

## ANNEX 8C

### TEMPORARY MOVEMENT OF NATURAL PERSONS

#### Article 8C.1

##### Definitions

For the purposes of this Annex:

- (a) **“immigration formality”** means a visa, permit, pass or other document or electronic authority granting temporary entry;
- (b) **“natural person of a Party”** means a natural person of a Party as defined in subparagraph (i) of Article 8.1 (Definitions); and
- (c) **“temporary entry”** means entry by a natural person of a Party into the territory of the other Party without the intent to establish permanent residence.

#### Article 8C.2

##### Scope

1. This Annex shall apply to measures by a Party affecting the temporary movement of natural persons of the other Party into its territory, where a natural person is engaged in trade in goods, the supply of services, or the conduct of investment, and falls under the scope of a category set out in each Party’s schedule in Annex 8J (Schedule of Specific Commitments on Temporary Movement of Natural Persons - India) or Annex 8K (Schedule of Specific Commitments on Temporary Movement of Natural Persons - New Zealand).
2. This Annex shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.
3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Annex.

4. The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Annex.

### **Article 8C.3 Grant of Temporary Entry**

1. Each Party shall set out in Annex 8J (Schedule of Specific Commitments on Temporary Movement of Natural Persons - India) or Annex 8K (Schedule of Specific Commitments on Temporary Movement of Natural Persons - New Zealand) the commitments it makes for the temporary entry of natural persons of the other Party, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of natural persons specified by that Party in its Schedule.
2. Each Party shall grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent provided for in its commitments made pursuant to paragraph 1, provided that those natural persons:
  - (a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and
  - (b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay in the granting Party.
3. The sole fact that a Party grants temporary entry to a natural person of the other Party pursuant to this Annex shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.
4. In respect of the commitments on temporary entry in this Annex, neither Party shall:
  - (a) adopt or maintain any limitations on the total number of each category of natural persons of the other Party to be granted temporary entry; or
  - (b) require an economic needs test, including a labour market test, or other procedures of similar effect, as a condition for temporary entry except as provided for in Annex 8J (Schedules of Specific Commitments on Temporary Movement of Natural Persons - India) or Annex 8K (Schedule of Specific Commitments on Temporary Movement of Natural Persons - New Zealand).

5. New Zealand agrees that natural persons of India granted temporary stay in its territory shall not be required to make contributions to directly funded social security schemes<sup>1,2</sup> while in New Zealand. In such cases, those natural persons from India shall not be eligible for benefits deriving from such directly funded social security schemes in New Zealand for their duration of stay.

#### **Article 8C.4** **Processing of Applications**

1. Each Party shall expeditiously process complete applications for immigration formalities, or extensions or renewals thereof, received from natural persons of the other Party covered under this Annex.
2. At the request of an applicant, or an applicant's authorised representative in accordance with a Party's laws and regulations, a Party that has received a completed application for an immigration formality or extension or renewal thereof, shall endeavour to promptly provide information concerning the status of the application to the applicant or the applicant's authorised representative in accordance with its laws and regulations.
3. Each Party shall promptly notify the applicant, either directly or through the applicant's authorised representative in accordance with its laws and regulations, of the decision on the application when a decision has been made by the Party. Such notifications shall include:
  - (a) for approved applications, the period of temporary stay and, if practicable, any other relevant conditions; and
  - (b) for refused or denied applications, information on any available review or appeal procedures and, to the extent required by the law of a Party, the reasons for refusal or denial.
4. To the extent permissible under its laws and regulations, each Party shall endeavour to accept applications relating to immigration formalities in an electronic format under the equivalent conditions of authenticity as paper submissions.
5. Where appropriate, a Party shall accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents, to the extent permitted by its laws and regulations.

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<sup>1</sup> For greater certainty, this paragraph shall not apply to the indirect funding of social security schemes through, for example, general taxation.

<sup>2</sup> For greater certainty, "social security" does not include New Zealand's compensation scheme under the Accident Compensation Act 2001.

6. Each Party shall ensure that any fees charged by its competent authorities for the processing of an application for an immigration formality by a natural person covered under this Annex are reasonable, in that they do not unduly impair or delay trade in services or the conduct of investment activities under this Agreement.

