

**Disclaimer:** *In view of the Commission and New Zealand's respective transparency policies, the Commission and New Zealand are publishing the texts of the Agreement following the announcement of conclusion of the negotiations on 30 June 2022 (Brussels time).*

*The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.*

*The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.*

## CHAPTER [X]

### INVESTMENT LIBERALISATION AND TRADE IN SERVICES

## SECTION A

### GENERAL PROVISIONS

#### ARTICLE X.1

##### Objectives

1. The Parties, affirming their commitment to create a better climate for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and investment.
2. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, or the promotion and protection of cultural diversity and, in the case of New Zealand, the promotion and protection of the rights, interests, duties and responsibilities of Māori related to Te Tiriti o Waitangi/the Treaty of Waitangi.

#### ARTICLE X.2

##### Scope

1. This Chapter does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
2. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them,

provided that such measures are not applied in such a manner as to nullify or impair the benefits<sup>1</sup> accruing to the other Party under the terms of this Chapter.

3. This Chapter does not apply to:

(a) air services or related services in support of air services<sup>2</sup>, other than the following:

(i) aircraft repair and maintenance services;

(ii) computer reservation system (CRS) services;

(iii) ground handling services;

(iv) the selling and marketing of air transport services; and

(v) the following services provided using a manned aircraft, whose primary purpose is not the transportation of goods or passengers: aerial fire-fighting; flight training; spraying; surveying; mapping; photography; aviation adventure services<sup>3</sup>; and other airborne agricultural, industrial and inspection services;

(b) audio-visual services; and

(c) national maritime cabotage<sup>4</sup>.

---

<sup>1</sup> 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 this Chapter.

<sup>2</sup> For greater certainty, air services or related services in support of air services include, but are not limited to, the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; rental of aircraft with crew and airport operation services.

<sup>3</sup> For greater certainty, aviation adventure services are services provided using a manned aircraft where users engage in an aerial operation for the purposes of sports or recreation, such as a ride in an ex-military, replica or historic aircraft; hot air balloon rides; or aerobatic rides.

<sup>4</sup> 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:

## ARTICLE X.3

### Definitions

For the purposes of this Chapter:

- (a) "activities performed or services supplied in the exercise of governmental authority" means activities which are performed or services which are supplied neither on a commercial basis nor in competition with one or more economic operators;
- (b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) "covered enterprise" means an enterprise in the territory of a Party established in accordance with point (h), directly or indirectly, by an investor of the other Party, in accordance with the applicable law existing on the date of entry into force of this Agreement or established thereafter;

---

i. For the European Union, transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in a Member State of the European Union;

ii. For New Zealand, the carriage by sea of passengers or cargo between a port or point located in the territory of New Zealand and another port or point located in the territory of New Zealand, and traffic originating and terminating in the same port or point located in the territory of New Zealand. For greater certainty, feeder services, as defined in Sub-Section 6 [International Maritime Transport] of Section E [Regulatory Framework], and repositioning of empty containers, which are not being carried as cargo against payment, shall not be considered as national maritime cabotage for the purpose of this Chapter.

- (e) "cross-border trade in services" means the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party; or
  - (ii) in the territory of a Party to the service consumer of the other Party;
- (f) "economic activity" includes any activity of an industrial, commercial or professional character or activities of craftspeople, including the supply of services, but does not include activities performed in the exercise of governmental authority;
- (g) "enterprise" means a juridical person or a branch or a representative office of a juridical person;
- (h) "establishment" means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in the territory of a Party, with a view to creating or maintaining lasting economic links;
- (i) "existing" means in effect on the date of entry into force of this Agreement;
- (j) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra airport transport systems;
- (k) "investor of a Party" means, a natural person of a Party or a juridical person of a Party including a Party, that seeks to establish, is establishing or has established an enterprise in accordance with point (h), in the territory of the other Party;
- (l) "juridical person" means any legal entity duly constituted or otherwise organised under the 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;

(m) "juridical person of a Party" means<sup>5</sup>:

(i) for the European Union:

(A) a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations<sup>6</sup> in the territory of the European Union; and

(B) shipping companies established outside the European Union, and controlled by natural persons of a Member State of the European Union, whose vessels are registered in, and fly the flag of, a Member State of the European Union;

(ii) for New Zealand:

(A) a juridical person constituted or organised under the law of New Zealand and engaged in substantive business operations in the territory of New Zealand; and

(B) shipping companies established outside New Zealand, and controlled by natural persons of New Zealand, whose vessels are registered in, and fly the flag of, New Zealand;

(n) "measures of a Party" means any measures adopted or maintained by<sup>7</sup>:

(i) central, regional or local governments or authorities; and

---

5 For greater certainty, the shipping companies mentioned in this point are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

6 In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

7 For greater certainty, "measures of a Party" includes measures which are adopted or maintained by instructing, directing or controlling the conduct of other entities.

- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (o) “natural person of a Party” means:
  - (i) for the European Union, a national of one of the Member States of the European Union according to its law<sup>8</sup>; and
  - (ii) for New Zealand, a national of New Zealand according to its law<sup>9</sup>;
- (p) “operation” means the conduct, management, maintenance, use, enjoyment, or sale or other form of disposal of an enterprise;
- (q) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but not including the pricing of air transport services nor the applicable conditions;
- (r) “service” means any service in any sector except services supplied in the exercise of governmental authority; and
- (s) “service supplier” means any natural or juridical person that seeks to supply or supplies a service.

## SECTION B

---

8 The definition of natural person also includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen’s passport.

9 The EU reaffirms its obligations regarding permanent residents of New Zealand under the GATS. To that effect, the definition of natural person of a Party also includes persons who have the right of permanent residence in New Zealand who are not nationals of New Zealand, to the extent that those natural persons are beneficiaries of EU commitments under the GATS.

## INVESTMENT LIBERALISATION

### ARTICLE X.4

#### Scope

1. This Section applies to measures of a Party affecting establishment or operation to perform economic activities by:

- (a) investors of the other Party;
- (b) covered enterprises; and
- (c) for the purposes of Article X.9 [Performance requirements], any enterprise in the territory of that Party.

2. This Section does not apply to any measure of a Party with respect to government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article [X.] [Scope and coverage] of Chapter [X] [Procurement].

3. Articles X.5[Market access], X.6 [National treatment], X.7 [Most favoured nation treatment] and X.8 [Senior management and boards of directors] do not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.

