

## CHAPTER 12

### Temporary presence of natural persons for business purposes

#### Article 12.1

##### Scope and Definitions

1. This Chapter applies to measures of the Parties concerning the performance of economic activities through the entry and temporary stay in their territories of natural persons of a Party] who are [Business Visitors for Establishment Purposes, Investors], Intra-corporate Transferees, Business Sellers, Contractual Service Suppliers and Independent Professionals in accordance with paragraph X.X.
2. This Chapter shall not apply to the sectors excluded from the scope of Chapter 11 [CBTS] pursuant to letters (b) to (d) of paragraph 3 of Article 11.4 [Scope].
3. This Agreement/Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.
4. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its border, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Agreement.
5. The sole fact that a Party requires persons of the other Party to obtain a visa shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Agreement.
6. To the extent that commitments are not undertaken in this Chapter, all requirements provided for in the law of a Party regarding the entry and temporary stay of natural persons shall continue to apply, including laws and regulations concerning the period of stay.
7. Notwithstanding the provisions of this Chapter, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including laws and regulations concerning minimum wages and collective wage agreements.
8. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or

management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

9. The definitions in [Articles 10.1 and 11.3] apply to this Chapter.
10. For the purpose of this Chapter:
  - (a) “business visitors for establishment purposes” mean natural persons working in a senior position within a juridical person of a Party who are responsible for establishing an enterprise of such juridical person. They do not offer or provide services or engage in any other economic activity than required for establishment purposes. They do not receive remuneration from a source located within the host Party.
  - (a) bis: Investor means natural persons who establish an enterprise, and develop or administer the operation of that enterprise in the other Party in a capacity that is supervisory or executive, and to which that person or the juridical person employing that person has committed, or is in the process of committing, a substantial amount of capital.
  - (b) “intra-corporate transferees” mean natural persons who have been employed by a juridical person or have been partners in it for at least one year and who are temporarily transferred to an enterprise of the juridical person in the territory of the other Party. The natural person concerned must belong to one of the following categories:
    - (i) managers: Persons working in a senior position within [a juridical person (to be decided after agreeing on the definition of juridical person)] of a Party, who primarily direct the management of the [enterprise (to be decided after agreeing on the definition of enterprise)] in the other Party<sup>1</sup>, receiving general supervision or direction principally from higher level executives, the board of directors or from stockholders of the business or their equivalent. Its responsibilities shall include:
      - (A) directing the [enterprise] or a department or subdivision thereof;
      - (B) supervising and controlling the work of other supervisory, professional or managerial employees; and

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<sup>1</sup> For greater certainty, while managers do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties as described above, from performing such tasks as may be necessary for the provision of the services.

- (C) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions.
  - (ii) specialists: persons working within a juridical person possessing specialised knowledge essential to the enterprise's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge including, but not limited to, possible membership of an accredited profession.
  - (iii) trainee employees: Persons who have been employed by a juridical person or its branch for at least one year, possess a university degree and are temporarily transferred for career development purposes or to obtain training in business techniques or methods<sup>2</sup>.
- (c) "short-term business visitors" means natural persons who are seeking entry and temporary stay in the territory of the other Party, 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. The natural person concerned must belong to one of the following categories:
- (i) "business sellers" are short-term business visitors who are representatives of a services or goods supplier of one Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier, including: attending meetings or conferences; engaging in consultations with business colleagues, taking orders or negotiating contracts for an enterprise located in the territory of the other Party. They are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in the territory of the Party where the short-term business visitors are staying temporarily, and a consumer in that territory. They are not commission agents.
  - (ii) "installers and maintainers" are short-term business visitors possessing specialised knowledge essential to a seller's or lessor's contractual obligation, performing services or training workers to perform services,

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<sup>2</sup> The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be link to the university degree which has been obtained.

pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer and related services, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, throughout the duration of the warranty or service contract.

- (d) “contractual services suppliers” mean natural persons employed by a juridical person of a Party which is not itself established in the territory of the other Party and is not an agency for placement and supply services of personnel nor acting through such an agency and which has concluded a bona fide contract to supply services with a final consumer in the other Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to provide services<sup>3</sup>.
  
- (e) “independent professionals” mean natural persons engaged in the supply of a service established as self-employed in the territory of a Party, but not in the territory of the other Party, who have concluded a bona fide contract (other than through an agency for placement and supply services of personnel), with a final consumer to supply services in the latter Party, requiring their presence on a temporary basis in that Party<sup>4</sup>.

