

## CHAPTER 9

### MOVEMENT OF NATURAL PERSONS

#### ARTICLE 9.1: GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties, the Parties' mutual desire to facilitate temporary entry of natural persons on a comparable basis and of establishing transparent criteria and streamlined procedures for temporary entry, while recognizing the need to ensure border security. This Chapter provides for rights and obligations additional to those set out in Chapters 2, 6 and 7 in relation to the movement of natural persons between the Parties.
2. This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.
3. Nothing contained in this Chapter shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to unduly impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement.

#### ARTICLE 9.2: SCOPE AND DEFINITIONS

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party, where such persons are:
  - (a) service sellers of the first mentioned Party;
  - (b) service suppliers of the first mentioned Party;
  - (c) sellers of goods of the first mentioned Party;
  - (d) investors of the first mentioned Party in respect of an investment of that investor in the territory of the other Party; or
  - (e) employed by an investor of the first mentioned Party in respect of an investment of that investor in the territory of the other Party;
  - (f) advisor (as defined in paragraph 2(b)(iv)).
2. For the purposes of this Chapter, the following definitions shall apply:

- (a) **natural person** is as defined in paragraph (j) of Article 7.1 of this Agreement and specifically covers a national of a Party as described in paragraphs 1(a) to 1(f);
- (b) **business visitor** means a natural person of either Party who is:
  - (i) a service seller; or
  - (ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or
  - (iii) an investor of a Party or an employee of an investor (who is a manager, executive or specialist as defined under paragraph 2(f)) seeking temporary entry to establish an investment; or
  - (iv) seeking temporary entry as an Advisor in a capacity as an employee or otherwise to a person described in paragraphs 2(b) (i) to (iii), so long as any such advisory role is solely confined to such person, and does not involve any direct dealings with the general public;
- (c) **immigration visa** refers to:
  - (i) in respect of Singapore: A multiple journey visa, employment pass, or other document issued by Singapore, granting a natural person of India the right to reside or work or remain in the territory of Singapore, and;
  - (ii) in respect of India: An employment visa or business visa issued by India, granting a natural person of Singapore the right to reside or work or remain in the territory of India without the intent to reside permanently;
- (d) **temporary entry** means entry by a business visitor, a short-term service supplier, an intra-corporate transferee, or a professional, and spouses or dependants as defined in Article 9.6, as the case may be without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor's home country;
- (e) **professional** means a natural person of a party who is employed in a specialised occupation as listed in Annex 9A that requires theoretical and practical application of specialised knowledge; and
  - (i) attainment of a post secondary degree in the specialty requiring three or more years of study (or the equivalent of such a degree) as a minimum of entry into the occupation. Such degrees include

Bachelors' degree, Masters' degree and Doctoral degree conferred by institutions in India and Singapore; and

- (ii) in the case of regulated professions, registration, license or credentials, as specified by the relevant authorities of a Party, if applicable, to engage in a business activity as a professional in one of the professions listed in Annex 9A, and for which specific commitments for that services sector have been undertaken by that Party under Chapter 7;
- (f) **intra-corporate transferee** means an employee of a service supplier, juridical person as defined in paragraph (e) of Article 7.1, investor or enterprise of a Party established in the territory of the other Party referred to below as an organization, through a branch, subsidiary or affiliate, who has been so employed for a period of not less than either six months in-company and one year industry experience or three years industry experience immediately preceding the date of the application for temporary entry, and who is a manager, executive or specialist as defined below:
- (i) **manager** means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations; this does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment, however, this does not prevent the manager, in the course of executing his duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment;
  - (ii) **executive** means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business; an executive would not primarily perform tasks related to the actual provision of the service or the operation of an investment; however, this does not prevent the executive, in the course of executing his duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment;
  - (iii) **specialist** means a natural person within an organization who possesses knowledge at an advanced level of expertise and who possesses relevant knowledge of the organisation's service,

research, equipment, techniques or management (a specialist may include, but is not limited to, members of a licensed profession);

