

CHAPTER 10

DOMESTIC REGULATION

Article 10.1 **Definitions**

For the purposes of this Chapter:

“authorisation” means the permission to carry out any of the activities referred to in subparagraphs 1(a) and 1(b) of Article 10.2 (Scope), resulting from a procedure to which a person of a Party, as defined in Article 9.1 (Definitions – Cross-Border Trade in Services), must adhere in order to demonstrate compliance with licensing requirements, qualification requirements, or technical standards;

“competent authority” means a central, regional, or local government or authority, or non-governmental body in the exercise of powers delegated by central, regional, or local governments or authorities, which is entitled to take a decision concerning the authorisation; and

“economic activity” means any activity of an industrial, commercial, or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority as defined in Article 14.2 (Definitions – Investment).

Article 10.2 **Scope**

1. This Chapter shall apply to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting:
 - (a) cross-border trade in services by service suppliers of the other Party as defined in Article 9.1 (Definitions – Cross-Border Trade in Services); and
 - (b) the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of a covered investment in the form of an enterprise, as these terms are defined in Article 14.2 (Definitions – Investment), for the pursuit of the relevant economic activity.

As far as measures relating to technical standards are concerned, this Chapter shall only apply to those measures affecting trade in services.

2. This Chapter shall not apply to services or measures of a Party that are excluded from the scope of:
 - (a) Chapter 9 (Cross-Border Trade in Services) pursuant to paragraphs 3 to 5 of Article 9.3 (Scope – Cross-Border Trade in Services); or
 - (b) Chapter 14 (Investment) pursuant to paragraphs 3 and 5 of Article 14.3 (Scope – Investment).
3. This Chapter shall not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards pursuant to a measure:
 - (a) to the extent that the measure is not subject to Article 9.4 (Market Access – Cross-Border Trade in Services), Article 9.5 (National Treatment – Cross-Border Trade in Services), or Article 9.7 (Local Presence – Cross-Border Trade in Services) and is referred to in subparagraphs 1(a) to 1(c) of Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services); or to Article 14.5 (Market Access – Investment) or Article 14.6 (National Treatment – Investment) and is referred to in subparagraphs 1(a) to 1(c) of Article 14.10 (Non-Conforming Measures – Investment); or
 - (b) is referred to in paragraph 2 of Article 9.8 (Non-Conforming Measures – Cross-Border Trade in Services) or paragraph 2 of Article 14.10 (Non-Conforming Measures – Investment).
4. The Parties recognise their respective right to regulate and to introduce new regulation in order to meet government policy objectives.

Article 10.3

Administration of Measures of General Application

Each Party shall ensure that all measures of general application affecting trade in services or the pursuit of an economic activity are administered in a reasonable, objective, and impartial manner.

Article 10.4

Development of Measures

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that:

- (a) requirements which must be met in order to obtain, maintain, or renew an authorisation preclude a competent authority from exercising its power of assessment in an arbitrary manner and are:

- (i) based on objective and transparent criteria;¹
 - (ii) clear and unambiguous;
 - (iii) impartial;
 - (iv) made public in advance; and
 - (v) easily accessible;
- (b) the procedures are impartial, accessible to all applicants, and adequate for applicants to demonstrate whether they meet the requirements, where those requirements exist;
- (c) the procedures do not in themselves prevent the fulfilment of requirements; and
- (d) those measures do not discriminate between men and women.²

Article 10.5 **Submission of Applications**

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

Article 10.6 **Application Timeframes**

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

¹ Such criteria may include competence and the ability to supply a service or pursue an economic activity, including to do so in a manner consistent with the Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

² Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by the Parties of temporary special measures aimed at accelerating *de facto* equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

Article 10.7
Electronic Applications and Acceptance of Copies

If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) to the extent practicable, provide for applications to be completed by electronic means, including from within the territory of the other Party; and
- (b) accept copies of documents authenticated in accordance with the Party's domestic law in place of original documents unless the competent authorities require original documents to protect the integrity of the authorisation process.

Article 10.8
Processing of Applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) to the extent practicable, publish in advance an indicative timeframe for processing an application;
- (b) confirm in writing³ that an application has been received and, at the request of the applicant, provide without undue delay information concerning the status of the application;
- (c) ascertain without undue delay the completeness of an application for processing under the Party's laws and regulations;
- (d) if the competent authorities consider an application complete for processing under the Party's laws and regulations, within a reasonable period of time after the submission of the application, ensure that:
 - (i) the processing of the application is completed; and
 - (ii) the applicant is informed in writing of the decision concerning the application;⁴
- (e) if the competent authorities consider an application incomplete for processing under the Party's laws and regulations, within a reasonable period of time:

³ References in subparagraphs (b) and (d) to "in writing" includes in electronic format.

