

ARTICLE 7.6

Exceptions

1. This Chapter is subject to the exceptions provided for in Article 2.14 (General Exceptions), Article 8.62 (General Exceptions), Article 9.3 (Security and General Exceptions) and, for greater certainty, to the relevant provisions of Chapter Sixteen (Institutional, General and Final Provisions).
2. For greater certainty, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties' products, service suppliers or investors where the same conditions prevail, or a disguised restriction on trade and investment between the Parties, nothing in this Chapter shall be construed as preventing a Party from the adoption or enforcement of measures necessary for the safe operation of the energy networks concerned, or the safety of energy supply.

ARTICLE 7.7

Implementation and Cooperation

1. The Parties shall cooperate and exchange information on any issues relevant for the implementation of this Chapter in the Trade Committee established pursuant to Article 16.1 (Trade Committee). The Parties may, by decision of the Trade Committee, adopt appropriate implementing measures to this effect and update this Chapter as appropriate.
2. The cooperation may include:
 - (a) exchanging information, regulatory experiences and best practices in areas such as:
 - (i) the design and non-discriminatory implementation of measures promoting the uptake of energy from renewable sources;
 - (ii) carbon capture and storage;
 - (iii) smart grids;
 - (iv) energy efficiency; and
 - (v) technical regulations, standards and conformity assessment procedures, such as those relating to grid code requirements; and
 - (b) promoting, also in relevant regional fora, the convergence of their domestic or regional technical regulations, regulatory concepts, standards, requirements and conformity assessment procedures with international standards.

CHAPTER EIGHT

SERVICES, ESTABLISHMENT AND ELECTRONIC COMMERCE

SECTION A

GENERAL PROVISIONS

ARTICLE 8.1

Objective and Scope

1. The Parties, affirming their respective commitments under the WTO Agreement, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services, establishment and electric commerce.
2. Except as otherwise provided, this Chapter shall not:
 - (a) apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees, and insurance;
 - (b) apply to services supplied in the exercise of governmental authority within the respective territories of the Parties;

- (c) require the privatisation of public undertakings; and
 - (d) apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.
3. Each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives in a manner consistent with this Chapter.
4. This Chapter does not apply to measures that affect natural persons seeking access to the employment market of a Party, or to measures regarding citizenship, residence or employment on a permanent basis. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including measures that are 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 ⁽⁴⁾ accruing to the other Party under the terms of this Chapter.

ARTICLE 8.2

Definitions

For the purposes of this Chapter:

- (a) 'direct taxes' comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (b) 'juridical 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;
- (c) 'Union juridical person' or 'Singapore juridical person' means:
 - (i) a juridical person set up in accordance with the laws of the Union and/or the Member States of the Union, or Singapore, respectively, and having its registered office, central administration ⁽⁵⁾, or principal place of business in the territory of the Union or Singapore, respectively; or
 - (ii) in the case of establishment in accordance with paragraph (d) of Article 8.8 (Definitions), a juridical person owned or controlled by natural persons of the Member States of the Union or of Singapore respectively, or by Union juridical persons or Singapore juridical persons respectively;

should the juridical person have only its registered office or central administration in the territory of the Union or of Singapore, respectively, it shall not be considered as a Union or Singapore juridical person, respectively, unless it engages in substantive business operations ⁽⁶⁾ in the territory of the Union or of Singapore respectively;

a juridical person is:

- (i) 'owned' by natural or juridical persons of the Union and/or any Member State of the Union, or of Singapore, if more than 50 per cent of the equity interest in it is beneficially owned by persons of the Union and/or any Member State of the Union, or of Singapore, respectively;
- (ii) 'controlled' by natural or juridical persons of the Union and/or any Member State of the Union, or of Singapore, if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

⁽⁴⁾ The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

⁽⁵⁾ 'Central administration' means the head office where ultimate decision-making takes place.

⁽⁶⁾ The Union understands that the concept of 'effective and continuous link' with the economy of a Member State of the Union enshrined in Article 54 of the Treaty on the Functioning of the European Union (hereinafter referred to as 'TFEU') is equivalent to the concept of 'substantive business operations'. Accordingly, for a juridical person set up in accordance with the laws of Singapore and having only its registered office or central administration in the territory of Singapore, the Union shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Singapore.

- (iii) 'affiliated' with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (d) notwithstanding subparagraph (c), shipping companies established outside the Union and controlled by nationals of a Member State of the Union shall also be covered by this Agreement if their vessels are registered in accordance with the respective legislation of a Member State of the Union and fly the flag of that Member State of the Union;
- (e) 'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (f) 'measures adopted or maintained by a Party' means measures taken by:
 - (i) central, regional or local governments and authorities; or
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (g) 'measures adopted or maintained by a Party affecting trade in services' include measures in respect of:
 - (i) the purchase, payment or use of a service;
 - (ii) 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
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (h) 'Schedule of Specific Commitments' refers to, in the case of the Union, Annex 8-A and the Appendices thereto, and, in the case of Singapore, Annex 8-B and the Appendices thereto;
- (i) 'service consumer' means any person that receives or uses a service;
- (j) 'supply of a service' includes the production, distribution, marketing, sale and delivery of a service;
- (k) 'service of the other Party' means a service which is supplied:
 - (i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;
- (l) 'service supplier' means any person that supplies or seeks to supply a service, including through establishment;
- (m) service supplied in the exercise of governmental authority means any service, except a service which is supplied on a commercial basis or in competition with one or more service suppliers; and
- (n) 'trade in services' means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party (cross-border);
 - (ii) in the territory of a Party to a service consumer of the other Party (consumption abroad);
 - (iii) by a service supplier of a Party, through commercial presence, in the territory of the other Party (commercial presence); or
 - (iv) by a service supplier of a Party, through presence of natural persons of that Party, in the territory of the other Party (presence of natural persons).

SECTION B

CROSS-BORDER SUPPLY OF SERVICES

ARTICLE 8.3

Scope

This Section applies to measures of the Parties affecting the cross-border supply of all service sectors except:

- (a) audio-visual services;
- (b) national maritime cabotage ⁽⁷⁾; and
- (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services.

