
2. For the purposes of the application of Article 3.1 (Scope) of Section 3.1 (General Provisions) to this Sub-Section, the term “activities performed in the exercise of governmental authority” means the following:
 - (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; and
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Party or its public entities.
3. For the purposes of the application of Article 3.1 (Scope) of Section 3.1 (General Provisions) to this Sub-Section, if a Party allows any of the activities referred to in subparagraph 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “activities performed in the exercise of governmental authority” does not include those activities.
4. The definition of “activities performed in the exercise of governmental authority” in Section 3.1 (General Provisions) does not apply to services covered by this Sub-Section.
5. Article 3.9 (Senior Management and Boards of Directors) of Section 3.2 (Investment Liberalisation) shall not apply to measures covered by this Sub-Section.

ARTICLE 3.45

Definitions

For the purposes of this Chapter:

- (a) “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

Insurance and insurance-related services

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

Banking and other financial services (excluding insurance)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers’ cheques, e-payments and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (ab) foreign exchange;
 - (ac) derivative products, including futures and options;

- (ad) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ae) transferable securities; and
 - (af) other negotiable instruments and financial assets, including bullion;
 - (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) money broking;
 - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) “financial service supplier” means a person of a Party wishing to supply or supplying financial services but does not include a public entity;
- (c) “new financial services” means a financial service not supplied in the Party that is supplied in another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party;
- (d) “public entity” means
- (i) a government, a central bank or monetary authority of a Party, or any entity owned or controlled by a Party that is principally engaged in carrying out governmental functions or activities for governmental purposes, but does not include an entity principally engaged in supplying financial services on commercial terms; or

- (ii) a private entity performing functions normally performed by a central bank or monetary authority when exercising those functions; and
- (e) “self-regulatory organisations” means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central or regional government.

ARTICLE 3.46

New Financial Services

1. Each Party shall, in accordance with its law, permit a financial service supplier of another Party to supply a new financial service that the Party would permit its own like financial service suppliers to supply without adopting a law or modifying an existing law, in like situations.
2. A Party may determine the institutional and juridical form⁴⁶ through which the new financial service may be supplied and may require authorisation or its renewal for the supply of the service from the relevant regulator. Where such authorisation is required, a decision shall be made within a reasonable period of time, and the authorisation or its renewal may only be refused for prudential reasons, including if such prudential reasons arise out of the Party’s international obligations.
3. Each Party shall endeavour to collaborate and share knowledge relating to developments in financial services including financial integrity, consumer wellbeing and protection, financial inclusion, financial data, competition and financial stability through innovation in financial services, by sharing best practice and facilitating cross-border development of new financial services.
4. The Parties understand that nothing in this Article prevents a financial service supplier of a Party from applying to another Party to request that it authorises the supply of a financial service that is not supplied in any Party. That application shall be subject to the law of the Party receiving the application, and for greater certainty, shall not be subject to paragraphs 1 to 2.

⁴⁶ For greater certainty, a Party may determine that the service can only be provided by an established financial service supplier.

ARTICLE 3.47

Financial Information and Data

1. No Party shall restrict a financial service supplier of another Party from transferring or processing information, including by electronic means, or from transferring equipment in accordance with this Agreement and any applicable domestic laws and regulations, where such transfers or processing are necessary in the course of the business of that financial service supplier.
2. The Parties affirm that paragraph 1 of Article 4.11 (Cross-border Data Flows) of Chapter 4 (Digital Trade) applies to cross-border data transfers of financial service suppliers.
3. Notwithstanding paragraph 1 of this Article and paragraph 1 of Article 4.11 (Cross-Border Data Flows) of Chapter 4 (Digital Trade), each Party has the right to require that information of a financial service supplier is used, stored or processed in that Party where it is not able to ensure access to data required for the purposes of financial regulation and supervision. Before imposing such requirements on the financial service supplier of another Party with respect to use, storage or processing of financial information in that Party, the Party or its financial regulators shall endeavour to consult that other Party or its financial regulators and, as far as practicable, provide the financial service supplier with a reasonable opportunity to remediate any lack of access to information.
4. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures in accordance with paragraph 2 of Article 4.12 (Protection of Personal Data and Privacy) of Chapter 4 (Digital Trade).