### ARTICLE X.5

#### Market access

A Party shall not adopt or maintain, with regard to market access through establishment or operation by an investor of the other Party or by a covered enterprise, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that:

- (a) impose limitations on<sup>10</sup>:
- (i) the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
  - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) 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;
  - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
  - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity, in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which an investor of the other Party may perform an economic activity.

## ARTICLE X.6

### National treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own investors and to their enterprises, with respect to establishment in its territory.

---

<sup>10</sup> Points (a)(i),(a)(ii) and (a)(iii) do not cover measures taken in order to limit the production of an agricultural or fishery product.

2. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own investors and to their enterprises, with respect to operation in its territory.

#### ARTICLE X.7

##### Most favoured nation treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to establishment in its territory.

2. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to operation in its territory.

3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to investors of the other Party or to covered enterprises the benefit of any treatment resulting from existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in article VII of GATS or paragraph 3 of its Annex on Financial Services.

4. For greater certainty, the “treatment” referred to in paragraphs 1 and 2 does not include dispute settlement procedures provided for in other international agreements.

5. For greater certainty, substantive provisions in other international agreements concluded by a Party with a third country do not in themselves constitute the “treatment” referred to in paragraphs 1 and 2. Measures of a Party pursuant to those provisions<sup>11</sup> may constitute such treatment and thus give rise to a breach of this Article.

---

<sup>11</sup> For greater certainty, the mere transposition of those provisions into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

## ARTICLE X.8

### Senior management and boards of directors

A Party shall not require a covered enterprise to appoint natural persons of any particular nationality to senior management positions or members of the board of directors.

## ARTICLE X.9

### Performance requirements

1. A Party shall not impose or enforce any requirement, or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory<sup>12</sup> :

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural or juridical persons or any other entities in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
- (e) to restrict sales of goods or services in its territory that such enterprise produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;

---

<sup>12</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

- (f) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;
- (g) to supply exclusively from the territory of that Party a good produced or a service supplied by the enterprise to a specific regional market or to the world market;
- (h) to locate the headquarters for a specific region or the world market in its territory;
- (i) to hire a given number or percentage of natural persons of that Party;
- (j) to achieve a given level or value of research and development in its territory;
- (k) to restrict the exportation or sale for export; or
- (l) to adopt:
  - (i) a given rate or amount of royalty under a licence contract; or
  - (ii) a given duration of the term of a licence contract<sup>13</sup>

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party.<sup>14</sup>

2. A Party shall not condition the receipt, or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, on compliance with any of the following requirements:

---

<sup>13</sup> A "licence contract" referred to in this point means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

<sup>14</sup> For greater certainty, point (l) does not apply when the licence contract is concluded between the enterprise and the Party.

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entity in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
- (d) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;  
or
- (e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Points (f) and (l) of paragraph 1 do not apply when:

- (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority, pursuant to the Party's competition law, to prevent or remedy a distortion of competition;
- (b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or other proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement.

5. Points (a), (b) and (c) of paragraph 1 and points (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.
6. Points (a) and (b) of paragraph 2 do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
7. Point (l) of paragraph 1 does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.
8. This article is without prejudice to the obligations of a Party under the WTO Agreement.
9. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.<sup>15</sup>
10. This article does not apply to the establishment or operation of a financial service supplier.
11. With regard to performance requirements relating to financial service suppliers, the Parties shall negotiate disciplines on performance requirements with respect to the establishment or operation of a financial service supplier which shall be incorporated into this article.
12. Within 180 days following the successful negotiation and incorporation by the Parties of the performance requirement disciplines pursuant to paragraph 11, each Party may amend its Schedule as required. Article X.9 shall then apply to the establishment and operation of a financial service supplier.

## ARTICLE X.10

### Non-conforming measures

---

<sup>15</sup> For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with its reservations in Annex I or Annex II.

1. Article X.5 [Market access], Article X.6 [National treatment] and Articles X.7 [Most favoured nation treatment], X.8 [Senior management and boards of directors] and X.9 [Performance requirements], 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 point (C); and

(ii) for New Zealand:

(A) the central government, as specified in its Schedule to Annex I; or

(B) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification of, or amendment to, any non-conforming measure referred to in points (a) and (b), provided that it does not decrease the conformity of the measure, as it existed immediately before the modification or amendment, with Article X.5 [Market access], Article X.6 [National treatment] and Articles X.7 [Most favoured nation treatment], X.8 [Senior management and boards of directors] and X.9 [Performance requirements].

2. Article X.5 [Market access], Article X.6 [National treatment] and Articles X.7 [Most favoured nation treatment], X.8 [Senior management and boards of directors] and X.9 [Performance

requirements], do not apply to a measure of a Party with respect to sectors, subsectors or activities specified in its Schedule to Annex II.

3. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles X.6 [National treatment] and X.7 [Most favoured nation treatment] do not apply to any measure that constitutes an exception to, or a derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of that Agreement.

#### ARTICLE X.11

##### Information requirements

Notwithstanding Articles X.6 [National treatment] and X.7 [Most favoured nation treatment], a Party may require an investor of the other Party or its covered enterprise to provide information concerning that covered enterprise solely for information or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered enterprise. Nothing in this Article shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

#### ARTICLE X.12

##### Denial of benefits

A Party may deny the benefits of this Section to an investor of the other Party or to a covered enterprise if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that investor or covered enterprise, or
- (b) would be violated or circumvented if the benefits of this Section were accorded to that investor or covered enterprise, including where the measures prohibit transactions with a natural or juridical person who owns or controls either of them.

## SECTION C

### CROSS-BORDER TRADE IN SERVICES

#### ARTICLE X.13

##### Scope

1. This Section applies to measures of a Party affecting the cross-border trade in services by service suppliers of the other Party.
2. This Section does not apply to any measure of a Party with respect to government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article [X] [Scope and coverage] of Chapter [X] [Procurement].
3. This Section does not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.

#### ARTICLE X.14

##### Market access

A Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial sub-division, a measure that:

- (a) imposes limitations on:
  - (i) the number of services suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) 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; or
- (b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

#### ARTICLE X.15

##### Local presence

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for cross-border trade in services.

#### ARTICLE X.16

##### National treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to its own services and services suppliers.<sup>16</sup>

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 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 the Party compared to services or service suppliers of the other Party.

#### ARTICLE X.17

##### Most favoured nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to services and service suppliers of a non-Party.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in article VII of GATS or paragraph 3 of its Annex on Financial Services.

