

## **CHAPTER 9**

### **TEMPORARY ENTRY FOR BUSINESS PERSONS**

#### **Article 9.1: Definitions**

For purposes of this Chapter:

**business person** means a natural person of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

**immigration formality** means a visa, permit, pass or other document or electronic authority granting temporary entry;

**immigration measure** means any measure affecting the entry and stay of foreign nationals; and

**temporary entry** means entry into the territory of a Party by a business person of the other Party who does not intend to establish permanent residence.

#### **Article 9.2: Scope**

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of the other Party under any of the categories referred to in Annex 9-A.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

4. The sole fact that a Party requires business 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 Chapter.

5. This Chapter shall not apply to financial services as defined in Article 1.2 (General Definitions).

### **Article 9.3: Grant of Temporary Entry**

1. Each Party shall set out in Annex 9-A the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.
2. A Party shall grant temporary entry or extension of temporary stay to business persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business 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.
3. The sole fact that a Party grants temporary entry to a business person of the other Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities.

### **Article 9.4: Application Procedures**

1. Where an application for an immigration formality is required by a Party, that Party shall process, as expeditiously as possible, completed applications for immigration formalities or extensions thereof received from business persons of the other Party.
2. Each Party shall, upon request and within a reasonable period after receiving a completed application for an immigration formality from a business person of the other Party, notify the applicant of:
  - (a) the receipt of the application; and
  - (b) the decision concerning the application including, if approved, the period of stay and other conditions.
3. Each Party shall, upon request and within a reasonable period after receiving a completed application for an immigration formality from a business person of the other Party, endeavour to notify the applicant of the status of the

application.

4. In accordance with its laws and regulations, any fees imposed by a Party in respect of the processing of an immigration formality shall be reasonable in that they do not, in themselves, represent an unjustifiable impediment to the temporary entry of business persons of the other Party under this Chapter.

### **Article 9.5: Provision of Information**

1. Each Party shall:

- (a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Chapter;
- (b) publish or otherwise make publicly available in its territory and to the other Party, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable business persons of the other Party to become acquainted with those requirements;
- (c) upon modifying or amending any immigration measure that affects temporary entry of business persons of the other Party, ensure that the information published or otherwise made publicly available pursuant to subparagraph (b) is updated as soon as possible; and
- (d) maintain mechanisms to respond to inquiries from interested persons regarding its laws and regulations affecting the temporary entry of business persons.

2. Each Party shall endeavour to publish, to the extent practicable, the information referred to in paragraph 1 in the English language.

### **Article 9.6: Relation to Other Chapters**

1. Nothing in this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, except for this Chapter and Chapters 1 (Initial Provisions and General Definitions), 16 (General Provisions and Exceptions), 17 (Dispute Settlement), 18 (Institutional Arrangements), and 19 (Final Provisions), and Articles 15.2 (Publication) through 15.4 (Administrative Proceedings).

2. Nothing in this Chapter shall be construed to impose obligations or

commitments with respect to other Chapters and their Annexes of this Agreement.

### **Article 9.7: Dispute Settlement**

1. Chapter 17 (Dispute Settlement) shall not apply to this Chapter regarding a refusal to grant temporary entry unless:

- (a) the matter involves a pattern of practice; and
- (b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. For purposes of paragraph 1(b), the administrative remedies 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 business persons concerned.

## **Annex 9-A Specific Commitments**

### **Section A: Korea's Specific Commitments**

1. Korea requires a business person of Malaysia seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.

#### **Business Visitors of Malaysia**

2. Temporary entry shall be granted to a business visitor of Malaysia for a period of not more than 90 days without requiring that person to obtain an employment authorisation, provided that the business visitor otherwise complies with immigration measures applicable to temporary entry.

3. “A business visitor of Malaysia” means a business person of Malaysia:

(a) who is:

(i) a service seller who enters the territory of Korea for the purpose of negotiating the sale of services or entering into agreements for such sale;

(ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or

(iii) an investor or an employee of an investor, who is an executive or manager as defined in paragraph 5, seeking temporary entry to establish an investment; and

(b) whose primary source of remuneration for the proposed business activity, principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Korea.

#### **Intra-Corporate Transferees of Malaysia**

4. Temporary entry shall be granted for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, to an intra-corporate transferee of Malaysia, provided that such person otherwise complies with immigration measures applicable to temporary entry.

5. An “intra-corporate transferee” means an employee of an enterprise that supply services through subsidiaries, branches or designated affiliates established in the territory of Korea and who has been so employed for a period not less than one year immediately preceding the date of the application for temporary entry, and who is an executive, manager or specialist as defined below:

- (a) “executive” means a business person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives general supervision or direction from higher-level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual supply of a service or services of the organisation;
- (b) “manager” means a business person within an organisation who primarily directs the organisation or a department of the organisation; supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service; and
- (c) “specialist” means a business person within an organisation who possesses knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research, equipment, techniques or management of the organisation.

### **Contractual Service Suppliers of Malaysia**

6. Temporary entry shall be granted for a period up to one year or the period of the contract, whichever is less, to a business person of Malaysia who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 9-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

7. A “contractual service supplier of Malaysia” means a business person of Malaysia who:

- (a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;

- (b) possesses the necessary academic and professional qualifications and professionally-qualified competency-based experience to perform an activity in the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;
- (c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract, for a period not exceeding one year, from an enterprise of Korea, who is the final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;
- (d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and
- (e) is required to receive no remuneration from an enterprise located in Korea.