ARTICLE 8.4

Definitions

For the purposes of this Section, 'cross-border supply of services' means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party; and
- (b) in the territory of a Party to a service consumer of the other Party.

ARTICLE 8.5

Market Access

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.
2. In sectors where market access commitments are undertaken, the measures which each Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments, are defined as:
 - (a) limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test ⁽⁸⁾;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test ⁽⁹⁾.

⁽⁷⁾ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Member State of the Union and another port or point located in the same Member State of the Union, including on its continental shelf, as provided in the United Nations Convention on the Law of the Sea (hereinafter referred to as 'UNCLOS'), and traffic originating and terminating in the same port or point located in a Member State of the Union.

⁽⁸⁾ Subparagraph 2(a) includes measures which require a service supplier of the other Party to have an establishment within the meaning of paragraph (d) of Article 8.8 (Definitions) or to be resident in a Party's territory as a condition for the cross-border supply of a service.

⁽⁹⁾ This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

ARTICLE 8.6

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, 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 the other 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 a Party compared to like services or service suppliers of the other Party.
4. Specific commitments assumed under this Article shall not be construed as requiring a Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

ARTICLE 8.7

Schedule of Specific Commitments

1. The sectors liberalised by a Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and service suppliers of the other Party in those sectors are set out in its Schedule of Specific Commitments.
2. Neither Party may adopt new or more discriminatory measures with regard to services or service suppliers of the other Party in relation to the specific commitments undertaken in conformity with paragraph 1.

SECTION C

ESTABLISHMENT

ARTICLE 8.8

Definitions

For the purposes of this Section:

- (a) 'branch' of a juridical person means a place of business or a juridical person not having distinct legal personality and is the extension of a parent body;
- (b) 'economic activity' includes any activities of an economic nature, except activities carried out in the exercise of governmental authority, i.e., activities not carried out on a commercial basis or in competition with one or more economic operators;
- (c) 'entrepreneur' means any person of a Party that seeks to perform or performs an economic activity through establishment⁽¹⁰⁾;
- (d) 'establishment' means:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or representative office,

with a view to establishing or maintaining lasting economic links within the territory of a Party for the purpose of performing an economic activity including, but not limited to, supplying a service; and

⁽¹⁰⁾ Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the entrepreneur (i.e. the juridical person) shall, nonetheless, through such establishment be accorded the treatment provided for entrepreneurs under this Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the entrepreneur located outside the territory where the economic activity is performed.

- (e) 'subsidiary' of a juridical person of a Party means a juridical person which is controlled by another juridical person of that Party, in accordance with its domestic law ⁽¹¹⁾.

ARTICLE 8.9

Scope

This Section applies to measures adopted or maintained by the Parties affecting establishment in all economic activities with the exception of:

- (a) mining, manufacturing and processing ⁽¹²⁾ of nuclear materials;
- (b) production of, or trade in, arms, munitions and war material;
- (c) audio-visual services;
- (d) national maritime cabotage ⁽¹³⁾; and
- (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services.

ARTICLE 8.10

Market Access

1. With respect to market access through establishment, each Party shall accord establishments and entrepreneurs of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.
2. In sectors where market access commitments are undertaken, the measures which each Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments, are defined as:
 - (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as an economic needs tests;
 - (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of operations or on 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 ⁽¹⁴⁾;
 - (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which an entrepreneur of the other Party may perform an economic activity; and

⁽¹¹⁾ For further clarity, a subsidiary of a juridical person of a Party may also refer to a juridical person which is a subsidiary of another subsidiary of a juridical person of that Party.

⁽¹²⁾ For greater certainty, processing of nuclear materials includes all the activities contained in the International Standard Industrial Classification of all Economic Activities, as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N 4, ISIC REV 3.1, 2002 code 2330.

⁽¹³⁾ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Member State of the Union and another port or point located in the same Member State of the Union, including on its continental shelf, as provided in the UNCLOS, and traffic originating and terminating in the same port or point located in a Member State of the Union.

⁽¹⁴⁾ Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

- (f) limitations on the total number of natural persons, other than key personnel and graduate trainees as defined in Article 8.13 (Scope and Definitions) ⁽¹⁵⁾, who may be employed in a particular sector or who an entrepreneur may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

ARTICLE 8.11

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment ⁽¹⁶⁾, each Party shall accord to establishments and entrepreneurs of the other Party treatment no less favourable than that it accords to its own like establishments and entrepreneurs.
2. A Party may meet the requirement of paragraph 1 by according to establishments and entrepreneurs of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and entrepreneurs.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments and entrepreneurs of the Party compared to like establishments and entrepreneurs of the other Party.
4. Specific commitments assumed under this Article shall not be construed to require a Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant establishments or entrepreneurs.

ARTICLE 8.12

Schedule of Specific Commitments

1. The sectors liberalised by a Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to establishments and entrepreneurs of the other Party in those sectors are set out in the former Party's Schedule of Specific Commitments.
2. Neither Party may adopt new or more discriminatory measures with regard to establishments and entrepreneurs of the other Party in relation to the specific commitments undertaken in conformity with paragraph 1.

SECTION D

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 8.13

Scope and Definitions

1. This Section applies to measures of the Parties concerning the entry into, and temporary stay in, their respective territories of key personnel, graduate trainees and business service sellers in accordance with paragraph 4 of Article 8.1 (Objective and Scope).
2. For the purposes of this Section:
 - (a) 'key personnel' means natural persons employed within a juridical person of one Party, other than a non-profit organisation, and who are responsible for the setting up or the proper control, administration and operation of an establishment;

key personnel comprises business visitors for establishment purposes responsible for setting up an establishment and intra-corporate transferees:

- (i) 'business visitors for establishment purposes' means natural persons working in a senior position who are responsible for setting up an establishment and who do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party; and

⁽¹⁵⁾ For greater certainty, measures or limitations relating specifically to key personnel and graduate trainees shall be subject to Article 8.14 (Key Personnel and Graduate Trainees).