3. For greater certainty, substantive provisions in other international agreements concluded by a Party with a non-Party do not in themselves constitute the ‘treatment’ referred to in paragraph 1. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

#### ARTICLE X.18

##### Non-conforming measures

---

<sup>16</sup> Nothing in this Article shall be construed as requiring either Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

1. Articles X.14 [Market access], X.15 [National treatment], X.16 [Local presence] and X.17 [Most favoured nation treatment] 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 point (C); and

(ii) for New Zealand:

(A) the central government, as specified in its Schedule to Annex I; or

(B) a local government

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification of, or amendment to, any non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification or amendment, with Articles X.14 [Market access], X.15 [National treatment], X.16 [Local presence] and X.17 [Most favoured nation treatment].

2. Articles X.14 [Market access], X.15 [National treatment], X.16 [Local presence] and X.17 [Most favoured nation treatment]) do not apply to a measure of a Party with respect to sectors, sub-sectors, or activities specified in its Schedule to Annex II.

## ARTICLE X.19

### Denial of benefits

A Party may deny the benefits of this Section to a service supplier of the other Party if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that service supplier, or
- (b) would be violated or circumvented if the benefits of this Section were accorded to that service supplier, including where the measures prohibit transactions with a natural or juridical person who owns or controls that service supplier.

## SECTION D

### ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

## ARTICLE X.20

### Scope and definitions

1. Subject to paragraph 1 and 2 of Article X.2, this Section applies to measures of a Party affecting the entry and temporary stay in its territory of natural persons of the other Party for business purposes, who fall within the scope of the following categories: short-term business visitors, business visitors for establishment purposes, contractual service suppliers, independent professionals and intra-corporate transferees.
2. 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.

3. For the purposes of this Section:

- (a) “business visitors for establishment purposes” means natural persons, working in a senior position within a juridical person of a Party, who:
- (i) are responsible for setting up or winding down an enterprise of such juridical person in the territory of the other Party ;
  - (ii) do not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise and;
  - (iii) do not receive remuneration from a source located within the other Party;
- (b) “contractual services suppliers” means natural persons employed by a juridical person of a Party (other than through an agency for placement and supply services of personnel), which is not established in the territory of the other Party and has concluded a *bona fide* contract to supply services to a final consumer in the other Party requiring the temporary presence of its employees<sup>17</sup> who:
- (i) have offered such services as employees of the juridical person for a period of not less than one year immediately preceding the date of their application for entry and temporary stay;
  - (ii) possess, on that date, the required level of professional experience in the sector of activity which is the object of the contract<sup>18</sup>, a degree or a qualification demonstrating knowledge of an equivalent level<sup>19</sup> and the professional qualifications legally required to exercise that activity in the other Party; and

---

<sup>17</sup> The service contract referred to under (b) and (c) shall comply with the requirements of the law of the Party where the contract is executed.

<sup>18</sup> The professional experience required by each Party is set out in its Annex IV.

<sup>19</sup> The level of the degree required by each Party is set out in its Annex IV. 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.

- (iii) do not receive remuneration from a source located within the other Party;
- (c) “independent professionals” means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who:
- (i) have not established in the territory of the other Party;
  - (ii) have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) for a period not exceeding twelve months to supply services to a final consumer in the other Party, requiring their presence on a temporary basis<sup>20</sup>; and
  - (iii) possess, on the date of their application for entry and temporary stay, at least six years professional experience in the relevant sector of activity which is the object of the contract, a university degree or a qualification demonstrating knowledge of an equivalent level<sup>21</sup> and any professional qualifications legally required to exercise that activity in the other Party; and
- (d) “intra-corporate transferees” means natural persons, who:
- (i) have been employed by a juridical person of a Party, or have been partners in it, for a period of not less than one year immediately preceding the date of their application for the entry and temporary stay in the other Party<sup>22</sup>;
  - (ii) at the time of application reside outside the territory of the other Party;

---

<sup>20</sup> The service contract referred to under (c) and (d) shall comply with the requirements of the law of the Party where the contract is executed.

<sup>21</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.

<sup>22</sup> For greater certainty, managers and specialists may be required to demonstrate that they possess the professional qualifications and experience needed in the juridical person to which they are transferred.

(iii) are temporarily transferred to an enterprise of the juridical person in the territory of the other Party which is a member of the group of the originating juridical person or branch, including its representative office, subsidiary, branch or head company, and

(iv) belong to one of the following categories:

(A) managers or executives: natural persons working in a senior position, who primarily direct the management of the enterprise or a substantial part of it in the other Party, receiving general supervision or direction principally from higher level executives or the board of directors or from stockholders of the business or their equivalent and whose responsibilities include:

(1) directing the enterprise or a department or subdivision thereof;

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

(3) having the authority to recommend hiring, dismissing or other personnel-related actions;

(B) specialists: natural persons possessing specialised knowledge at an advanced level of technical expertise, essential to the enterprise's areas of activity, techniques or management, which shall be assessed taking into account not only knowledge specific to the enterprise, but also 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 possible membership of an accredited profession.

## ARTICLE X.21

Intra-corporate transferees and business visitors for establishment purposes

1. Subject to the relevant conditions and qualifications specified in Annex III [reservations for ICTs, BVEP and STBV] for the EU and Annex III for New Zealand

(a) A Party shall allow:

(i) the entry and temporary stay of intra-corporate transferees and business visitors for establishment purposes and

(ii) the employment in its territory of intra-corporate transferees of the other Party.

(b) A Party 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 that an investor may employ as intra-corporate transferees either on the basis of a territorial subdivision or on the basis of its entire territory.

(c) Each Party shall accord to Intra-corporate Transferees and Business Visitors for Establishment Purposes of the other Party, with regard to measures affecting their business activities during their temporary stay 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 for a period of up to three years for managers or executives and specialists, and up to ninety days within any six month period for the EU and up to ninety days in any twelve month period for New Zealand for business visitors for establishment purposes.

## ARTICLE X22

### Short-term business visitors

1. Subject to the relevant conditions and qualifications specified in Annex III [reservations for ICTs, BVEP and STBV] for the EU and Annex III for New Zealand, a Party shall allow the entry and temporary stay of short-term business visitors of the other Party for the purposes of carrying out the activities listed in Annex [X-B] [list of activities of short-term business visitors], subject to the following conditions:

- (a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;
  - (b) the short-term business visitors do not receive remuneration from within the host Party; and
  - (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has not established in the territory of the Party where they are staying temporarily, and a consumer there, except as provided for in Annex [X-B] [list of activities of short-term business visitors].
2. Unless otherwise specified in Annex III [reservations for ICTs, BVEP and STBV] for the EU and Annex III for New Zealand, a Party shall allow entry of short-term business visitors without the requirement of an economic needs test or other prior approval procedures of similar intent.
3. The permissible length of stay shall be for a period of up to ninety days in any twelve month period.