- (g) **service seller** means a natural person of a party who is a representative<sup>9-1</sup> of a service supplier of that Party and is seeking temporary entry into the other Party for the purpose of negotiating the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (h) **seller of goods** means any person of a party engaged in the manufacture, production, supply or distribution of industrial or agricultural goods seeking temporary entry into the other Party in order to sell goods to, or to enter into a distribution or retailing arrangement with a person or an enterprise of the other Party engaged in an industrial or commercial enterprise, provided, however, that such person shall not sell goods directly to the general public of the other Party;
- (i) **short-term service suppliers** mean natural persons of a Party who:
  - (i) are employees of a service supplier or an enterprise of a Party not having a commercial presence or investment in the other, which has concluded a service contract with a service supplier or an enterprise engaged in substantive business operations in the other Party;
  - (ii) have been employees of the service supplier or enterprise for a time period of not less than three months in the relevant industry immediately preceding an application for admission for temporary entry;
  - (iii) are managers, executives or specialists as defined under paragraph 2(f) ;
  - (iv) are seeking temporary entry into the other Party for the purpose of providing a service as a professional in service sectors scheduled by the other Party under Chapter 7 of this Agreement on behalf of the service supplier or enterprise which employs them; and
  - (v) satisfy any other requirements under the domestic laws and regulations of the other Party to provide such services in the territory of that Party;

3. Notwithstanding paragraph 1 of Article 9.1, the obligations of this Chapter shall only apply to the sectors in which specific commitments are undertaken by the concerned Party under Chapters 6 and 7 of this Agreement. However, they shall not apply to

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<sup>9-1</sup> For greater certainty, the Parties understand that in the case of a juridical person of a Party where the service supplier is also the sole employee, the term “representative of a service supplier” includes the service supplier who is seeking temporary entry into the other Party for the purpose of negotiating the sale of services, where such person will not be engaged in making direct sales to the general public or in supplying services directly.

Singapore's commitments for the legal services sector made under the provisions of Chapter 7.

#### ARTICLE 9.3: GENERAL PRINCIPLES FOR GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to natural persons of other Party, who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter.
2. Each Party shall process expeditiously applications for temporary entry from natural persons of the other Party, including requests for further extensions. Each Party shall notify applicants for temporary entry, either directly or through their prospective employers, of the outcome of their applications, including the period of stay and other conditions.
3. Neither Party shall require labour market testing, economic needs testing or other procedures of similar effects as a condition for temporary entry in respect of natural persons upon whom the benefits of this Chapter are conferred.
4. Natural persons of either Party who are granted temporary entry into the territory of the other Party shall not be required to make contributions to social security funds in the host country. In such cases, they will not be eligible for social security benefits in the other Party for the duration of the stay.

#### ARTICLE 9.4: SHORT-TERM TEMPORARY ENTRY

##### **Business Visitors**

1. A Party shall, upon application by a business visitor of the other Party, who otherwise meets its criteria for the grant of a five-year multiple journey visa, ordinarily grant that business visitor with that immigration visa. Such a visa shall be granted provided the business visitor:
  - (a) complies with immigration measures applicable to temporary entry;
  - (b) presents proof of nationality;
  - (c) provides a letter of recommendation from a governmental economic agency of the Party to whom the application is made, giving an indication of his business activities/interests. In the event that it is not available, the Party shall consider a letter of recommendation from reputed Chambers of Commerce, Export Promotion Councils or similar organizations in his own country; and
  - (d) is otherwise qualified for entry under applicable measures relating to public health and safety and national security in accordance with this Chapter.

If that business visitor does not meet the aforesaid criteria, he or she may still be granted a multiple journey visa for a period of less than five years, as the Party granting the immigration visa deems fit. Each Party shall grant a business visitor of the other Party the right to temporary entry for a period of up to two months, which may be extended by a period of up to one month upon request, for holders of five-year multiple journey visas and up to one month for holders of multiple journey visas with a validity period of less than five years.

### **Short-Term Service Suppliers**

2. Each Party shall, upon application by a short-term service supplier of the other Party who otherwise meets its criteria for the grant of an immigration visa, grant that short-term service supplier, through the issuance of a single immigration visa, the right to temporary entry for an initial period of up to 90 days, with possibility for a further period of up to 90 days provided that the total sum of the initial period and the extended period shall not exceed 180 days or the length of the service contract referred to in paragraph 2(i)(i) of Article 9.2, whichever is the shorter period.