ARTICLE 3.48

Payments and Clearing

Under terms and conditions that accord national treatment under Article 3.7 (National Treatment) of Section 3.2 (Investment Liberalisation) and Article 3.16 (National Treatment) of Section 3.3 (Cross-Border Trade in Services), each Party shall grant to established financial service suppliers of another Party access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article shall not confer access to the Party's lender of last resort facilities.

ARTICLE 3.49

Senior Management and Boards of Directors

1. No Party shall require established financial service suppliers of another Party to engage natural persons of any particular nationality as members of the board of directors, senior managerial or other essential personnel.
2. No Party shall require that more than a minority of the board of directors of established financial service suppliers of another Party be composed of persons residing in that Party.
3. This Article is subject to each Party's reservations as set out in Annex XVI (Existing Measures) and Annex XVII (Future Measures).

ARTICLE 3.50

Self-Regulatory Organisations

If a Party requires a financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into that Party, or grants a privilege or advantage when supplying a financial service through a self-regulatory organisation, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 3.6 (Market Access), Article 3.7 (National Treatment) and Article 3.8 (Most-Favoured Nation Treatment) of Section 3.2 (Investment Liberalisation) and Article 3.14 (Market Access), Article 3.16 (National Treatment) and Article 3.17 (Most-Favoured Nation Treatment) of Section 3.3 (Cross-Border Trade in Services).

ARTICLE 3.51

Prudential Carve-Out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons⁴⁷, including:
 - (a) the protection of investors, depositors, policyholders, or persons to whom a financial service supplier owes a fiduciary duty;
 - (b) the maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier; or
 - (c) ensuring the integrity and stability of the Party's financial system.

⁴⁷ For greater certainty, this shall not prevent a Party from adopting or maintaining measures for prudential reasons in relation to branches established in that Party by legal persons in another Party.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

ARTICLE 3.52

Confidential Information

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 3.53

International Standards

Each Party shall make its best endeavour to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in that Party. Such internationally agreed standards are, inter alia, the Basel Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors, the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the Financial Action Task Force's "FATF Recommendations" and the standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes of the OECD.

ARTICLE 3.54

Recognition of Prudential Measures

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Sub-Section.⁴⁸ That recognition may be:
 - (a) accorded autonomously;
 - (b) achieved through harmonisation or other means; or
 - (c) based upon an agreement or arrangement with a non-Party.
2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation,

⁴⁸ For greater certainty, nothing in Article 3.8 (Most-Favoured-Nation Treatment) of Section 3.2 (Investment Liberalisation) and Article 3.17 (Most-Favoured-Nation Treatment) of Section 3.3 (Cross-Border Trade in Services) shall be construed to require a Party to accord recognition to prudential measures of another Party.

oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

3. If a Party accords recognition of prudential measures under subparagraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

SUB-SECTION 3.5.4

TELECOMMUNICATIONS SERVICES

ARTICLE 3.55

Scope

1. This Sub-Section applies to measures of a Party affecting the supply of telecommunications services in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter and Sub-Section 3.5.1 (Domestic Regulation) and Sub-Section 3.5.2 (Provisions of General Application) of this Section.
2. This Sub-Section does not apply to:
 - (a) measures affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services; or
 - (b) measures relating to broadcast or cable distribution of radio or television programming, except to ensure that a service supplier operating a broadcast station or cable system has continued access to and use of public telecommunications networks and services.

ARTICLE 3.56

Definitions

For the purposes of this Sub-Section:

- (a) “associated facilities” means those services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the provision of services via that network or service or have the potential to do so;
- (b) “end-user” means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;
- (c) “essential facilities” means facilities of a public telecommunications network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and

- (ii) cannot feasibly be economically or technically substituted in order to supply a service;
- (d) “interconnection” means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;
- (e) “international mobile roaming service” means a mobile service provided pursuant to an agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in a Party to use their mobile handset or other device for voice, data or messaging services in another Party;
- (f) “leased circuit” means telecommunications services or facilities, including those of a virtual or non-physical nature, between two or more designated points that are set aside for the dedicated use of, or availability to, a user;
- (g) “major supplier” means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;
- (h) “network element” means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- (i) “non-discriminatory” means treatment no less favourable than that accorded, in like situations, to other service suppliers and users of like public telecommunications networks or services;
- (j) “number portability” means the ability of end-users who so request to retain the same telephone numbers, at the same location in the case of a fixed line, when switching between the same category of suppliers of public telecommunications services;
- (k) “public telecommunications network” means any telecommunications network used for the provision of public telecommunications services between network termination points;
- (l) “public telecommunications service” means any telecommunications service that is offered to the public generally;