#### ARTICLE X.23

##### Contractual service suppliers and independent professionals

1. In the sectors subsectors and activities listed in Annex [IV] for the EU and Annex [IV] for New Zealand and subject to the relevant conditions and qualifications specified therein:
- (a) A Party shall allow the entry and temporary stay of contractual service suppliers and independent professionals in its territory.
  - (b) A Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party allowed temporary entry, in the form of numerical quotas or an economic needs test, either on the basis of a territorial subdivision or on the basis of its entire territory.

- (c) Each Party shall accord to contractual service suppliers and independent professionals of the other Party, with regard to measures affecting the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.
2. For greater certainty, access accorded under the provisions of this Article relates only to the service 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.
3. The permissible length of stay shall be for a cumulative period of twelve months, or for the duration of the contract, whichever is less.

#### ARTICLE X.24

##### Non-conforming measures

1. Articles 4.2.1 (b) and (c) and 4.4.1 (b) and (c) shall not apply to:
- (a) any existing measure that affects the temporary stay of natural persons for business purposes and that is maintained:
- (i) by 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 point (C); and
- (ii) by New Zealand:

- (A) the central government, as specified in its Schedule to in Annex I;
  - (B) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in point (a);
  - (c) a modification of, or amendment to, any non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification or amendment, with Articles 4.2.1 (b) and (c) and 4.4.1 (b) and (c);
2. Articles 4.2.1 (b) and (c) and 4.4.1 (b) and (c) shall not apply to any measure that a Party adopts or maintains that affects the temporary stay of natural persons for business purposes with respect to sectors, sub-sectors or activities as set out by that Party in its Schedule to Annex II.

#### ARTICLE X.25

##### Transparency

1. Each Party shall make publicly available , online if possible, information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in paragraph 1 of Article X.20.
2. The information referred to in paragraph 1 shall include *inter alia* the following information relevant to the entry and temporary stay of natural persons, where it exists:
- (a) entry conditions;
  - (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions;
  - (c) indicative processing time;
  - (d) applicable fees;

- (e) appeal procedures; and
- (f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

## SECTION E

### REGULATORY FRAMEWORK

#### SUB-SECTION 1

#### DOMESTIC REGULATION

#### ARTICLE X.26

##### Scope and definitions

1. This Sub-Section applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards<sup>23</sup> that affect:
  - (a) cross-border trade in services;
  - (b) establishment or operation; or
  - (c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party of categories of natural persons as defined in Article X.20 [Scope and Definitions]

---

<sup>23</sup> As far as measures relating to technical standards are concerned, this Section only applies to such measures affecting trade in services. Technical standards do not include regulatory or implementing technical standards for financial services.

2. This Sub-Section does not apply to licensing requirements and procedures and qualification requirements and procedures and technical standards pursuant to a measure that does not conform with article X.5 [Market access] or X.6 [National treatment] or with Article X.14 [Market access] or X.16 [National treatment] and is referred to in paragraph 1 and 2 of Article X.10 [Non-conforming measures and exceptions] or in paragraph 1 and 2 of Article X.18 [Non-conforming measures].
3. For the purposes of this Sub-Section,
  - (a) "authorisation" means the permission to carry out any of the activities referred to in points (a) to (c) of paragraph 1 resulting from a procedure a natural or juridical person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards.
  - (b) "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;

## ARTICLE X.27

### Submission of applications

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

## ARTICLE X.28

### Application timeframes

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

#### ARTICLE X.29

##### Electronic applications and acceptance of copies

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

- (a) endeavour to accept applications in electronic format; and
- (b) accept copies of documents, that are 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 X. 30

##### Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:
  - (a) to the extent practicable, provide an indicative timeframe for the processing of an application;
  - (b) at the request of the applicant, provide without undue delay information concerning the status of the application;
  - (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;

- (d) if they consider an application complete for processing under the Party's domestic laws and regulations<sup>24</sup>, 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 of the decision concerning the application,<sup>25</sup> to the extent possible in writing<sup>26</sup>;
- (e) if they consider an application incomplete for processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:
- (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 or otherwise provide guidance on why the application is considered incomplete; and
  - (iii) provide the applicant with the opportunity<sup>27</sup> to provide the additional information that is required to complete the application;

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

- (f) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application. An applicant

---

<sup>24</sup> Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

<sup>25</sup> Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application.

<sup>26</sup> "in writing" may include in electronic form.

<sup>27</sup> Such opportunity does not require a competent authority to provide extensions of deadlines.

should not be prevented from submitting another application solely on the basis of a previously rejected application.

2. The competent authority shall grant an authorisation as soon as it is established, in the light of an appropriate examination, that the applicant meets the conditions for obtaining it.
3. The competent authorities of a Party shall ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

#### ARTICLE X. 31

##### Fees

1. For all economic activities covered by this Sub-Section other than financial services, each Party shall ensure that the authorisation fees<sup>28</sup> charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity.
2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

#### ARTICLE X.32

##### Assessment of qualifications

If a Party requires an examination for authorisation, it shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of

---

<sup>28</sup> 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.

time to enable applicants to request to take the examination. To the extent practicable, each Party shall consider accepting requests in electronic format to take such examinations and the use of electronic means in other aspects of examination processes.

#### ARTICLE X.33

##### 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, reaches and administers its decisions objectively and impartially and in a manner independent from any person carrying out the economic activity for which authorisation is required.

#### ARTICLE X.34

##### Publication and information available

If a Party requires authorisation, the Party shall promptly publish<sup>29</sup> the information necessary for service suppliers or persons seeking to supply a service and persons carrying out or seeking to carry out the economic activity for which the licence or authorisation is required to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, where it exists:

- (a) the requirements and procedures;
- (b) contact information of relevant competent authorities;
- (c) authorisation fees;

---

<sup>29</sup> For the purposes of this Sub-Section, "publish" means to include in an official publication, such as an official journal, or on an official website. Parties are encouraged to consolidate electronic publications into a single portal.

- (d) applicable technical standards;
- (e) procedures for appeal or review of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for the processing of an application.

#### ARTICLE X.35

##### Technical standards

A 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, designated to develop technical standards to do so through open and transparent processes.

