

CHAPTER 12

TEMPORARY ENTRY FOR BUSINESS PERSONS

ARTICLE 12.1: GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties, the Parties' mutual desire of facilitating temporary entry for business persons in accordance with their legislation and the provisions in Annex 12-A and of establishing transparent criteria and procedures for temporary entry for business persons as well as the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.
2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, permanent residence, or employment on a permanent basis.
3. Nothing in this Chapter or any other provision of this Agreement shall be construed to prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to unduly nullify or impair the benefits accruing to the other Party under the terms of specific categories in Annex 12-A.
4. The sole fact of requiring a visa to natural persons shall not be considered to nullify or impair the provisions of this Agreement.

ARTICLE 12.2: GENERAL OBLIGATIONS

Each Party shall apply its measures related to this Chapter in accordance with Article 12.1 and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

ARTICLE 12.3: GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to business persons who comply with immigration measures applicable to temporary entry and other related measures, such as those related to public health and safety and national security, in accordance with this Chapter.
2. Temporary entry granted pursuant to this Chapter shall not replace the requirements demanded to carry out a profession or an activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

3. A Party may refuse to issue an immigration document authorizing employment to a business person in accordance with its legislation where the temporary entry of that person might adversely affect:

- (a) the settlement of any labor dispute underway at the place or intended place of employment; or
- (b) the employment of any person who is involved in such dispute.

ARTICLE 12.4: PROVISION OF INFORMATION

1. Further to Article 18.1 (Publication), each Party shall:

- (a) provide to the other Party such materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and make available, explanatory material regarding the requirements for temporary entry of business persons under this Chapter.

2. Each Party shall collect, maintain and, upon request, make available to the other Party, in accordance with its legislation, the information regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including specific data for each authorized category.

3. The contact points¹ shall be in charge of exchanging the information referred to in this Article.

ARTICLE 12.5: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Article 22.4 (Consultations), regarding a denial to grant temporary entry under this Chapter or a particular case arising under Article 12.2, unless:

- (a) the matter involves a pattern of practice; and
- (b) the affected business person has exhausted the available administrative proceedings regarding that particular matter, in accordance with the legislation of the denying Party.

¹ For the Republics of Central America, the contact points are those referred to in Article 21.3 (Contact Points).

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

ARTICLE 12.6: COOPERATION

Taking into consideration the principles set forth in Article 12.1, the Parties shall endeavor as far as possible to:

- (a) cooperate to strengthen the institutional capacity and promote technical assistance between the immigration authorities; and
- (b) exchange information and experiences on regulations and implementation of programs and technology in the context of immigration matters, including those related to the use of biometric technology, advanced information systems for passengers, frequent flyer programs and security in travel documents.

ARTICLE 12.7: WORKING GROUP

1. The Parties hereby establish a Working Group on Temporary Entry of Business Persons (hereinafter referred to as the “Working Group”), comprising representatives of each Party, including immigration officials and contact points, in accordance with paragraph 3.

2. The Working Group shall meet, when necessary, to consider matters pertaining to this Chapter, such as:

- (a) the implementation and administration of this Chapter;
- (b) the establishment of procedures for the exchange of information on measures affecting the temporary entry under this Chapter;
- (c) the development of measures to further facilitate temporary entry of business persons; and
- (d) any other measures of mutual interest related to this Chapter.