⁽¹⁶⁾ The obligations in this Article apply also to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.

(ii) 'intra-corporate transferees' means natural persons who have been employed by a juridical person of one Party or, in the case of professionals providing business services, have been partners in it for at least one year and who are temporarily transferred to an establishment (that may be a subsidiary, branch or head company of the enterprise) in the territory of the other Party and who must belong to one of the following categories:

(1) 'executives', meaning natural persons within a juridical person who direct the management of the establishment, exercise wide latitude in decision-making, and receive general supervision or direction from the board of directors, or stockholders of the business or their equivalent, and who do not directly perform tasks related to the actual provision of the service or services of the juridical person;

(2) 'managers', meaning natural persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction from high-level executives, the board of directors or stockholders of the business or their equivalent, including:

(aa) directing the establishment or a department or sub-division thereof;

(bb) supervising and controlling the work of other supervisory, professional or managerial employees; and

(cc) having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions; or

(3) 'specialists', meaning natural persons working within a juridical person, who possess uncommon knowledge or expertise essential to the establishment's production, research equipment, techniques or management; in assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also, where relevant, of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

(b) 'graduate trainees' means natural persons who have been employed by a juridical person of a Party for at least one year, who possess a university degree and who are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods⁽¹⁷⁾; and

(c) 'business services sellers' means natural persons who are representatives of a service supplier of a Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier and who do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party.

ARTICLE 8.14

Key Personnel and Graduate Trainees

1. For every sector liberalised in accordance with Section C (Establishment) and subject to any reservations listed in its Schedule of Specific Commitments, each Party shall allow entrepreneurs of the other Party to temporarily employ in their establishment natural persons of that other Party, provided that such employees are key personnel or graduate trainees as defined in Article 8.13 (Scope and Definitions). Their temporary entry and stay shall be permitted for a period of up to three years for intra-corporate transferees, 90 days in any twelve-month period for business visitors for establishment purposes, and one year for graduate trainees. For intra-corporate transferees, this period may be extended for up to two additional years, subject to domestic law⁽¹⁸⁾.

⁽¹⁷⁾ The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that training be linked to the university degree which has been obtained.

⁽¹⁸⁾ For greater certainty and without prejudice to paragraph 4 of Article 8.1 (Objective and Scope), the stay in the territory of a Party under these provisions does not entitle the intra-corporate transferee to apply for permanent residency or citizenship in that Party.

2. For every sector liberalised in accordance with Section C (Establishment), the measures which a Party shall not maintain or adopt, unless otherwise specified in its Schedule of Specific Commitments, are defined as limitations on the total number of natural persons that an entrepreneur may transfer as key personnel or graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

ARTICLE 8.15

Business Services Sellers

For every sector liberalised in accordance with Section B (Cross-border Supply of Services) or Section C (Establishment) and subject to any reservations listed in its Schedule of Specific Commitments, each Party shall allow the temporary entry and stay of business service sellers for a period of up to 90 days in any twelve-month period ⁽¹⁹⁾.

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 1

PROVISIONS OF GENERAL APPLICATION

ARTICLE 8.16

Mutual Recognition of Professional Qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant professional bodies in their respective territories to develop and provide a joint recommendation on mutual recognition to the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees). Such a recommendation shall be supported by evidence on:

- (a) the economic value of an envisaged an agreement on mutual recognition of professional qualifications (hereinafter referred to as 'Mutual Recognition Agreement'); and
- (b) the compatibility of the respective regimes, i.e., the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers are compatible.

3. On receipt of a joint recommendation, the Committee on Trade in Services, Investment and Government Procurement shall, within a reasonable time, review the joint recommendation with a view to determining whether it is consistent with this Agreement.

4. Where, on the basis of the information provided for in paragraph 2, the recommendation has been found to be consistent with this Agreement, the Parties shall take necessary steps to negotiate a Mutual Recognition Agreement through their competent authorities or authorised designees.

ARTICLE 8.17

Transparency

Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Chapter. Each Party shall also establish one or more enquiry points pursuant to Article 13.4 (Enquiries and Contact Points) to provide specific information on all such matters upon request to entrepreneurs and service suppliers of the other Party.

⁽¹⁹⁾ This Article is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Singapore and one of the Member States of the Union.

SUB-SECTION 2

DOMESTIC REGULATION

ARTICLE 8.18

Scope and Definitions

1. This Sub-Section applies to measures of the Parties relating to licensing requirements and procedures or qualification requirements and procedures that affect:
 - (a) cross-border supply of services as defined in Article 8.4 (Definitions);
 - (b) establishment in their territory of juridical and natural persons as defined in Article 8.8 (Definitions); or
 - (c) temporary stay of natural persons in their territory as referred to in Article 8.13 (Scope and Definitions).
2. This Sub-Section shall only apply to sectors for which a Party has undertaken specific commitments and to the extent that these specific commitments apply.
3. This Sub-Section does not apply to measures to the extent that the measures constitute limitations as scheduled in Articles 8.5 (Market Access) and 8.10 (Market Access) or Articles 8.6 (National Treatment) and 8.11 (National Treatment).
4. For the purposes of this Sub-Section:
 - (a) 'competent authorities' means any central, regional or local government or authority, or any non-governmental body exercising powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish an economic activity other than services;
 - (b) 'licensing procedures' means administrative or procedural rules to which a natural or a juridical person must adhere, in order to demonstrate compliance with licensing requirements when seeking authorisation to supply a service or establish an economic activity other than services, including the amendment or renewal of a license;
 - (c) 'licensing requirements' means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to supply a service or establish in an economic activity other than services;
 - (d) 'qualification procedures' means administrative or procedural rules to which a natural person must adhere in order to demonstrate compliance with qualification requirements for the purpose of obtaining authorisation to supply a service; and
 - (e) 'qualification requirements' means substantive requirements relating to the competence of a natural person to supply a service, compliance with which is required to be demonstrated for the purpose of obtaining authorisation to supply a service.