#### ARTICLE X.36

##### Development of measures

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

- (a) such measures are based on clear, objective and transparent criteria;<sup>30</sup>

---

<sup>30</sup> Such criteria may include, *inter alia*, competence and the ability to supply a service or any other economic activity, including to do so in a manner consistent with a Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

- (b) the procedures are impartial, easily accessible to all applicants and are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist;
- (c) the procedures do not in themselves unjustifiably prevent fulfilment of requirements;

#### ARTICLE X.37

##### Limited numbers 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 completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

#### ARTICLE X.38

##### Review procedures for administrative decisions

A Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at request of an affected investor or service supplier of the other Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions that affect establishment or operation, cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of the other Party. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, a Party shall ensure that the procedures provide for an objective and impartial review in fact.

#### SUB-SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE X.39

Mutual recognition of professional qualifications

1. For the purposes of this Article, “professional qualifications” means formal qualification, professional experience, professional registration or other attestation of competence.
2. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary professional qualifications specified in the territory where the service is supplied, for the sector of activity concerned.
3. Where appropriate, the Parties shall encourage the establishment of dialogue between the relevant experts, regulators and/or industry bodies to share and facilitate understanding of the respective qualifications, registration requirements and processes, and cooperate with a view to achieving mutual recognition of professional qualifications.
4. The Parties shall encourage the relevant professional bodies or authorities in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the [Committee on Investment Liberalisation, Trade in Services, Digital Trade, Government Procurement, Intellectual Property Rights, including Geographical Indications] established pursuant to Article [X.4][Specialised Committees]. Such a joint recommendation shall be supported by evidence of:
  - (a) the economic value of an envisaged instrument on mutual recognition of professional qualifications (hereinafter referred to as “Mutual Recognition Instrument”); 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 professionals are compatible.
5. On receipt of a joint recommendation, the [Committee on Investment Liberalisation, Trade in Services, Digital Trade, Government Procurement, Intellectual Property Rights, including

Geographical Indications] shall review its consistency with this Chapter within a reasonable period of time. The [Committee on Investment Liberalisation, Trade in Services, Digital Trade, Government Procurement, Intellectual Property Rights, including Geographical Indications] may, following such review, develop and adopt a mutual recognition instrument by decision as an annex to this Agreement, which shall be considered to form an integral part of this Chapter<sup>31</sup>. The entry into force of the decision is conditional upon the fulfilment of the respective internal requirements of New Zealand and becomes binding on the Parties upon the notification by New Zealand that the entry into force requirements have been met.

### SUB-SECTION 3

#### DELIVERY SERVICES

#### ARTICLE X.40

##### Scope and definitions

1. This Sub-Section sets out principles of the regulatory framework for the supply of delivery services and applies to measures by a Party affecting trade in delivery services.
2. For the purposes of this Sub-Section:
  - (a) “delivery services” means postal, courier, express delivery or express mail services, which include the following activities: the collection, sorting, transport, and delivery of postal items;
  - (b) “express delivery services” means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

---

<sup>31</sup> For greater certainty, such instruments shall not lead to the automatic recognition of qualifications but shall set, in the mutual interest of both Parties, the conditions for the competent authorities granting recognition.

- (c) “express mail services” means international express delivery services supplied through the EMS Cooperative, the voluntary association of designated postal operators under Universal Postal Union (UPU);
- (d) “licence” means an authorisation that a regulatory authority of a Party may require of an individual supplier in order for that supplier to offer postal and courier services;
- (e) “postal item” means an item up to 31.5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;
- (f) “postal monopoly” means the exclusive right to supply specified delivery services within a Party’s territory or a subdivision thereof pursuant to a legislative measure; and
- (g) “universal service” means the permanent supply of a delivery service of specified quality at all points in the territory of a Party or a subdivision thereof at affordable prices for all users.

#### ARTICLE X.41

##### Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on their scope and implementation. Any universal service obligation shall be administered in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.
2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to this service over other international express delivery services.

#### ARTICLE X.42

##### Universal service funding

A Party shall not impose fees or other charges on the supply of a non-universal delivery service for the purpose of funding the supply of a universal service.<sup>32</sup>

#### ARTICLE X.43

##### Prevention of market distortive practices

Each Party shall ensure that suppliers of delivery services subject to a universal service obligation or postal monopolies do not engage in market distortive practices such as:

- (a) using revenues derived from the supply of the service subject to a universal service obligation or from the monopoly to cross-subsidise the supply of an express delivery service or any delivery service which are not subject to a universal service obligation, or
- (b) unjustifiably differentiating among customers with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

#### ARTICLE X.44

##### Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

- (a) all the licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of licences.

---

<sup>32</sup> This paragraph does not apply to generally applicable taxation measures or administrative fees.

2. The procedures, obligations and requirements of a license shall be transparent, non-discriminatory and based on objective criteria.

3. If a licence application is rejected by the competent authority, it shall inform the applicant of the reasons for the rejection in writing. Each party shall establish an appeal procedure through an independent body available to applicants whose licence has been rejected. This body may be a court.

#### ARTICLE X.45

##### Independence of the regulatory body

1. Each Party shall establish or maintain a regulatory body which shall be legally distinct and functionally independent from any supplier of delivery services. If a Party owns or controls a supplier of delivery services, it shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. The regulatory bodies shall perform their tasks in a transparent and timely manner and have adequate financial and human resources to carry out the task assigned to them. Their decisions shall be impartial with respect to all market participants.

#### SUB-SECTION 4

##### TELECOMMUNICATIONS SERVICES

#### ARTICLE X.46

##### Scope

1. This Sub-Section sets out principles of the regulatory framework affecting telecommunications networks and services and applies to measures by a Party affecting trade in telecommunications services.