### **Article 8C.5 Transparency**

1. Each Party shall make publicly available information relating to its current requirements for the temporary entry by natural persons of the other Party covered by this Annex.
2. The information referred to in paragraph 1 shall include, where applicable, the following:
  - (a) categories of immigration formality;
  - (b) documentation required and conditions to be met;
  - (c) method of filing an application and options on where to file, such as consular offices or online;
  - (d) application fees and an indicative timeframe for the processing of an application;
  - (e) the maximum length of stay under each category of immigration formality;
  - (f) conditions for any available extension or renewal;
  - (g) rules regarding accompanying dependants;
  - (h) available review or appeal procedures; and
  - (i) relevant measures of general application pertaining to the temporary entry of natural persons of the other Party.
3. Each Party shall:
  - (a) upon modifying or amending any measure affecting the entry and stay of foreign nationals that affects temporary entry of natural persons of the other Party, ensure that the information published or otherwise made publicly available pursuant to paragraphs 1 and 2 is updated as soon as possible; and
  - (b) maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry and stay of natural persons covered under this Annex.

4. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall provide a reasonable period of time between the publication of laws and regulations and their effective date affecting the temporary entry and stay of natural persons covered under this Annex, and such publication can be made electronically available.
5. Each Party shall publish, to the extent practicable, the information referred to in this Article in English.

#### **Article 8C.6 Labour Market Information**

1. Each Party shall endeavour to keep the other Party informed of the conditions and any changes thereof for entry, stay and work for natural persons covered under this Annex in their respective territories.
2. To this end, during the meetings of the Working Group on Temporary Movement of Natural Persons, the Parties shall:
  - (a) exchange information on each other's labour market, including, to the extent practicable, relevant government reports, statistics, skill shortages and gaps in specific sectors or occupations, and other labour market-related information, including measures that may affect the temporary movement of natural persons; and
  - (b) share information on any mutual recognition arrangements falling under the scope of Article 8.14 (Recognition).
3. Upon the entry into force of this Agreement, each Party shall designate a contact point to facilitate communication and coordination between the Parties on matters covered by this Article and shall notify the other Party of the contact details for the contact point. Each Party shall promptly notify the other Party of any change of those contact details.

#### **Article 8C.7 Cooperation on Return and Readmissions**

The Parties acknowledge that the temporary movement of natural persons requires the Parties' full cooperation to support the return and readmission of natural persons staying in a Party in contravention of its law for temporary entry.

### **Article 8C.8**

#### **Working Group on the Temporary Movement of Natural Persons**

1. The Parties hereby establish a Working Group on the Temporary Movement of Natural Persons (“Working Group”) composed of representatives of each Party.
2. Unless otherwise agreed by the Parties, the Working Group shall meet once a year, or without undue delay at the request of either Party. The meetings shall take place in India or in New Zealand alternately or by any other appropriate means of communication, as agreed by the representatives of the Parties.
3. With respect to issues relating to this Annex, the Working Group shall:
  - (a) monitor and review the implementation and operation of this Annex;
  - (b) consider and discuss technical issues arising from the implementation of this Annex;
  - (c) adopt decisions or make recommendations;
  - (d) conduct the preparatory work necessary to support the functions of the Joint Commission, including when the Joint Commission has to adopt decisions or recommendations; and
  - (e) provide a forum for the Parties to exchange information, discuss best practices and share implementation experiences.
4. The Working Group may decide on its own rules of procedure, in the absence of which the Rules of Procedure of the Joint Commission shall apply *mutatis mutandis*.
5. The Working Group shall report to the Services Committee established under Article 8.23 (Committee on Trade in Services) on the results and conclusions from each of its meetings.

### **Article 8C.9**

#### **Dispute Settlement**

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Annex amicably through consultations or negotiations.
2. Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) regarding a refusal to grant temporary entry unless:
  - (a) the matter involves a pattern of practice; and

- (b) the natural persons affected have exhausted all available administrative remedies regarding the particular matter.
- 3. The remedies referred to in subparagraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the natural persons concerned.