ARTICLE 8.19

Conditions for Licensing and Qualification

1. Each Party shall ensure that measures relating to licensing requirements and procedures as well as qualification requirements and procedures are based on criteria which are:
 - (a) clear;
 - (b) objective and transparent; and
 - (c) pre-established and accessible to the public and interested persons.
2. An authorisation or a licence shall, subject to availability, be granted as soon as it has been established, on the basis of an appropriate examination, that the conditions have been met.

3. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected entrepreneur or service supplier, for a prompt review, of and where justified, appropriate remedies for administrative decisions affecting establishment, cross-border supply of services or temporary stay of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

This paragraph shall not be construed as requiring a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

ARTICLE 8.20

Licensing and Qualification Procedures

1. Each Party shall ensure that licensing and qualification procedures and formalities are as simple as possible and do not unduly complicate or delay the supply of the service. Any licensing or authorisation fees ⁽²⁰⁾ which the applicants may incur from their application should be reasonable and should not in themselves restrict the supply of the service.

2. Each Party shall ensure that the competent authority uses procedures and takes decisions in the licensing or authorisation process that are impartial with respect to all applicants. The competent authority should reach its decisions in an independent manner and should not be accountable to any supplier of the services for which the licence or authorisation is required.

3. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period of time for the submission of an application. The competent authority shall initiate the processing of such applications without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as for paper submissions.

4. Each Party shall ensure that the processing of an application, including the reaching of a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish a normal timeframe for the processing of an application.

5. Where the competent authority considers that an application is incomplete, it shall, within a reasonable period of time after the receipt of that application inform the applicant that the application is incomplete and, to the extent feasible, specify the additional information required to complete the application, and shall provide the applicant with the opportunity to correct deficiencies.

6. Where possible, authenticated copies should be accepted in place of original documents.

7. Where the competent authority rejects an application, it shall inform the applicant in writing without undue delay. In principle, the applicant should, where it so requests, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. Where applicable, an applicant should be permitted, within reasonable time limits, to resubmit an application.

8. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

SUB-SECTION 3

COMPUTER SERVICES

ARTICLE 8.21

Computer Services

1. The Parties subscribe to the understanding set out in the following paragraphs in respect of computer services liberalised in accordance with Section B (Cross-border Supply of Services), Section C (Establishment) and Section D (Temporary Presence of Natural Persons for Business Purposes).

⁽²⁰⁾ Licensing or authorisation fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

2. The Parties understand that CPC ⁽²¹⁾ 84, the United Nations code used for describing computer and related services, covers all computer and related services. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of the basic functions listed in paragraph 3. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.

3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide any of the following or any combination thereof:

- (a) consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance or management of or for computers or computer systems;
- (b) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for software ⁽²²⁾;
- (c) data processing, data storage, data hosting or database services;
- (d) maintenance and repair services for office machinery and equipment, including computers; and
- (e) training services for staff of clients, related to software, computers or computer systems, and not elsewhere classified.

4. The Parties understand that, in many cases, computer and related services enable the provision of other services ⁽²³⁾ by both electronic and other means. However, in such cases, there is an important distinction between the computer and related service (e.g., web-hosting or application hosting) and the other service ⁽²⁴⁾ enabled by the computer and related service. The other service, regardless of whether it is enabled by a computer and related service, is not covered by CPC 84.

SUB-SECTION 4

POSTAL SERVICES

ARTICLE 8.22

Prevention of Anti-Competitive Practices in the Postal Sector ⁽²⁵⁾

Each Party shall introduce or maintain appropriate measures ⁽²⁶⁾ for the purpose of preventing suppliers of postal services who, alone or together, are a major supplier in the relevant market for postal services, from engaging in or continuing anti-competitive practices.

ARTICLE 8.23

Independence of Regulatory Bodies

Regulatory bodies shall be separate from, and shall not be accountable to, any supplier of postal services. The decisions of and the procedures used by regulatory bodies shall be impartial with respect to all market participants.

⁽²¹⁾ 'CPC' means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No 77, CPC prov, 1991.

⁽²²⁾ The term 'software' means the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customised software) or using a combination of the two.

⁽²³⁾ E.g., W/120.1.A.b. (accounting, auditing and bookkeeping services), W/120.1.A.d. (architectural services), W/120.1.A.h. (medical and dental services), W/120.2.D (audiovisual services), W/120.5. (educational services).

⁽²⁴⁾ See previous footnote.

⁽²⁵⁾ For greater certainty, only measures relating to basic letter services shall be subject to Article 8.22 (Prevention of Anti-Competitive Practices in the Postal Sector).

⁽²⁶⁾ The maintenance of appropriate measures includes the effective enforcement of such measures.

SUB-SECTION 5

TELECOMMUNICATIONS SERVICES

ARTICLE 8.24

Scope

1. This Sub-Section applies to measures that affect trade in telecommunications services and sets out the principles of the regulatory framework for telecommunications services, liberalised pursuant to Section B to Section D.
2. This Sub-Section does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
3. Nothing in this Sub-Section shall be construed as requiring a Party:
 - (a) to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or services, other than as provided for in its Schedule of Specific Commitments; or
 - (b) to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or services where such networks or services are not offered to the public generally, or to compel any service supplier to do so.
4. Each Party shall impose, maintain, amend or withdraw the rights and obligations of service suppliers provided for in the Article 8.26 (Access to and Use of Public Telecommunications Networks and Services), Article 8.28 (Interconnection), Article 8.29 (Interconnection with Major Suppliers), Article 8.30 (Conduct of Major Suppliers), Article 8.32 (Unbundled Network Elements), Article 8.33 (Co-location), Article 8.34 (Resale), Article 8.35 (Facility Sharing), Article 8.36 (Provisioning of Leased Circuits Services) and Article 8.38 (Submarine Cable Landing Stations) in a manner consistent with its domestic law and internal procedures for the regulation of its telecommunications markets. For the Union, such procedures entail the analysis by the Union regulators of the relevant product and service markets provided for in the relevant Union legislation, of the designation of a service supplier as having significant market power and the decision of regulators, based upon such analysis, to impose, maintain, amend or withdraw such rights and obligations.