2. This Sub-Section does not apply to measures affecting:
  - (a) Broadcasting services as defined in the laws and regulations of each Party; and
  - (b) Services providing, or exercising editorial control over, content transmitted using telecommunications networks and services.
3. Notwithstanding point 2(a), a supplier of broadcasting services shall be considered as a supplier of public telecommunications services and its networks as public telecommunications networks, when and to the extent that such networks are also used for providing public telecommunications services.
4. 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 supply telecommunications networks or services other than as provided for in this Agreement; or
  - (b) To establish, construct, acquire, lease, operate or supply telecommunications networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

## ARTICLE X.47

### Definitions

For the purpose of this Sub-Section:

- (a) "associated facilities" means services, physical infrastructures and other facilities associated with a telecommunications network or service which enable or support the supply of services via that network or service or have the potential to do so;
- (b) "essential facilities" means facilities of a public telecommunications 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;
- (c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;
- (d) "leased circuit" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points;
- (e) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;
- (f) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- (g) "number portability" means the ability of subscribers who so request to retain the same telephone numbers, at the same location in the case of a fixed line, without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;
- (h) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;
- (i) "public telecommunications service" means any telecommunications service that is offered to the public generally;

- (j) "subscriber" means any natural or juridical person which is party to a contract with a supplier of public telecommunications services for the supply of such services;
- (k) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (l) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
- (m) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this section;
- (n) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including broadcasting signals, over telecommunications networks, including those used for broadcasting, but not a service providing, or exercising editorial control over, content transmitted using telecommunications networks and services;
- (o) "universal service" means the minimum set of services of specified quality that must be made available to all users, or to a set of users, in the territory of a Party, or in a subdivision thereof, regardless of their geographical location and at an affordable price; and
- (p) "user" means any natural or juridical person using a public telecommunications service.

#### ARTICLE X.48

##### Approaches to regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective and sustainable competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that a Party may determine how to implement its obligations under this Sub-Section.

2. In that respect, the Parties recognise that a Party may:
  - (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;
  - (b) rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities; or
  - (c) rely on market structure rules that restrict the activities of some suppliers of telecommunications services that own network facilities, for example by requiring provision of wholesale services on a non-discriminatory basis or prohibiting participation in retail market, with a view to ensuring market behaviour equivalent to that of participants in a competitive market.
3. For greater certainty, a Party that refrains from engaging in regulation in accordance with point 2(b) remains subject to the obligations under this Sub-Section. Nothing in this Article shall prevent a Party from applying regulation to telecommunications services.

#### ARTICLE X.49

##### Telecommunications regulatory authority

1. Each Party shall establish or maintain a telecommunications regulatory authority that:
  - (a) is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment;
  - (b) uses procedures and issues decisions that are impartial with respect to all market participants;
  - (c) acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it by law to enforce the obligations set out in Articles X.51, X.52, X.53, X.55 and X.56;

- (d) is sufficiently empowered to carry out those tasks;
- (e) has the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information<sup>33</sup>, including financial information, necessary to carry out those tasks; and
- (f) exercises its powers transparently and in a timely manner.

2. Each Party shall ensure that the tasks to be undertaken by the telecommunications regulatory authority are made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

4. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has a right of appeal before an appeal body which is independent of both the regulatory authority and other affected parties. Pending the outcome of the appeal, the decision shall stand, unless interim measures are granted in accordance with the Party's law.

#### ARTICLE X.50

##### Authorisation to provide telecommunications networks or services

1. If a Party requires an authorisation for the provision of telecommunications networks or services, it shall make publicly available the types of services requiring authorisation, together with all authorisation criteria, applicable procedures, and terms and conditions generally associated with the authorisation.

---

<sup>33</sup> Information requested shall be treated in accordance with the requirements of confidentiality.

2. Each Party shall endeavour to authorise the provision of telecommunications networks or services without a formal procedure and permitting the supplier to start providing its networks or services without having to wait for a decision by the telecommunications regulatory authority. If a Party requires a formal authorisation decision, it shall state a reasonable period of time normally required to obtain such a decision and communicate this in a transparent manner. It shall endeavour to ensure that the decision is taken within the stated period of time.

3. Any authorisation criteria or applicable procedure, as well as any obligation or condition imposed on or associated with an authorisation, shall be objective, transparent, non-discriminatory, and related to and not more burdensome than necessary for the kind of service provided.

4. Each Party shall ensure that an applicant receives in writing the reasons for the denial or the revocation of an authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall have a right of appeal before an appeal body.

5. Administrative fees imposed on suppliers shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this section.<sup>34</sup>

## ARTICLE X.51

### Interconnection

1. The Parties recognise that interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications networks or services concerned.

2. To this end each Party shall ensure that a supplier of public telecommunications networks or services in its territory has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

---

<sup>34</sup> Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE X.52

Access and use

1. Each Party shall ensure that any covered enterprise or service supplier of the other Party is accorded access to and use of public telecommunications networks or services on reasonable and non-discriminatory<sup>35</sup> terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 5 of this Article.
  
2. Each Party shall ensure that covered enterprises or service suppliers of the other Party have access to and use of any public telecommunications network or service offered within or across its border, including private leased circuits, and to this end shall ensure, subject to the provisions in paragraph 5 of this article, that such enterprises and suppliers are permitted:
  - (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to conduct their operations;
  - (b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another covered enterprise or service supplier; and
  - (c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of telecommunications services to the public generally.
  
3. Each Party shall ensure that covered enterprises or service suppliers of the other Party may use public telecommunications networks and services for the movement of information within and across borders, including for their intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

---

<sup>35</sup> For the purposes of this Article, “non-discriminatory” means most-favoured-nation and national treatment as defined in articles X.6 [National treatment], X.16 [National treatment] and X.7 [Most favoured nation treatment] and X.17 [Most favoured nation treatment], as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

4. Notwithstanding the provisions in paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute either a disguised restriction on trade in services or on the pursuit of any other economic activity covered by this Chapter or a means of arbitrary or unjustifiable discrimination.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary:

- (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or
- (b) to protect the technical integrity of public telecommunications networks or services.

#### ARTICLE X.53

##### Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Sub-Section, and at the request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.

2. The decision by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right of appeal referred to in Article X.49 (4).

3. The procedure referred to in paragraphs 1 and 2 shall not preclude either party concerned from bringing an action before a judicial authority, in accordance with the laws and regulations of the Party.

#### ARTICLE X.54

### Competitive safeguards on major suppliers

Each Party shall adopt or maintain appropriate measures that prevent suppliers of telecommunications networks or services who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. Anti-competitive practices may include:

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

### ARTICLE X.55

#### Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms and conditions (including as regards rates, and technical standards and specifications including quality and maintenance) and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms and conditions (including as regards rates, and technical standards and specifications including quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network elements 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 users, subject to charges that reflect the cost of construction of necessary additional facilities.
2. The procedures applicable for interconnection to a major supplier shall be made publicly available.
3. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers as appropriate.

#### ARTICLE X.56

##### Access to major suppliers' essential facilities

Each Party shall ensure that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority.