- (m) “reference interconnection offer” means an interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;
- (n) “telecommunications” means the transmission and reception of signals by any electromagnetic means;
- (o) “telecommunications network” means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
- (p) “telecommunications regulatory authority” means the body or bodies responsible for the regulation of telecommunications networks and services covered by this Sub-Section;
- (q) “telecommunications service” means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, including over networks used for broadcasting, but does not include a service providing, or exercising editorial control over, content transmitted using telecommunications networks and services;
- (r) “universal service” means the minimum set of services that must be made available to all users in a Party; and
- (s) “user” means a service consumer or a service supplier using a public telecommunications network or service.

ARTICLE 3.57

Access and Use

1. Each Party shall ensure that any covered enterprise or service supplier of another Party is accorded access to and use of public telecommunications networks or services, including private leased circuits, offered in that Party or across its borders on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, to paragraphs 2 to 6.
2. Each Party shall ensure that covered enterprises or service suppliers of another Party are permitted:
 - (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to conduct their operations;

- (b) to interconnect private leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another covered enterprise or service supplier; and
 - (c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of public telecommunications services.
- 3. Each Party shall ensure that covered enterprises or service suppliers of another Party may use public telecommunications networks and services for the movement of information in that Party or across its borders, including for their intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the Party.
- 4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.
- 5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services other than as necessary:
 - (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available; or
 - (b) to protect the technical integrity of public telecommunications networks or services.
- 6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:
 - (a) restrictions on resale or shared use of such services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;
 - (c) a requirement, if necessary, for the interoperability of such services;
 - (d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
 - (e) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

- (f) notification, registration and licensing.

ARTICLE 3.58

Access to Major Suppliers' Essential Facilities

Each Party shall ensure that a major supplier in that Party grants access to its essential facilities to suppliers of telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of market conditions conducted by the Party's telecommunications regulatory authority. The major supplier's essential facilities may include, *inter alia*, network elements, leased circuit services and associated facilities.

ARTICLE 3.59

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

ARTICLE 3.60

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier of public telecommunications networks or services in that Party provides interconnection:
 - (a) at any technically feasible point in the major supplier's network;
 - (b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the major supplier's own like services, or for like services of its subsidiaries or other affiliates;
 - (c) on a timely basis, and on terms, conditions (including technical standards and specifications) and rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier does not need to pay for network components or facilities that it does not require for the service to be provided; and

- (d) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
- 2. Each Party shall ensure that major suppliers in that Party make publicly available, as appropriate:
 - (a) a reference interconnection offer or other standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or
 - (b) the terms and conditions of an interconnection agreement in effect.
- 3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in that Party.

ARTICLE 3.61

Number Portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on a timely basis, without impairment of quality, reliability or convenience, and on reasonable and non-discriminatory terms and conditions.

ARTICLE 3.62

Scarce Resources

- 1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives, including the promotion of competition. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.
- 2. Each Party shall make publicly available the current use of allocated frequency bands, but detailed identification of radio spectrum allocated for specific government uses is not required.
- 3. Each Party may rely on market-based approaches, such as bidding procedures, to assign spectrum for commercial use.
- 4. A measure of a Party allocating and assigning spectrum and managing frequency is not per se inconsistent with Article 3.6 (Market Access) of Section 3.2 (Investment Liberalisation) and Article 3.14 (Market Access) of

Section 3.3 (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

ARTICLE 3.63

Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anticompetitive practices.
2. The anticompetitive practices referred to in paragraph 1 include:
 - (a) engaging in anticompetitive cross-subsidisation;
 - (b) using information obtained from competitors with anticompetitive results; and
 - (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

ARTICLE 3.64

Treatment by Major Suppliers

Each Party shall provide its telecommunications regulatory authority with the power to require, if appropriate, that a major supplier in that Party accords suppliers of public telecommunications networks or services of another Party treatment no less favourable than the major supplier accords, in like situations, to its subsidiaries or affiliates regarding:

- (a) the availability, provisioning, rates or quality of like telecommunications services; and
- (b) the availability of technical interfaces necessary for interconnection.