ARTICLE 8.25

Definitions

For the purposes of this Sub-Section:

- (a) 'broadcasting service' refers to the uninterrupted chain of transmission via wired or wireless means, regardless of the location of the originating transmission, required for the reception or display of aural or visual programme signals by all or any part of the public, but does not cover contribution links between operators;
- (b) 'end-user' means a service consumer or a service supplier to whom a public telecommunications network or service is supplied other than for use in the further supply of a public telecommunications network or service;
- (c) 'essential facilities' mean facilities of a public telecommunications transport 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 provide a service;
- (d) 'interconnection' means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
- (e) 'major supplier' means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation in the relevant market for public telecommunications networks or services, having regard to price and supply, as a result of:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;

- (f) 'non-discriminatory' means treatment that is no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
- (g) 'number portability' means the ability of end-users of public telecommunications networks or services to retain existing telephone numbers at the same location, without impairment of quality, reliability or convenience when switching between like suppliers of public telecommunications networks or services;
- (h) 'public telecommunications network' means a telecommunications network which a Party requires to provide telecommunications services between defined network termination points;
- (i) 'public telecommunications service' means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally;
- (j) 'submarine cable landing station' means the premises and buildings where international submarine cables arrive and terminate and are connected to backhaul links;
- (k) 'telecommunications' means the transmission and reception of signals by any electromagnetic means;
- (l) 'telecommunications services' means all services consisting of the transmission and reception of electro-magnetic signals, but excludes broadcasting services and economic activities consisting of the provision of content which requires telecommunications for its transport; and
- (m) 'telecommunications regulatory body' means the national body or bodies charged with the regulation of telecommunications.

ARTICLE 8.26

Access to and Use of Public Telecommunications Networks and Services

1. Each Party shall ensure that all service suppliers of the other Party have access to and use of any public telecommunications network and service offered in its territory or across its borders, including private leased circuits, on reasonable, non-discriminatory and transparent terms and conditions, including as set out in paragraphs 2 and 3.
2. Each Party shall ensure that such service suppliers are permitted to:
 - (a) purchase or lease, and attach terminal or other equipment which interfaces with the public telecommunications network;
 - (b) interconnect private leased or owned circuits with public telecommunications networks and services in its territory, or across its borders, or with circuits leased or owned by other service suppliers; and
 - (c) use operating protocols of their choice, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.
3. Each Party shall ensure that all service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such service suppliers and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party. Any new or amended measures of a Party significantly affecting such use shall be notified to the other Party and shall be subject to consultations.

ARTICLE 8.27

Confidentiality of Information

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of any public telecommunications network or service, without restricting trade in services.

ARTICLE 8.28

Interconnection ⁽²⁷⁾

1. Each Party shall ensure that any service supplier authorised to provide public telecommunications networks or services has the right and obligation to negotiate interconnection with other suppliers of public telecommunications networks or services. Interconnection should be agreed on the basis of commercial negotiations between the parties concerned.
2. Regulatory authorities shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied, and at all times respect the confidentiality of information transmitted or stored.

ARTICLE 8.29

Interconnection with Major Suppliers

1. Each Party shall ensure that any major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided:
 - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of non-affiliated suppliers of public telecommunications networks or services, or for its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent, are reasonable, having regard to economic feasibility, and are sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
 - (c) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications networks or services, subject to charges that reflect the cost of construction of necessary additional facilities.
2. Each Party shall ensure that major suppliers in its territory make publicly available their interconnection agreements or a reference interconnection offer.
3. The procedures applicable for interconnection to a major supplier shall be made publicly available.
4. When suppliers of public telecommunications networks or services are unable to resolve disputes regarding the terms, conditions and rates on which interconnection is to be provided by a major supplier, they shall have recourse to the regulatory authority, which shall aim to resolve the disputes in the shortest possible timeframe and in any case within 180 days of the referral to it, provided that the resolution of complex disputes may take longer than 180 days.

ARTICLE 8.30

Conduct of Major Suppliers

1. Each Party may impose obligations of non-discrimination on major suppliers in relation to interconnection or access.
2. Obligations of non-discrimination shall ensure, in particular, that the major supplier applies equivalent conditions in equivalent circumstances to other suppliers providing equivalent services and provides services and information to others under equivalent conditions and of the same quality as it provides for its own services or for the services of its subsidiaries or partners.

⁽²⁷⁾ For the purposes of this Article and Article 8.30 (Conduct of Major Suppliers), designation of a supplier of public telecommunications networks and services as a major supplier shall be in accordance with the domestic law and procedures of each Party.

ARTICLE 8.31

Competitive Safeguards on Major Suppliers

Each Party shall introduce or maintain appropriate measures⁽²⁸⁾ for the purpose of preventing suppliers of public telecommunications networks or services who, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation or margin squeeze;
- (b) using information obtained from competitors with anti-competitive results;
- (c) not making available to suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications services;
- (d) pricing services in a manner that is likely to unreasonably restrict competition, such as predatory pricing.

ARTICLE 8.32

Unbundled Network Elements

1. Each Party shall impose obligations on major suppliers to meet reasonable requests for access to, and use of, specific network elements and associated facilities at any technically feasible point, on an unbundled basis, in a timely fashion and on terms and conditions that are reasonable, transparent, and non-discriminatory, and in particular:

- (a) to give access to specified network elements and/or facilities, including access to network elements which are not active, and/or unbundled access to the local loop to, *inter alia*, allow subscriber line resale offers;
- (b) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- (c) to provide co-location; and
- (d) to provide services required to ensure interoperability of end-to-end services to users.

2. When a Party is considering the obligations referred in paragraph 1, it may take account of, *inter alia*, the following factors:

- (a) the technical and economic viability of using or installing competing facilities, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access products such as access to ducts;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;
- (c) the initial investment by the facility owner, taking into account the risks involved in making the investment; and
- (d) the need to safeguard effective and sustainable competition.