#### ARTICLE X.57

##### Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio frequency spectrum, numbers and rights of way, is carried out using procedures that are objective, timely, transparent, non-discriminatory and that do not create a disincentive for the application for the use of such scarce resources.
2. Each Party shall endeavour to take into account the public interest, including the promotion of competition, and to rely on market-based approaches, including mechanisms such as auctions, when allocating and granting rights of use of radio frequency spectrum for public telecommunication services.

3. The current use of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.

4. Measures of a Party allocating and assigning spectrum and managing frequency are not *per se* inconsistent with Articles X.5 [Market access] and X.14 [Market access]. Each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with the other provisions of this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

#### ARTICLE X.58

##### Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Each Party shall administer the universal service obligations in a transparent, objective and non-discriminatory way, which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the Party.

3. Where a Party designates universal service suppliers, it shall do so in a manner that is efficient, transparent, non-discriminatory and open to all suppliers of public telecommunication networks or services.

4. Where a Party decides to compensate the universal service suppliers, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

#### ARTICLE X.59

##### Number portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on reasonable terms and conditions.

## ARTICLE X.60

### Confidentiality of information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles X.51, X.52, X.55 and X.58 use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.<sup>36</sup>
2. Each Party shall adopt or maintain measures to protect the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or services, in a manner that is non-discriminatory and that does not unduly restrict the supply of telecommunication services.

## ARTICLE X.61

### Telecommunications connectivity

The Parties recognise the importance of the availability and take-up of very high capacity networks and of high quality telecommunications services, including in rural and remote areas, as a means of enabling persons and businesses to access the benefits of trade.

## SUB-SECTION 5

### FINANCIAL SERVICES

---

<sup>36</sup> For greater certainty, a Party can meet this obligation by enabling the enforcement of non-disclosure agreements between the suppliers.

## ARTICLE X.62

### Scope

1. This Sub-Section applies to measures of a Party affecting the supply of financial services. This Sub-Section does not apply to the non-conforming aspects of measures adopted or maintained in accordance with article X.10 or X.18.
2. For the purposes of this Sub-Section, "activities performed or services supplied in the exercise of governmental authority" referred to in point (a) of Article X.3 means the following:
  - (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (b) activities forming part of a statutory system of social security or public retirement plans; and
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.
3. For the purposes of the application of point (r) of Article X.3 to this Sub-Section, if a Party allows any of the activities referred to in point 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "service" shall include those activities.
4. Point (a) of Article X.3 does not apply to services covered by this Sub-Section.

## ARTICLE X.63

### Definitions

For the purposes of this Sub-Section and of Sections B, C and D of this Chapter:

(a) “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial Services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(i) insurance and insurance-related services

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

(1) life;

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency; and

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

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

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

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

(C) financial leasing;

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

(E) guarantees and commitments;

- (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (1) money market instruments (including cheques, bills, certificates of deposits);
  - (2) foreign exchange;
  - (3) derivative products including, but not limited to, futures and options;
  - (4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (5) transferable securities;
  - (6) other negotiable instruments and financial assets, including bullion;
- (G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (H) money broking;
- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (K) provision and transfer of financial information, and financial data processing and related software; and
- (L) advisory, intermediation and other auxiliary financial services on all the activities listed in points (A) through (K), 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 seeks to supply or supplies financial services and does not include a public entity;
- (c) “public entity” means:
  - (i) a government, a central bank or a 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, not including 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;
- (d) “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; and
- (e) “self-regulatory organisation” means any non-governmental body, any securities or futures exchange or market, clearing agency, 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, where applicable.

#### ARTICLE X.64

##### Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining 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) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

#### ARTICLE X.65

##### International standards

1. The Parties shall give due consideration to ensuring that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance in the financial services sector are implemented and applied in their territory. Such internationally agreed standards are, inter alia, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), in particular its "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors (IAIS), in particular its "Insurance Core Principles", the International Organisation of Securities Commissions (IOSCO), in particular its "Objectives and Principles of Securities Regulation", the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

2. The Parties shall aim to cooperate and exchange information regarding the development of international standards.

#### ARTICLE X.66

##### Financial services new to the territory of a party

Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require the adoption of a new law or amendment of an existing law. This does not apply to branches of financial service suppliers of the other Party established within the territory of a Party.

A Party may determine the institutional and legal form through which the service may be supplied and require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

#### ARTICLE X.67

##### Self-regulatory organisations

Where a Party requires membership of, participation in, or access to, any self-regulatory organisation 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 by that self-regulatory organisation of the obligations under Articles X.6 [National treatment] and X.7 [Most favoured nation treatment] as well as X.16 [National treatment] and X.17 [Most favoured nation treatment].

#### ARTICLE X.68

##### Clearing and payment systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory 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 shall not confer access to the Party's lender of last resort facilities.

#### SUB-SECTION 6

## INTERNATIONAL MARITIME TRANSPORT SERVICES

### ARTICLE X.69

#### Scope and definitions

1. This Sub-Section sets out principles of the regulatory framework for the provision of international maritime transport services pursuant to Sections B, C and D of this Chapter and applies to measures by a Party affecting trade in international maritime transport services. This Sub-Section does not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article X.10 or Article X.18.
2. For the purpose of this Sub-Section and Sections B, C and D of this Chapter:
  - (a) “container station and depot services” means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;
  - (b) “customs clearance” means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;
  - (c) “door-to-door or multimodal transport operations” means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;
  - (d) “feeder services” means, the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in the territory of a Party, international cargo "en route" directed to a destination, or coming from a port of shipment, outside the territory of that Party.

- (e) “freight forwarding services” means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- (f) “international cargo” means cargo transported between a port of one Party and a port of the other Party or of a third Party, or between ports of different Member States of the European Union;
- (g) “international maritime transport services” means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country, including the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services;
- (h) “maritime agency services” means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
  - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
  - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
- (i) “maritime auxiliary services” means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services; and
- (j) “maritime cargo handling services” means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

- (i) the loading or discharging of cargo to or from a ship;
- (ii) the lashing or unlashng of cargo;
- (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge;

## ARTICLE X.70

### Obligations

1. Each Party shall implement unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis by:
  - (a) According to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, with regard to, inter alia, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading;
  - (b) Permitting international maritime service suppliers of the other Party to establish and operate an enterprise in its territory under conditions no less favourable than it accords to its own service suppliers;
  - (c) Making available to international maritime transport suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services and shore-based operational services essential to ship operations, including communications, water and electrical supplies;
  - (d) permitting international maritime transport service suppliers of the other party, subject to the authorisation by the competent authority where applicable, to re-position owned or leased

empty containers, which are not being carried as cargo against payment, between ports of New Zealand or between ports of a Member State of the European Union; and

- (e) permitting international maritime transport service suppliers of the other Party to provide feeder services between their national ports, subject to the authorisation by the competent authority where applicable.
2. In applying the principles referred to in points (a) and (b) of paragraph 1, 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 terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and
  - (b) not adopt or maintain any administrative, technical or other measures which could constitute a disguised restriction, or have arbitrary or unjustifiable discriminatory effects where like conditions prevail, on the free supply of services in international maritime transport.