ARTICLE 3.65

Telecommunications Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct from, and functionally independent to any supplier of telecommunications networks, equipment and services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications services, networks or equipment. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
2. Each Party shall ensure that regulatory decisions and procedures of its telecommunications regulatory authority or other competent authority are impartial with respect to all market participants.
3. Each Party shall ensure that its telecommunications regulatory authority acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it under the Party's law to enforce the obligations set out in this Sub-Section concerning obligations relating to that Party's telecommunications service suppliers.⁴⁹
4. Each Party shall ensure that the telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it to enforce the obligations set out in this Sub-Section. Such power shall be exercised transparently and in a timely manner.
5. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly on request, with all the information, including financial information, which is necessary to enable it to carry out its tasks in accordance with this Sub-Section. Information requested shall be treated in accordance with the Party's requirements of confidentiality.
6. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the Party's telecommunications regulatory authority has a right to appeal before an appeal body that is independent of the telecommunications regulatory authority and of the user or supplier affected by the decision. Pending the outcome of the appeal, the decision of the telecommunications regulatory

⁴⁹ For greater certainty, this paragraph shall not apply to measures of a Party allocating and assigning spectrum and managing frequency referred to in paragraph 4 of Article 3.62 (Scarce Resources).

authority shall stand, unless interim measures are granted in accordance with the Party's law.

7. Each Party shall ensure that:
 - (a) its telecommunications regulatory authority reports annually, *inter alia*, on the state of the electronic communications market, on the decisions they issue, on their human and financial resources and how those resources are attributed, as well as on future plans; and
 - (b) the report referred to in subparagraph (a) is made publicly available.

ARTICLE 3.66

Authorisation to Provide Telecommunications Networks or Services

1. Each Party shall permit the provision of telecommunications networks or telecommunications services without a prior formal authorisation.
2. Each Party shall make publicly available all the criteria, applicable procedures and terms and conditions under which suppliers are permitted to provide telecommunications networks or telecommunications services.
3. Each Party shall ensure that:
 - (a) any authorisation criteria and applicable procedures are as simple as possible, objective, transparent, non-discriminatory and proportionate; and
 - (b) any obligations and conditions imposed on or associated with an authorisation are non-discriminatory, transparent, proportionate and related to the services or networks provided.
4. Each Party shall ensure that an applicant for an authorisation receives in writing the reasons for the denial or revocation of the authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall have a right of appeal before an appeal body.
5. Each Party shall ensure that administrative fees imposed on suppliers are objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Sub-Section. Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 3.67

Transparency

To the extent not already provided for in this Agreement, each Party shall make each of the following, to the extent it exists, publicly available:

- (a) the responsibilities of its telecommunications regulatory authority in an easily accessible and clear form;
- (b) those measures it adopts or maintains relating to public telecommunications networks or services, including:
 - (i) regulations of its telecommunications regulatory authority, together with the basis for these regulations;
 - (ii) tariffs and other terms and conditions of services, except in circumstances otherwise provided for in its laws, regulations and decisions of its telecommunications regulatory authority;
 - (iii) specifications of technical interfaces;
 - (iv) conditions for attaching terminal or other equipment to the public telecommunications networks; and
 - (v) notification, permit, registration or licensing requirements; and
- (c) information on bodies responsible for preparing, amending and adopting standards-related measures.

ARTICLE 3.68

Universal Service Obligation

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.
2. Each Party shall administer any universal service obligation that it maintains in a manner that is transparent, non-discriminatory and neutral with respect to competition. Each Party shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to these principles shall not be regarded per se as anticompetitive.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to compensate a universal service supplier, it shall ensure that such compensation does not exceed the needs directly attributable to the universal service obligation, as determined through a competitive process or a determination of net costs.