ARTICLE 8.33

Co-location

1. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements in a timely fashion and on terms and conditions that are reasonable and non-discriminatory.

⁽²⁸⁾ The maintenance of appropriate measures includes the effective enforcement of such measures.

2. Each Party may determine in accordance with its domestic law the locations at which it requires major suppliers in its territory to provide co-location under paragraph 1.

ARTICLE 8.34

Resale

Each Party shall ensure that major suppliers in its territory offer for resale to suppliers of public telecommunications networks or services of the other Party, public telecommunications services that such major suppliers provide at retail to end-users in accordance with the provisions of this Sub-Section and, in particular, with Article 8.32 (Unbundled Network Elements).

ARTICLE 8.35

Facility Sharing

1. Each Party shall be able, taking into account the principle of proportionality, to impose on any major supplier having the right to install facilities on, over or under public or private property, the sharing of such facilities or property, including buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, poles, ducts, conduits, manholes and cabinets.
2. Each Party may determine in accordance with its domestic law the facilities to which it requires major suppliers in its territory to provide access under paragraph 1, on the basis that such facilities cannot feasibly be economically or technically substituted in order to provide a competing service.

ARTICLE 8.36

Provisioning of Leased Circuits Services

Each Party shall ensure that major suppliers of leased circuits services in its territory provide juridical persons of the other Party leased circuits services that are public telecommunications services in a timely fashion on terms and conditions that are reasonable, non-discriminatory and transparent.

ARTICLE 8.37

Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability for those services designated by that Party, to the extent technically feasible, on a timely basis and on reasonable terms and conditions.

ARTICLE 8.38

Submarine Cable Landing Stations

Each Party shall ensure access to submarine cable systems, including landing facilities, in its territory, where a supplier is authorised to operate a submarine cable system as a public telecommunications service, on reasonable, non-discriminatory and transparent terms and conditions.

ARTICLE 8.39

Independent Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications networks or services or telecommunications equipment. To this end, each Party shall ensure that its telecommunications regulatory body does not hold any financial interest or control in such a supplier.
2. Each Party shall ensure that the decisions of, and procedures followed by, its telecommunications regulatory bodies are fair and impartial with respect to all market participants and that they are made and implemented without undue delay. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications networks or services does not influence the decisions of, and procedures followed by, its telecommunications regulatory body.

3. The powers of the regulatory authorities shall be exercised transparently in accordance with the applicable domestic law.
4. Regulatory authorities shall have the power to ensure that suppliers of telecommunications transport networks and services within their respective territories provide them, promptly upon request, with all the information, including financial information, which is necessary to enable the regulatory authorities to carry out their tasks in accordance with this Sub-Section. Information requested shall be reasonably proportionate to the performance of the regulatory authorities' tasks and treated in accordance with the requirements of confidentiality.
5. The regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

ARTICLE 8.40

Universal Services

1. Each Party has the right to define the kind of universal service obligations that it wishes to maintain.
2. Such obligations will not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, objective, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.
3. Where a Party requires a supplier of telecommunications services to provide directories of subscribers, that Party shall ensure that the supplier applies the principle of non-discrimination to the treatment of information that has been provided to them by other suppliers of such telecommunications services.

ARTICLE 8.41

Authorisation to Provide Telecommunications Services

1. Each Party shall ensure that licensing procedures are as simple as possible and do not unduly complicate or delay the provisions of the service.
2. Where a Party requires a supplier of public telecommunications networks or services to have a licence, that Party shall make publicly available:
 - (a) all the licensing criteria, terms, conditions and procedures it applies; and
 - (b) a reasonable period of time that would normally be required to reach a decision concerning an application for a licence.
3. Each Party shall ensure that, if it so requests, the applicant receives in writing the reasons for the denial of a licence.
4. Where a licence has been unduly denied, the applicant for a licence shall be able to seek recourse before an appeal body.
5. Any licensing or authorisation fees ⁽²⁹⁾ which the applicants may incur from their application should be reasonable and should not in themselves restrict the supply of the service.

ARTICLE 8.42

Allocation and Use of Scarce Resources

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

⁽²⁹⁾ Licensing or authorisation fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

2. The Parties understand that decisions on allocating and assigning spectrum and frequency management are not measures that are *per se* inconsistent with Articles 8.5 (Market Access) and 8.10 (Market Access). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with this Chapter. The Parties also retain the right to allocate frequency bands in a manner that takes existing and future needs into account.

ARTICLE 8.43

Enforcement

1. Each Party shall ensure that its telecommunications regulatory body maintains appropriate procedures and has the authority to enforce domestic measures relating to the obligations under this Sub-Section. Such procedures and authority shall include the ability to impose timely, proportionate and effective sanctions, and the ability to modify, suspend, and revoke licences.

2. Where a major supplier refuses the application of the rights and obligations provided for in Article 8.29 (Interconnection with Major Suppliers), Article 8.30 (Conduct of Major Suppliers), Article 8.31 (Competitive Safeguards on Major Suppliers), Article 8.32 (Unbundled Network Elements), Article 8.33 (Co-location), Article 8.34 (Resale), Article 8.35 (Facility Sharing) or Article 8.36 (Provisioning of Leased Circuit Services), the requesting service supplier may seek the intervention of the regulatory body, which shall issue, in accordance with its domestic law, a binding decision, in the shortest possible period of time, and in any case within a reasonable period of time.

ARTICLE 8.44

Resolution of Telecommunications Disputes

1. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to a telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures that address a matter set out in this Sub-Section.

2. Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party that is affected by a decision of its telecommunications regulatory body may appeal against that decision to a judicial or administrative authority independent of the parties involved.

3. Where the appeal body is not judicial in character, written reasons for its decision shall be given and its decision shall be subject to review by an impartial and independent judicial authority.

4. Decisions taken by appeal bodies shall be effectively implemented by the parties concerned in accordance with the applicable domestic law and internal procedures. An appeal shall not relieve a party concerned of its obligation to comply with the underlying regulatory decision unless an appropriate authority has stayed that regulatory decision.