⁴ Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application.

- (i) inform the applicant that the application is incomplete;
- (ii) at the request of the applicant, identify the additional information required to complete the application and provide guidance to the applicant to assist them in completing an application correctly; and
- (iii) provide the applicant with the opportunity⁵ to correct deficiencies,

however, if none of the above is practicable, and the application is rejected due to incompleteness, competent authorities shall ensure that they inform the applicant within a reasonable period of time; and

- (f) if an application is rejected, to the extent possible, either upon their own initiative or upon request of the applicant, inform the applicant in writing and without delay of the reasons for rejection and the procedures for resubmission of an application. An applicant should not be prevented from submitting another application⁶ solely on the basis of a previously rejected application.

2. Each Party shall ensure that:

- (a) its competent authority grants an authorisation as soon as it determines that the conditions for authorisation have been met; and
- (b) once granted by a competent authority, an authorisation enters into effect without undue delay, subject to the applicable terms and conditions.⁷

Article 10.9

Fees

Each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable, transparent, based on authority set out in a measure, made public in advance, payable by electronic means, and do not in themselves restrict the supply of the relevant service or pursuit of the relevant economic activity.⁸

⁵ This opportunity does not require a competent authority to provide extensions of deadlines.

⁶ Competent authorities may require that the content of such an application has been revised.

⁷ Competent authorities are not responsible for delays due to reasons outside their competence.

⁸ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Article 10.10

Examinations

1. If a Party requires an examination for authorisation, it shall ensure that its competent authorities schedule the examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.
2. To the extent practicable, if a Party requires an examination for authorisation, it shall accept a request in electronic format to take that examination and consider the use of electronic means in other aspects of the examination process.

Article 10.11

Objectivity, Impartiality, and Independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that the competent authority processes an application and reaches and administers its decisions:

- (a) objectively and impartially; and
- (b) in a manner independent from any service supplier or person pursuing an economic activity for which the authorisation is required.⁹

Article 10.12

Publication and Information Available

1. If a Party requires authorisation, the Party shall promptly publish the information necessary for persons pursuing or seeking to pursue the activities referred to in paragraph 1 of Article 10.2 (Scope) for which the authorisation is required to comply with the requirements, technical standards, and procedures for obtaining, maintaining, amending, and renewing that authorisation. Each Party shall ensure that this information is easily accessible through electronic means. Where it exists, that information shall include:
 - (a) contact information of relevant competent authorities;
 - (b) the requirements and procedures;
 - (c) fees;
 - (d) technical standards;

⁹ This paragraph does not mandate a particular administrative structure.

- (e) procedures for appeal or review of decisions concerning applications;
 - (f) procedures for monitoring or enforcing compliance with the licensing requirements or qualifications requirements;
 - (g) opportunities for public involvement, such as through hearings or comments; and
 - (h) indicative timeframes for the processing of an application.
2. To the extent practicable, each Party shall require its competent authorities to respond to any reasonable request for information or assistance.

Article 10.13

Review Procedures for Administrative Decisions

Each Party shall maintain judicial, arbitral, or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party or person of the other Party pursuing an economic activity, for the prompt review of and, where justified, appropriate remedies for, administrative decisions that affect the supply of a service or pursuit of an economic activity. Where those procedures are not independent of the competent authority of a Party entrusted with the administrative decision concerned, the Party shall ensure that the procedures provide for an objective and impartial review.

Article 10.14

Technical Standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations,¹⁰ designated to develop technical standards to use open and transparent processes.

Article 10.15

Limited Number of Licences

If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall in accordance with its laws and regulations apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct, and

¹⁰ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of each Party.

completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate public policy objectives, including, but not limited to, considerations of health, safety, the protection of the environment, and the preservation of cultural heritage.

Article 10.16

Opportunity to Comment Before Entry into Force

To the extent practicable and in a manner consistent with its legal system for adopting laws and regulations, each Party shall consider any comment received in response to any consultation documentation published pursuant to paragraph 2 of Article 29.2 (Publication – Transparency) in relation to matters within the scope of this Chapter and make publicly available a summary of how relevant input received has informed the development of the proposed measure.¹¹

Article 10.17

Enquiry Points

Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers or persons pursuing an economic activity regarding the measures within the scope of this Chapter.

¹¹ This paragraph is without prejudice to the final decision of a Party that adopts or maintains any measure for authorisation for the supply of a service or pursuit of an economic activity.