3. The Working Group shall be comprised of:

- (a) for Korea, a representative from Visa and Residence Division in Ministry of Justice;

- (b) for Costa Rica, representatives from the Ministry of Foreign Trade (*Ministerio de Comercio Exterior de Costa Rica*), the Ministry of Work and Social Security (*Ministerio de Trabajo y Seguridad Social*) and the General Directorate of Migrations and Foreigners (*Dirección General de Migración y Extranjería*);
- (c) for El Salvador, representatives from the Trade Agreements Administration Bureau of the Ministry of Economy (*Dirección de Administración de Tratados Comerciales del Ministerio de Economía*), General Directorate of Migration and Immigration (*Dirección General de Migración y Extranjería*) and the Ministry of Labor (*Ministerio de Trabajo*);
- (d) for Honduras, representatives from the Directorate General of Administration and Negotiation of Agreements of the Secretary of State in the Office of Economic Development, National Institute of Migration (*Dirección General de Administración y Negociación de Tratados de la Secretaría de Estado en el Despacho de Desarrollo Económico, Instituto Nacional de Migración*), and Secretary of State in the Office of Labor and Social Security (*Secretaría de Estado en el Despacho de Trabajo y Seguridad Social*);
- (e) for Nicaragua, representatives from the Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio*), General Directorate of Migration and Immigration (*Dirección General de Migración y Extranjería*), and the Ministry of Labor (*Ministerio del Trabajo*); and
- (f) for Panama, representatives from the National Immigration Service (*Servicio Nacional de Migración*) through the Office of International Trade Negotiations of the Ministry of Commerce and Industries (*Oficina de Negociaciones Comerciales Internacionales del Ministerio de Comercio e Industrias*),

or their successors.

ARTICLE 12.8: RELATION TO OTHER CHAPTERS

1. Nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures except as provided in this Chapter and Chapters 1 (Initial Provisions and General Definitions), 18 (Transparency), 21 (Institutional Provisions), 22 (Dispute Settlement), 23 (Exceptions), and 24 (Final Provisions).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

ARTICLE 12.9: DEFINITIONS

For the purposes of this Chapter:

business activities means legitimate commercial activities undertaken and operated for the purpose of obtaining profits in the market, but not including the possibility of obtaining employment, wages or remuneration from a labor source in the territory of a Party granting the temporary entry;

business person means a national of a Party who is engaged in trade of goods, the supply of services, or the conduct of investment activities;

executive means a person who shall have the following basic responsibilities:

- (a) managing the administration of the organization, or of a relevant component, or function within it;
- (b) establishing the policies and objectives of the organization, components or function; and
- (c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders;

manager means a person who shall have the following basic responsibilities:

- (a) directing the organization or a department or sub-division of the organization;
- (b) supervising and controlling the work of other professional employees, supervisors, or managers;
- (c) having the authority to hire and dismiss or to recommend these actions, and to undertake other actions related to the management of the personnel directly supervised by this person, and to perform senior functions within the organizational hierarchy or functions related to his position; and
- (d) performing discretionary actions related to the ordinary operation of the functions over which this person has authority;

pattern of practice means a practice repeatedly carried out by the immigration authorities of a Party during a representative period immediately before the execution of such practice;

specialist means a person who possesses specialized knowledge of the enterprise's products or services and its application in international markets, or an advanced level of expertise or knowledge of the enterprise's process and procedures; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

ANNEX 12-A
TEMPORARY ENTRY OF BUSINESS PERSONS

Section A: Business Visitors

1. Each Party shall grant temporary entry and provide document verification to a business person seeking to engage in a business activity set out in Appendix 12-A-1 to this Annex, provided that the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality of the other Party;
- (b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix 12-A-1 to this Annex and describing the purpose of entry; and
- (c) proof demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits remain predominantly outside such territory.

For the purposes of this paragraph, a Party that authorizes temporary entry shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it should be conducted according to its legislation.

3. Neither Party may:

- (a) as a condition for authorizing temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1.

4. A Party may require business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry.

Section B: Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person that, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, seeks to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or
- (b) establish, develop, or administer an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital in accordance with its legislation.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests, or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1.