ARTICLE 3.69

International Mobile Roaming Services⁵⁰

1. The Parties recognise the importance of international mobile roaming services for enhancing consumer welfare and promoting the growth of trade between the Parties.
2. With a view to facilitating surcharge-free international mobile roaming for end-users of each Party, the maximum rates that a supplier of public telecommunications services of a Party may levy on a supplier of public telecommunications services of another Party for the provision of wholesale international mobile roaming services (IMRS Rates) shall be the IMRS rates specified in Annex XX.
3. The Sub-Committee on Services and Investment shall, within a reasonable period of time, make a recommendation to the Joint Committee concerning the adoption, by amending Annex XX, of the IMRS rates the Sub-Committee on Services and Investment considers appropriate, provided that those rates are:
 - (a) reasonable and reciprocal; and
 - (b) based on the cost to suppliers of a Party of supplying wholesale international mobile roaming services to suppliers of the other Parties, which may include a reasonable profit.
4. The Sub-Committee on Services and Investment, in making its recommendation:
 - (a) shall take into account relevant international benchmarks;
 - (b) may consult with the telecommunications regulatory authority of each Party by any means it considers appropriate; and
 - (c) may adopt its own rules of procedure for determining the IMRS rates.
5. The Sub-Committee on Services and Investment shall review the IMRS rates in Annex XX every two years, unless it otherwise decides, with a view to determining whether those rates are still appropriate. The review shall consider, *inter alia*, the implementation and effect of the IMRS rates, particularly for consumers and suppliers of public telecommunications

⁵⁰ This Article shall not apply to Liechtenstein.

services of each Party, and the views of each Party's telecommunications regulatory authority. Following a review, the Sub-Committee on Services and Investment may make a recommendation to the Joint Committee, in accordance with paragraphs 3 and 4, that the IMRS rates be modified.

6. Each Party shall monitor the rates for retail international mobile roaming services offered by suppliers of public telecommunication services in that Party and may take such measures it considers necessary to facilitate surcharge-free international mobile roaming for end-users of the Party when roaming in another Party.
7. For greater certainty, this Article does not prevent:
 - (a) a supplier of public telecommunications services of a Party from applying a "fair use" policy for the provision of retail international mobile roaming services; or
 - (b) a Party from adopting or maintaining measures to prohibit permanent international mobile roaming services.
8. The Sub-Committee on Services and Investment shall review the implementation and functioning of this Article within three years of entry into force of this Agreement.

ARTICLE 3.70

Dispute Resolution

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with the rights and obligations that arise from this Sub-Section, and at the request of either supplier involved in the dispute, its telecommunications regulatory authority issues a binding decision within the timeframe stipulated in the Party's law to resolve the dispute.
2. Each Party shall ensure that if its telecommunications regulatory authority declines to initiate any action on a request to resolve a dispute, the telecommunications regulatory authority shall, upon request, provide a written explanation for its decision within a reasonable period of time.
3. Each Party shall ensure that a decision issued by its telecommunications regulatory authority is made publicly available, having regard to the requirements of business confidentiality.
4. Each Party shall ensure that the suppliers involved in the dispute:
 - (a) are given a full statement of the reasons on which the decision is based; and

- (b) may appeal the decision, in accordance with paragraph 6 of Article 3.65 (Telecommunications Regulatory Authority).
- 5. For greater certainty, the procedure referred to in paragraphs 1 and 2 shall not preclude a supplier of telecommunications networks or services involved in a dispute from bringing an action before a judicial authority.

ARTICLE 3.71

Confidentiality

- 1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Article 3.57 (Access and Use), Article 3.58 (Access to Major Suppliers' Essential Facilities), Article 3.59 (Interconnection) and Article 3.60 (Interconnection with Major Suppliers) use that information solely for the purpose for which it was supplied and respect, at all times, the confidentiality of information transmitted or stored.
- 2. Each Party shall ensure, in accordance with its law, the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

SUB-SECTION 3.5.5:
INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 3.72

Scope and Definitions

1. This Sub-Section shall apply to measures of a Party affecting the supply of international maritime transport services in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter and Sub-Section 3.5.1 (Domestic Regulation) and Sub-Section 3.5.2 (Provisions of General Application) of this Section.
2. For the purposes of this Sub-Section, Sub-Section 3.5.1 (Domestic Regulation) of this Section and Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services, and Entry and Temporary Stay of Natural Persons for Business Purposes) of this Chapter:
 - (a) “container station and depot services” means activities consisting in storing, stuffing, stripping or repairing of containers and making containers available for shipment, whether in port areas or inland;
 - (b) “customs clearance services” means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether these services are the main activity of the service supplier or a usual complement of its main activity;
 - (c) “door-to-door or multimodal transport operations” means the transport of cargo using more than one mode of transport, that includes an international sea-leg, under a single transport document;
 - (d) “feeder services” means the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in a Party, provided such international cargo is “*en route*”, that is, directed to a destination, or coming from a port of shipment, outside of that Party;
 - (e) “international cargo” means cargo transported between a port of one Party and a port of another Party or of a non-Party;
 - (f) “international maritime transport services” means the transport of passengers or cargo by sea-going vessels between a port of one Party and a port of another Party or of a non-Party, including the direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a

single transport document, but does not include the right to provide such other transport services;