ARTICLE 8.45

Transparency

When regulatory bodies intend to take measures related to the provisions of this Sub-Section, they shall give interested parties the opportunity to comment on the draft measure within a reasonable period of time, in accordance with their domestic law. Regulatory bodies shall make their consultation procedures for such draft measures publicly available. The results of the consultation procedure should be made publicly available by the regulatory body except in the case of confidential information in accordance with the domestic law on business confidentiality.

ARTICLE 8.46

Flexibility in the Choice of Technologies

Neither Party shall prevent suppliers of public telecommunications services from having the flexibility to choose the technologies that they use to supply their services, subject to the ability of each Party to take measures to ensure that end-users of different networks are able to communicate with each other.

ARTICLE 8.47

Relationship to other Sub-Sections, Sections and Chapters

In the event of any inconsistency between this Sub-Section and another Sub-Section or Section in this Chapter or another Chapter, this Sub-Section shall prevail to the extent of such inconsistency.

ARTICLE 8.48

Cooperation

1. The Parties, recognising the rapid development of the telecommunications and information technology industry, both in the domestic and international contexts, shall cooperate to promote the development of such services with a view to obtaining the maximum benefit for the Parties from the use of telecommunications and information technology.

2. The areas of cooperation may include the following:

- (a) exchanging views on policy issues such as the regulatory framework for high speed broadband networks and the reduction of international mobile roaming charges; and
- (b) promoting the use by consumers, the public sector and the private sector of telecommunications and information technology services, including newly emerging services.

3. The forms of cooperation may include the following:

- (a) promoting dialogue on policy issues;
- (b) enhancing cooperation in international fora relating to telecommunications and information technology; and
- (c) other forms of cooperation activities.

SUB-SECTION 6

FINANCIAL SERVICES

ARTICLE 8.49

Scope and Definitions

1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections B (Cross-border Supply of Services), C (Establishment) and D (Temporary Presence of Natural Persons for Business Purposes).

2. For the purposes of this Sub-Section:

- (a) 'financial service' means any service of a financial nature, including a service incidental or auxiliary to a service of a financial nature, offered by a financial service supplier of a Party; financial services include the following activities:

- (i) insurance and insurance-related services:

- (1) direct insurance (including co-insurance):

- (aa) life insurance;

- (bb) non-life insurance;

- (2) reinsurance and retrocession;

- (3) insurance inter-mediation, such as brokerage and agency; and

(4) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

and

(ii) banking and other financial services (excluding insurance):

(1) the acceptance of deposits and other repayable funds from the public;

(2) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(3) financial leasing;

(4) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(5) guarantees and commitments;

(6) the trading on own account or for the account of customers, whether on an exchange, in an over-the-counter market or otherwise, of the following:

(aa) money market instruments (including cheques, bills, certificates of deposits);

(bb) foreign exchange;

(cc) derivative products including, but not limited to, futures and options;

(dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(ee) transferable securities;

(ff) other negotiable instruments and financial assets, including bullion;

(7) the participation in issues of securities of all kinds, including underwriting and placement as agent, whether publicly or privately, and provision of services related to such issues;

(8) money broking;

(9) asset management, such as cash or portfolio management, any form of collective investment management, pension fund management, custodial, depository and trust services;

(10) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(11) the provision and transfer of financial information, and the provision of financial data processing and related software by suppliers of other financial services; and

(12) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) to (11), 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 any natural or juridical person of a Party that is engaged or is seeking to engage in the business of supplying financial services within the territory of that Party but does not include a public entity;

- (c) 'new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;
- (d) 'public entity' means:
 - (i) a government, central bank or monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, other than 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 organisation' 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, regional or local governments or authorities.

ARTICLE 8.50

Prudential Carve-out

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or
 - (c) ensuring the integrity and stability of the Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers of the other Party in comparison to its own like financial service suppliers, or a disguised restriction on trade in services.
3. Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual consumers or to disclose any confidential or proprietary information in the possession of public entities.
4. Each Party shall use its best endeavours to ensure that the Basel Committee's 'Core Principles for Effective Banking Supervision', the standards and principles of the International Association of Insurance Supervisors and the International Organisation of Securities Commissions' 'Objectives and Principles of Securities Regulation', and the internationally agreed Standard for transparency and exchange of information for tax purposes, as spelled out in the 2017 OECD Model Tax Convention on Income and on Capital, are implemented and applied in its territory.
5. Subject to Article 8.6 (National Treatment) and without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

ARTICLE 8.51

Self-regulatory Organisations

When membership or participation in, or access to, any self-regulatory organisation is required by a Party in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, the Party shall ensure observance of the obligations under Article 8.6 (National Treatment) and Article 8.11 (National Treatment) by such self-regulatory organisation.

ARTICLE 8.52

Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall, as permitted by its access criteria, grant to financial service suppliers of the other Party that are established in its territory and regulated or supervised as financial service suppliers under its domestic law, 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 is not intended to confer access to a Party's lender-of-last-resort facilities.

ARTICLE 8.53

New Financial Services

Each Party shall permit a financial service supplier of the other Party to supply any new financial service that the first Party would permit its own like financial service suppliers to supply without additional legislative action required by the first Party. Each Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where a Party requires such authorisation, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons under Article 8.50 (Prudential Carve-out).

ARTICLE 8.54

Data Processing

1. Each Party shall, subject to appropriate safeguards on privacy and confidentiality, permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing, where such processing is required in the ordinary course of business of such financial service supplier.
2. Each Party shall adopt or maintain appropriate safeguards to protect privacy and personal data, including individual records and accounts, as long as these safeguards are not used to circumvent the provisions of this Agreement.

ARTICLE 8.55

Specific Exceptions

1. Nothing in this Chapter shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing activities or services in its territory that form part of a public retirement plan or statutory system of social security, except where those activities may be carried out, by financial service suppliers in competition with public entities or private institutions, as provided by the Party's domestic regulation.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Chapter shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing activities or services in its territory for the account or with the guarantee or using the financial resources of the Party, or its public entities, except where that Party's domestic regulation provides that those activities may be carried out by financial service suppliers in competition with public entities or private institutions.