3. A Party may require business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry.

Section C: Intra-corporate Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise of the other Party, that is being transferred to render services to that enterprise² of the Party granting temporary entry or a subsidiary or an affiliate thereof as an executive, manager, or specialist, provided that the business person and that enterprise otherwise comply with immigration measures applicable to temporary entry that are in force. A Party may require the business person to have been employed continuously by the enterprise for one year within the three years immediately preceding the date of the application for temporary entry. If necessary, a Party may request

² For greater certainty, 'that enterprise of the Party granting temporary entry' includes a branch that the enterprise of the other Party establishes in the Party, only when the branch is duly registered in accordance with the legislation of such Party.

documentation from the enterprise endorsing the corporate transfer and the role to be played by the person to be transferred.

2. For greater certainty, nothing in this Section shall be interpreted as affecting the labor legislation or the legislation applicable to the exercise of professions of a Party.

3. A Party may require business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry.

APPENDIX 12-A-1 BUSINESS VISITORS

Research

- Technical, scientific, and statistical researchers conducting independent research or research for an enterprise established in the territory of the other Party.

Meetings and Consultancies

- Business persons attending meetings, seminars or conferences, or carrying out consultancies, among others, in technical, scientific or social areas.

Cultivation, Manufacture, and Production Purchasing

- Purchasing and production personnel at managerial level conducting commercial transactions for an enterprise established in the territory of the other Party.

Marketing

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise established in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts on goods or services for an enterprise established in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise established in the territory of the other Party.

After-sale Services

- Installation, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Services

- Management and supervisory personnel engaging in a commercial transaction for an enterprise established in the territory of the other Party.
- Financial services personnel engaging in commercial transaction for an enterprise established in the territory of the other Party. For greater certainty, this business activity should be in accordance with the legislation in financial matters of the Party granting entry.
- Public relations and advertising personnel consulting with business associates or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions.
- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party, except for those services that in accordance with the legislation of the Party shall be provided by authorized translators.

APPENDIX 12-A-2
EXISTING IMMIGRATION MEASURES

The following immigration measures are herein listed for the purposes of transparency:

For Korea:

- (a) Immigration Control Act and its amendments No. 13440 of, 24 July, 2015.

For Costa Rica:

- (a) General Law on Migration and Immigration (*Ley General de Migración y Extranjería*) of August 19, 2009, Law No. 8764, and its regulations and amendments.

For El Salvador:

- (a) Migration Law (*Ley de Migración*), approved by Legislative Decree No. 2772 of December 19, 1958 and its amendments;
- (b) Migration Law Regulation (*Reglamento de la Ley de Migración*) approved by Executive Decree No. 33 of March 9, 1959 and its amendments; and
- (c) Immigration Law (*Ley de Extranjería*) approved by Legislative Decree No. 299 of February 18, 1986 and its amendments.

For Honduras:

- (a) Migration and Immigration Law (*Ley de Migración y Extranjería*) approved by Decree No. 208-2003, and its amendments;
- (b) Migration and Immigration Law Regulation (*Reglamento de la Ley de Migración y Extranjería*) approved by Executive Agreement No. 018-2004, and its amendments; and
- (c) Agreement No. 21-2004, and its amendments.

For Nicaragua:

- (a) General Law of Migration and Immigration (*Ley General de Migración y Extranjería*) Law No. 761, of March 31, 2011 and its amendments; and
- (b) Regulation to the Law No. 761, General Law of Migration and Immigration (*Reglamento a la Ley No. 761, Ley General de Migración y Extranjería*), Decree No. 31-2012, of September 20, 2012 and its amendments.

For Panama:

- (a) Decree Law 3 February 22, 2008 that creates the National Migration Service, the Migration Career and other Provisions (*Decreto Ley 3 del 22 de febrero de 2008 que crea el Servicio Nacional de Migración, la Carrera Migratoria y dicta otras disposiciones*), and its amendments; and
- (b) Executive Decree No. 320 of August 8, 2008 that regulates the Decree Law 3 of February 22, 2008 (*Decreto Ejecutivo No. 320 del 8 de agosto de 2008 que reglamenta el Decreto Ley 3 del 22 de febrero de 2008*) and its regulation and its amendments.