- (g) “maritime agency services” means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, issuance of bills of lading on behalf of the shipping lines or shipping companies, acquisition and resale of the necessary related services, preparation of documentation and provision of business information; and
 - (ii) acting on behalf of the shipping lines or shipping companies organising the call of the ship or taking over cargoes when required;
- (h) “maritime auxiliary services” means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, maritime freight forwarding services and storage and warehousing services;
- (i) “maritime cargo handling services” means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers if the workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - (i) the loading or discharging of cargo to or from a ship;
 - (ii) the lashing or unlashings of cargo; and
 - (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge;
- (j) “maritime freight forwarding services” means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the arrangement of transport and related services, preparation of documentation and provision of business information;
- (k) “port services” means services provided inside a maritime port area or on the waterway access to such area by the managing body of a port, its subcontractors, or other service providers to support the transport of cargo or passengers; and
- (l) “storage and warehousing services” means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and other storage or warehousing services.

ARTICLE 3.73

Obligations

1. Without prejudice to non-conforming measures or other measures referred to in Article 3.12 (Non-Conforming Measures) of Section 3.2 (Investment Liberalisation) and Article 3.18 (Non-Conforming Measures) of Section 3.3 (Cross-Border Trade in Services), each Party shall implement the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis by:
 - (a) according to ships flying the flag of another Party, or operated by international maritime transport service suppliers of another Party, treatment no less favourable than that accorded to its own ships or ships of a non-Party, with regard to, *inter alia*:
 - (i) access to ports;
 - (ii) the use of port infrastructure;
 - (iii) the use of maritime auxiliary services; and
 - (iv) customs facilities and the assignment of berths and facilities for loading and unloading;including related fees and charges;
 - (b) making available to international maritime transport service suppliers of another Party on terms and conditions which are both reasonable and no less favourable than those applicable to its own suppliers or vessels or to vessels or suppliers of a non-Party (including fees and charges, specifications and quality of the service to be provided), the following port services: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth, berthing and unberthing services and shore-based operational services essential to ship operations, including communications, water and electrical supplies;
 - (c) permitting international maritime transport service suppliers of another Party to re-position owned or leased empty containers, which are not being carried as cargo against payment, between ports of that Party; and
 - (d) permitting international maritime transport service suppliers of another Party to provide feeder services between their national ports.
2. In applying the principle referred to in paragraph 1, a Party shall not:

- (a) introduce cargo-sharing arrangements in future agreements with non-Parties concerning maritime transport services, including dry and liquid bulk and liner trade, and shall terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements;
- (b) adopt or maintain a measure that requires all or part of any international cargo to be transported exclusively by vessels registered in that Party or owned or controlled by natural persons of that Party;
- (c) introduce unilateral measures or administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of international maritime transport services, and that Party shall remove any such measures or administrative, technical and other obstacles should they already exist; or
- (d) prevent international maritime transport service suppliers of another Party from directly contracting with other transport service suppliers for door-to-door or multimodal transport operations.

SUB-SECTION 3.5.6

LEGAL SERVICES

ARTICLE 3.74

Scope

1. This Sub-Section applies to measures of a Party affecting the supply of designated legal services by a lawyer of the other Party, in addition to Sections 3.1 to 3.4 (General Provisions, Investment Liberalisation, Cross-Border Trade in Services and Entry and Temporary Stay of Natural Persons) of this Chapter, and Sub-Sections 3.5.1 (Domestic Regulation) and 3.5.2 (Provisions of General Application) of this Section.
2. This Sub-Section applies without prejudice to the other rights and obligations of the Parties under this Agreement, including with regard to any non-conforming measures.⁵¹