## Article 12.2

### Intra-corporate Transferees, Business Visitors for Establishment Purposes and Investors

1. Subject to the relevant conditions and qualifications specified in Annex IV [reservations for ICTs, BVEP and STBV], each Party:
  - a) shall allow the entry and temporary stay of Intra-corporate Transferees, Business Visitors for Establishment Purposes and Investors;
  - b) shall allow the employment in its territory of Intra-corporate Transferees of the other Party; and
  - c) shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes [or investors], or that may be employed as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory.
  - d) shall accord to intra-corporate transferees, business visitors for establishment purposes [and investors] of the other Party, with regard to their temporary stay

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<sup>3</sup> The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

<sup>4</sup> The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The permissible length of stay shall be:
  - a. for Chile, for a period of up to two years which may be extended, without a requirement to apply for permanent residence, provided the conditions on which it is based remain in effect; and
  - b. for the European Union, for a period of up to three years for Managers and Specialists; up to one year for Trainee Employees and Investors; and up to 90 days within any six month period days for Business Visitors for Establishment Purposes.

### Article 12.3

#### Short-term business visitors

1. Subject to the scope exclusions set out in Chapter II Article 2(1) and subject to the relevant conditions and qualifications specified in Annex IV [reservations for ICTs, BVEP and STBV], a Party shall allow entry and temporary stay of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.
2. If short-term business visitors of a Party are engaged in the supply of a service to a consumer in the territory of the Party where they are staying temporarily, that Party shall accord to them, with regard to the supply of that service, treatment no less favourable than that it accords, in like situations, to its own service suppliers:
3. The permissible length of stay shall be for a period of up to ninety days in any twelve month period.

### Article 12.4

#### Contractual Service Suppliers and Independent Professionals

4. Each Party shall allow the entry and temporary stay of contractual services suppliers in its territory, in the sectors, subsectors and activities specified in Annex V [reservations on contractual services suppliers and independent professionals], subject to the relevant conditions and qualifications specified therein, as well as to the following conditions:
  - a) The natural persons must be engaged in the supply of a service as employees of a juridical person, which has obtained a service contract not exceeding twelve months.
  - b) The natural persons entering the other Party should be offering such services as employees of the juridical person supplying the services for at least one year

immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, on the date of application for entry, at least three years professional experience<sup>16</sup> in the sector of activity which is the subject of the contract.

- c) The natural persons entering the other Party must possess:
    - (i) a university degree or a qualification demonstrating knowledge of an equivalent level<sup>17</sup> and
    - (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied.
  - d) The natural person shall not receive remuneration for the provision of services in the territory of the other Party other than the remuneration paid by the juridical person employing the natural person.
  - e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.
2. Each Party shall allow the entry and temporary stay of independent professionals in its territory in the sectors, subsectors and activities specified in Annex V [reservations on contractual services suppliers and independent professionals], subject to the relevant conditions and qualifications specified therein, as well as to the following conditions:
- a) The contract concluded shall not exceed a period of twelve months.
  - b) The natural persons must possess, on the date of application for temporary entry, at least six years professional experience in the sector of activity which is the subject of the contract.
  - c) The natural persons entering the other Party must possess:
    - (i) a university degree or a qualification demonstrating knowledge of an equivalent level<sup>17</sup> and
    - (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied.

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<sup>16</sup> Obtained after having reached the age of majority.

<sup>17</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

- d) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
3. A Party shall not adopt or maintain limitations on the total number of contract service suppliers and independent professionals of the other Party who are allowed temporary entry, in the form of numerical quotas or an economic needs test.
  4. Each Party shall accord to contractual services suppliers and independent professionals of the other Party, with regard to the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.
  5. The permissible length of stay shall be:
    - a. for the EU, for a cumulative period of not more than six months in any twelve month period or for the duration of the contract, whichever is less; and
    - b. for Chile, for a period up to one year which may be extended for subsequent periods, provided the conditions on which it is based remain in effect.

#### Article 12.5

##### Non-conforming measures

To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, Article 12.2, paragraph 1, subparagraphs (c) and (d) and Article 12.4, paragraphs 3 and 4 do not apply to:

- (a) any existing non-conforming measure of a Party at the level of:
  - (i) for the European Union:
    - (A) the European Union, as specified in its Schedule to Annex I;
    - (B) the central government of a Member State of the European Union, as specified in its Schedule to Annex I;
    - (C) a regional government of a Member State of the European Union, as specified in its Schedule to Annex I; or
    - (D) a local government, other than that referred to in subparagraph (C); and
  - (ii) for Chile:
    - (A) the central government, as specified in its Schedule to in Annex I;
    - (B) a [regional subdivision], as specified in its Schedule to Annex I; or
    - (C) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
- (c) a modification of any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with Article 12.2, paragraph 1,

subparagraphs (b) and (c) and Article 12.4, paragraph 1, subparagraphs (ii) and (iii); or

- (d) any measure of a Party consistent with a condition or qualification specified in Annex II.

## Article 12.6

### Transparency

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



Article 12.7

Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter XX (Dispute Settlement) regarding a refusal to grant temporary entry unless the matter involves a pattern of practice.