SUB-SECTION 7

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 8.56

Scope, Definitions and Principles

1. This Sub-Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Sections B (Cross-border Supply of Services), C (Establishment) and D (Temporary Presence of Natural Persons for Business Purposes).

2. For the purposes of this Sub-Section, 'international maritime transport' includes door-to-door and multi-modal transport operations, which means the carriage of goods using more than one mode of transport, and which involves a sea-leg, where such carriage takes place under a single transport document, and to this effect involves the right to contract directly with providers of other modes of transport.

3. As regards international maritime transport, the Parties agree to ensure the effective application of the principles of unrestricted access to cargoes on a commercial basis, the freedom to supply international maritime transport services, as well as national treatment in the framework of the supply of such services.

In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall effectively apply the principle of unrestricted access to the international maritime transport markets and trades on a commercial and non-discriminatory basis; and
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than the treatment that the granting Party accords to its own ships or those of any third country, whichever is better, with regard to, *inter alia*, access to ports, the use of infrastructure and auxiliary maritime services of the ports, as well as with regard to related fees and charges, customs facilities and access to berths and facilities for loading and unloading.

4. In applying these principles, the Parties shall:

- (a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and shall terminate, within a reasonable period of time, any such cargo-sharing arrangements that exist in previous agreements; and
- (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures⁽³⁰⁾ or administrative, technical and other obstacles which could constitute a disguised restriction or could have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime transport service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation in accordance with the conditions inscribed in its Schedule of Specific Commitments.

6. The Parties shall make the use of the following services at the port available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions:

- (a) pilotage;
- (b) towing and tug assistance;
- (c) provisioning;
- (d) fuelling and watering;
- (e) garbage collecting and ballast waste disposal;
- (f) port captain's services;
- (g) navigation aids;

⁽³⁰⁾ For the purposes of this subparagraph, the term 'measures' shall comprise only measures that adversely discriminate based on the nationality or geographic area(s) of origin of the natural or juridical person to which the measure is applied.

- (h) shore-based operational services that are essential to ship operations, including communications, water and electrical supplies; and
- (i) emergency repair facilities, anchorage, berth and berthing services.

SECTION F

ELECTRONIC COMMERCE

ARTICLE 8.57

Objectives

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree on the importance of facilitating its use and development and the applicability of WTO rules to electronic commerce.
2. The Parties agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Chapter. Within this context both Parties should avoid imposing unnecessary regulations or restrictions on electronic commerce.
3. The Parties recognise the importance of the free flow of information on the internet, while agreeing that this should not impair the rights of intellectual property owners, given the importance of protecting intellectual property rights on the internet.
4. The Parties agree that the development of electronic commerce must be fully compatible with international standards of data protection, in order to ensure the confidence of users of electronic commerce.

ARTICLE 8.58

Customs Duties

The Parties shall not impose customs duties on electronic transmissions.

ARTICLE 8.59

Electronic Supply of Services

For greater certainty, the Parties affirm that measures related to the supply of a service using electronic means falls within the scope of the obligations contained in the relevant provisions of this Chapter, subject to any exceptions applicable to such obligations.

ARTICLE 8.60

Electronic Signatures

1. The Parties shall take steps to facilitate the better understanding of each other's electronic signatures framework and, subject to relevant domestic conditions and legislation, to examine the feasibility of having a mutual recognition agreement on electronic signatures in the future.
2. In achieving the objectives of paragraph 1, each Party shall:
 - (a) facilitate, as much as possible, the representation of the other Party in available fora on electronic signatures organised formally or informally by its own competent authorities, by allowing the other Party to present its electronic signatures framework;
 - (b) encourage, as much as possible, the exchange of views on electronic signatures through dedicated seminars and expert meetings in areas such as security and interoperability; and

- (c) contribute, as much as possible, to the other Party's efforts to study and analyse its own framework by making available relevant information.

ARTICLE 8.61

Regulatory Cooperation on Electronic Commerce

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will, *inter alia*, address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the liability of intermediary service providers with respect to the transmission or storage of information;
- (c) the treatment of unsolicited electronic commercial communications;
- (d) the protection of consumers; and
- (e) any other issue relevant for the development of electronic commerce.

2. This cooperation may take the form of an exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

SECTION G

GENERAL PROVISIONS

ARTICLE 8.62

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order ⁽³¹⁾;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic entrepreneurs or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

⁽³¹⁾ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

or

(f) inconsistent with Article 8.6 (National Treatment) and Article 8.11 (National Treatment), provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, entrepreneurs or service suppliers of the other Party ⁽³²⁾.

ARTICLE 8.63

Review

With a view to further deepening liberalisation and eliminating remaining restrictions and ensuring an overall balance of rights and obligations, the Parties shall review this Chapter and their Schedules of Specific Commitments no later than three years after the entry into force of this Agreement, and at regular intervals thereafter. As a result of such review, the Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 16.2 (Specialised Committees) may decide to amend the relevant Schedules of Specific Commitments.

ARTICLE 8.64

Committee on Trade in Services, Investment and Government Procurement

1. The Committee on Trade in Services, Investment and Government Procurement shall be responsible for the effective implementation of this Chapter and to that end it shall:

- (a) regularly review the implementation of this Chapter by each Party and the Schedules of Specific Commitments in accordance with Article 8.63 (Review);
- (b) as appropriate, take decisions pursuant to Article 8.63 (Review) amending the Appendices to Annexes 8-A and 8-B; and
- (c) consider any matter in relation to this Chapter as the Parties may agree.

2. The responsibilities of the Committee on Trade in Services, Investment and Government Procurement in relation to Chapter Nine (Government Procurement) are set out in Article 9.19 (Responsibilities of the Committee).

⁽³²⁾ Measures that are aimed at ensuring the effective or equitable imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident entrepreneurs and service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (e) distinguish entrepreneurs and service suppliers subject to tax on worldwide taxable items from other entrepreneurs and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in subparagraph (f) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.