8. Labour market testing may be required as a condition for temporary entry of contractual service suppliers , or numerical restriction may be imposed relating to temporary entry for contractual service suppliers.

**APPENDIX 9-A-1**  
**LIST OF CONTRACTUAL SERVICE SUPPLIERS**

1. Services related to the installation, management or repair of industrial equipment or machinery, excluding construction and power generation equipment, for an enterprise in Korea which purchases the equipment or the machinery from an enterprise employing the business person located in Malaysia;
2. Consultancy services related to technical knowledge or skill concerning the natural sciences applied to information technology, e-business, biotechnology, nanotechnology, digital electronics or the environmental industry;
3. Consultancy services for foreign accounting standards and auditing, training of certified public accountants, transfer of auditing technology and exchange of information related to accounting, auditing and bookkeeping services, to a Korean accounting firm or office through a membership contract;
4. Architectural services subject to collaboration with architects registered under Korean law in the form of joint contracts;
5. Management consulting services; and
6. The following professional engineering services:
  - (a) consultancy services related to the installation of computer hardware;
  - (b) software research and development-based implementation services;
  - (c) data management services;
  - (d) data system services; and
  - (e) specialty engineering design services for automobiles.

## **Section B: Malaysia's Specific Commitments**

### **Explanatory Notes**

1. The following sets out Malaysia's commitments with respect to the temporary entry for business persons into the territory of Malaysia in accordance with this Chapter.
2. A business person seeking temporary entry into the territory of Malaysia under this Chapter and this Schedule shall be required to obtain the necessary visa and documentation prior to entry, and provide the requisite information and documentation in support of such application. Entry shall be granted subject to the terms, conditions or limitations prescribed under Malaysia's immigration laws and regulations.
3. Malaysia's commitments under this Chapter with respect to the temporary entry of business persons of the other Party into the territory of Malaysia shall apply in relation to the categories of persons as set out in the schedules in Sub-section 1 below.
4. In accordance with Article 9.3, for each category of business persons set out in the schedule below, Malaysia specifies any terms, conditions, limitations or qualifications that apply to the temporary entry of those business persons into the territory of Malaysia.
5. Section A (Korea's Specific Commitments) of this Annex shall not be used to interpret Malaysia's commitments or obligations under this Chapter or other Chapters of this Agreement.

### **Sub-section 1: All Sectors Except Financial Services**

<b>Description of Category</b>	<b>Conditions and Limitations (including length of stay)</b>
<b>A. Business Visitors</b>	
<p>“Business visitors” means:</p> <ul style="list-style-type: none"> <li>(a) a service seller or representative of a service supplier seeking temporary entry into the territory of Malaysia, for purposes of negotiating the sale of services for that service supplier and who will not be engaged in direct sales to the general public or in supplying services directly;</li> <li>(b) a goods seller, seeking temporary entry into the territory of Malaysia for the sale of goods, or to enter into a distribution or retailing arrangement that does not involve direct sales to the general public; or</li> <li>(c) a person who attends meetings or conferences or engages in consultations with business associates; or</li> </ul>	<p>Temporary entry is allowed for a period not exceeding 90 days.</p> <p>Does not receive any remuneration from a source located within Malaysia.</p>
<b>B. Intra-Corporate Transferees</b>	
<p>Intra-corporate transferees for all sectors and sub-sectors except for legal services, customs agents and real estate agents.</p>	
<p>“Intra-corporate transferees” means a business person who is:</p>	<p>Temporary entry is allowed for an initial period of up to two years and may be extended every two years.</p>

<b>Description of Category</b>	<b>Conditions and Limitations (including length of stay)</b>
<p>(a) a senior manager being a person within an enterprise within Malaysia:</p> <ul style="list-style-type: none"> <li>(i) having proprietary information of the enterprise;</li> <li>(ii) exercising wide latitude in decision making relating to the establishment, control, and operation of the enterprise;</li> <li>(iii) primarily directing the management of the enterprise; and</li> <li>(iv) receiving only general supervision or direction from the board of directors or partners of the enterprise; or</li> </ul>	Temporary entry is allowed for one senior manager per enterprise.
<p>(b) a “specialist” or an “expert” means a person within an enterprise who possesses knowledge at an advanced level of continued expertise and who possesses proprietary knowledge of the enterprise, provided that the employee of the service supplier of the other Party must have been employed for not less than two years immediately preceding the date of the application for temporary entry.</p>	Temporary entry is allowed for two specialists or experts per organisation. Additional specialists or experts may be allowed temporary entry subject to market test and the training of Malaysians through an acceptable training programme in the relevant services sector or subsector. This is provided that such additional specialists or experts are employees of the foreign service supplier for a period of not less than one year immediately preceding the date of application for a work permit and they are to serve in at least a similar capacity.

<b>Description of Category</b>	<b>Conditions and Limitations (including length of stay)</b>
<p><b>C. Installers or Maintainers</b></p> <p>“Installers or maintainers” means persons who are installers or maintainers of machinery or equipment who are employed or appointed by a supplying company, where such installation or maintaining by the supplying company is a condition of purchase of the said machinery or equipment; and are not performing activities not related to the installing or maintaining activities which are the subject of the contract.</p>	<p>Temporary entry is allowed for a duration of three months or the period of contract, whichever is less.</p>