ARTICLE 3.75

Definitions

1. For the purposes of this Sub-Section:
 - (a) “CPC” means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);
 - (b) “designated legal services” means legal services in relation to home jurisdiction law and international law;
 - (c) “home jurisdiction” means the jurisdiction (or part thereof) of the Party in which a lawyer acquired a home jurisdiction professional title;
 - (d) “home jurisdiction law” means the law of the lawyer’s home jurisdiction;
 - (e) “home jurisdiction professional title” means the professional title listed in the second column of the following table acquired by a lawyer in the jurisdiction (or part thereof) of the corresponding Party

⁵¹ For the avoidance of doubt, this Sub-Section applies without prejudice to the rights and obligations of the Parties in respect of members of the professions Lögmaður, Rechtsanwalt, Advokat or Advocate, Barrister or Solicitor under Chapter 12 (Recognition of Professional Qualifications).

listed in column one of that table and authorising the supply of legal services in that jurisdiction (or part thereof):

Party (Home jurisdiction)	Home jurisdiction professional title
Iceland	Lögmaður
Liechtenstein	Rechtsanwalt
Norway	Advokat
United Kingdom	Advocate/Barrister/Solicitor

- (f) “lawyer” means a natural person of a Party who is authorised in a Party to supply legal services under a home jurisdiction professional title;
- (g) “lawyer of the other Party” means:
 - (i) where “the other Party” is Iceland, Liechtenstein or Norway, a lawyer who acquired a home jurisdiction professional title in Iceland, Liechtenstein or Norway;
 - (ii) where “the other Party” is the United Kingdom, a lawyer who acquired a home jurisdiction professional title in any part of the jurisdiction of the United Kingdom;
- (h) “legal services” means the same as in CPC 861 but excluding:
 - (i) legal representation before administrative agencies, the courts and other duly constituted official tribunals of a Party; and
 - (ii) legal advisory and legal documentation and certification services that may only be supplied within a Party by a legal professional entrusted with public functions such as notaries, and services supplied by bailiffs.

ARTICLE 3.76

Obligations

1. A Party shall allow a lawyer of the other Party to supply designated legal services under a home jurisdiction professional title and shall not impose disproportionately complex or burdensome administrative or regulatory conditions on or for the provision of such services.

2. Paragraph 3 applies to the supply of designated legal services, pursuant to paragraph 1, through:
 - (a) the cross-border trade in services; or
 - (b) the entry and temporary stay of natural persons of a Party in the other Party.
3. A Party (the host jurisdiction) shall not adopt or maintain measures that impose any requirement that a lawyer of the other Party, as a condition for supplying designated legal services, must:
 - (a) register with the relevant competent authority or professional body responsible for the regulation of legal services in the host jurisdiction; or
 - (b) be a member of a professional body in the host jurisdiction.
4. Where a Party (the host jurisdiction) requires a lawyer of the other Party to register with a competent authority or professional body responsible for the regulation of legal services in the host jurisdiction as a condition of that lawyer supplying designated legal services in the host jurisdiction, in circumstances other than those set out in paragraph 2, the requirements or process for such registration shall:
 - (a) accord treatment no less favourable than those which apply to a natural person who is supplying legal services in relation to the law of a non-Party or international law under that person's non-Party professional title in the host jurisdiction; and
 - (b) not amount to or be equivalent to any requirement to requalify into or be admitted to the legal profession of the host jurisdiction.
5. A Party (the host jurisdiction) shall allow a legal person of the other Party to establish a branch in the host jurisdiction through which designated legal services are supplied pursuant to paragraph 1, in accordance with and subject to the conditions set out in Section 3.2 (Investment Liberalisation) of this Chapter.

ARTICLE 3.77

Non-Conforming Measures

1. The provisions of this Sub-Section shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures);

- (ii) a regional level of government, as set out by that Party in its Schedule to Annex XVI (Existing Measures); or
 - (iii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with the provisions of this Sub-Section.
2. The provisions of this Sub-Section shall not apply to any measure of a Party that are consistent with the reservations, conditions or qualifications specified with respect to a sector, sub-sector or activity, as set out by that Party in its Schedule to Annex XVII (Future Measures).
3. This Sub-Section applies without prejudice to Annex XIX (Contractual Service Suppliers and Independent Professionals).