## **ARTICLE 9.5: LONG-TERM TEMPORARY ENTRY**

### **Intra-Corporate Transferees**

1. Unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration visa has been refused on such grounds of national security or public order by the granting Party as it deems fit, each Party shall grant temporary entry to an intra-corporate transferee of the other Party, who otherwise meets its criteria for the grant of an immigration visa, for an initial period of up to two years or the period of the contract, whichever is less. The period of stay may be extended for period of up to three years at a time for a total term not exceeding eight years.

### **Professionals**

2. Each Party shall grant temporary entry and stay for up to one year or the duration of contract, whichever is less, to a natural person seeking to engage in a business activity as a professional, or to perform training functions related to a particular profession, including conducting seminars, if the professional otherwise complies with immigration measures applicable to temporary entry, on presentation by the natural person concerned of:

- (a) Proof of nationality of the other Party;
- (b) Documentation demonstrating that he or she will be so engaged and describing the purpose of entry, including the letter of contract from the party<sup>9-2</sup> engaging the services of the natural person in the host Party; and

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<sup>9-2</sup> For the avoidance of doubt, “party” shall not mean the Republic of India or the Republic of Singapore (“Party”).

- (c) Documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

#### ARTICLE 9.6: EMPLOYMENT OF SPOUSES AND DEPENDANTS

For natural persons of a Party who have been granted the right to long term temporary entry and have been allowed to bring in their spouses or dependants, a Party shall, upon application, grant the accompanying spouses or dependants of the other Party the right to work as managers, executives or specialists (as defined in paragraphs 2(f)(i) to (iii) of Article 9.2), subject to its relevant licensing, administrative and registration requirements. Such spouses or dependants can apply independently in their own capacity (and not necessarily as accompanying spouses or dependants) and shall not be barred by the Party granting them the right to work from taking up employment in a category other than that of managers, executives, or specialists solely on the ground that they as the accompanying spouses or dependants are already employed in its territory as managers, executives or specialists.

#### ARTICLE 9.7: REGULATORY TRANSPARENCY

1. Each Party shall maintain or establish contact points or other mechanisms to respond to inquiries from interested persons regarding regulations affecting the temporary entry of natural persons. These contact points shall also be the authorized points allowing business persons to report and seek clarifications, if any, on instances where they have encountered special difficulties in the process of seeking temporary entry in the other Party.
2. To the extent possible, each Party shall allow reasonable time between publication of regulations affecting the temporary entry of natural persons and their effective date, and such notification to the other Party can be made electronically available.
3. Prior to the entry into force of this Agreement, the Parties shall exchange information on current procedures relating to the processing of applications for temporary entry.

#### ARTICLE 9.8: IMMIGRATION MEASURES

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 those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

#### ARTICLE 9.9: EXPEDITIOUS APPLICATIONS PROCEDURES

Each Party shall process expeditiously applications for temporary entry from natural persons of the other Party, including requests for further extension, for grant of Business/Employment Visa in the case of India and Business Visas/ Employment Passes in the case of Singapore, from natural persons of the other Party, including further immigration visa request or extension thereof, particularly applications from members of professions for which mutual recognition arrangements have been concluded pursuant to Article 7.11.

#### ARTICLE 9.10: NOTIFICATION OF OUTCOME OF APPLICATION

Each Party shall notify the applicant for temporary entry, either directly or through his or her prospective employers, of the outcome of final determination, including the period of stay and other conditions.

#### ARTICLE 9.11: RESOLUTION OF PROBLEMS

The relevant authorities of both Parties shall endeavor to favorably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the temporary entry of natural persons) which may arise from the implementation and administration of this Chapter.

#### ARTICLE 9.12: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Chapter 15 regarding a refusal to grant temporary entry under this chapter unless

- (a) the matter involves a breach of any of the provisions relating to the right of entry accruing under this Chapter;
- (b) involves a pattern of practice; and
- (c) its natural persons affected by the pattern of practice have exhausted the available domestic administrative remedies of the other Party.

2. The remedies referred to in paragraph 1(c) 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 proceedings for domestic administrative remedies including proceedings by way of review, and the failure to issue a determination is not attributable to the delay caused by the natural person.

ARTICLE 9.13: RESERVATIONS

The commitments made by each Party under this Chapter shall be subject to any terms, conditions, reservations or limitations it has scheduled in respect of each service sector under Chapter 7.