\*\*\*

ANNEX X-A - MOVEMENT OF NATURAL PERSONS FOR BUSINESS PURPOSES<sup>37</sup>

ARTICLE 1

Entry and temporary stay-related procedural commitments

Parties should ensure that the processing of applications for entry and temporary stay pursuant to their respective commitments in the Agreement follows good administrative practice. To that effect:

- (a) Each Party shall ensure that fees charged by competent authorities for the processing of applications for entry and temporary stay do not unduly impair or delay trade in goods or services or establishment or operation under this Agreement.
- (b) Subject to the competent authorities' discretion, documents required from the applicants for an application for the grant of entry and temporary stay of short-term visitors for business purposes should be commensurate with the purpose for which they are collected.
- (c) Complete applications for the grant of entry and temporary stay shall be processed as expeditiously as possible.
- (d) The competent authorities of a Party shall endeavor to provide, without undue delay, information in response to any reasonable request from an applicant concerning the status of an application.
- (e) If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall endeavor to notify, without undue delay, the applicant.
- (f) The competent authorities of each Party shall notify the applicant of the outcome of the application promptly after a decision has been taken.
- (g) If the application is approved, the competent authorities of each Party shall notify the applicant of the period of stay and other relevant terms and conditions.

---

<sup>37</sup> The definitions included in Article X.3 [Definitions] and Paragraph 3 of Article X.20 [Scope and Definitions] of the Chapter on Investment Liberalisation and Trade in Services apply to this Annex.

- (h) If the application is denied, the competent authorities of a Party shall, upon request or upon their own initiative, make available to the applicant information on any available review and/or appeal procedures.
- (i) Parties shall endeavor to accept and process applications in electronic format.

## ARTICLE 2

### Additional procedural commitments applying to intra-corporate transferees<sup>38</sup>

1. The competent authorities of each Party shall adopt a decision on the application for entry or temporary stay of an intra- corporate transferee, or a renewal of it, and shall notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but:
  - (a) In the case of the European Union, not later than 90 days from the date on which the complete application was submitted; or
  - (b) In the case of New Zealand:
    - (i) within 15 working days of receipt of an application completed and submitted in accordance with its domestic law; or
    - (ii) if a decision cannot be made in that time period, provide an indicative timeframe in which the decision will be made.
2. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall endeavour to notify the applicant within a reasonable period of time of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the competent authorities have received the additional information required.
3. The European Union shall extend to family members of natural persons of New Zealand, who are intra-corporate transferees to the European Union, the right of entry and temporary stay granted to family members of an intra-corporate transferee under Article 19 of Directive 2014/66/EU of the

---

<sup>38</sup> Paragraphs 1, 2 and 3 do not apply for the Member States of the European Union that are not subject to the application of the Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer ("ICT Directive").

European Parliament and of the Council of 15 May 2014 on the condition of entry and residence of third country nationals in the framework of an intra-corporate transfer.

4. New Zealand shall allow the entry and temporary stay of the partner and any dependent children accompanying an Intra-Corporate Transferee of the European Union that have been granted entry and temporary stay. The period of temporary stay for that partner and, where relevant, dependent children, shall be the same as that granted to the Intra-Corporate Transferee.<sup>39</sup>

### ARTICLE 3

#### Cooperation on return and readmission

The Parties acknowledge that the enhanced movement of natural persons following from the provisions of Articles 1 and 2 of the present Annex requires full cooperation on return and readmission of natural persons who do not or no longer fulfil the conditions for entry to, presence in or residence on the territory of the other Party.

\*\*\*

---

<sup>39</sup> For the purposes of this commitment:

- “partner” means any spouse or civil partner of an Intra-Corporate Transferee from the European Union, including under a marriage, civil union, or equivalent union or partnership, recognised as such in accordance with the law of New Zealand. For greater certainty, this includes any unmarried or same sex partner of the Intra-Corporate Transferee; and
- “dependent children” means children under the age of 20 who are dependent on the Intra-Corporate Transferee and who are recognised as dependent children in accordance with the law of New Zealand where:
  - (i) the Intra-Corporate Transferee has the legal right to remove them from their home country; or
  - (ii) both of the children's parents will be granted entry and temporary stay in accordance with this Agreement.

**ANNEX X-B - LIST OF ACTIVITIES OF SHORT-TERM BUSINESS VISITORS**

Activities of short-term business visitors are:

- (a) meetings and consultations: natural persons attending meetings or conferences, or engaged in consultations with business associates;
- (b) training seminars: personnel of an enterprise who enter the territory of a Party to receive informal training in techniques and work practices which are relevant to the operation of the enterprise, provided that the training received is confined to theoretical instruction, observation, familiarisation only , and does not lead to the award of a formal qualification ;
- (c) trade fairs and exhibitions: personnel attending a trade fair for the purpose of promoting their company or its products or services;
- (d) sales: representatives of a supplier of services or goods taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves. Short-term business visitors do not engage in making direct sales to the general public;
- (e) purchasing: buyers purchasing goods or services for an enterprise, or management and supervisory personnel, engaging in a commercial transaction carried out in the territory of the other Party;
- (f) after-sales or after-lease service: installers, repair and maintenance personnel and supervisors, possessing specialised knowledge essential to a contractual obligation of a seller or a lessor of a Party, performing services or training workers to perform services, pursuant to a warranty or other service contract associated with 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 other Party, throughout the duration of the warranty or service contract;
- (g) commercial transactions: management and supervisory personnel and financial services personnel (including insurers, bankers and investment brokers) engaging in a commercial transaction for an enterprise located in the territory of the other Party; and
- (h) tourism personnel: tour and travel agents, tour guides or tour operators attending or participating in conventions.

\*\*\*

**ANNEX X-C**

**ANNEX X-C - SCHEDULES FOR CHAPTER X [INVESTMENT LIBERALISATION AND  
TRADE IN SERVICES]**

(...)