

## **Chapter Fourteen**

### **Temporary Entry for Business Persons**

#### **Article 14.1: General Principles**

1. Further to Article 1.2 (Objectives), this Chapter reflects the preferential trading relationship between the Parties, the mutual desire of the Parties to facilitate temporary entry of business persons under the provisions of Annex 14.3 on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.
2. This Chapter does not apply to measures regarding citizenship, nationality, permanent residence, or employment on a permanent basis.

#### **Article 14.2: General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.1(1) and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. For greater certainty, nothing in this Chapter shall be construed to 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, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement. The sole fact of requiring a visa for natural persons shall not be regarded as unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

#### **Article 14.3: Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provisions of Annex 14.3.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.
3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
- (a) inform in writing the business person of the reasons for the refusal; and
  - (b) promptly notify the other Party in writing of the reasons for the refusal.
4. Each Party shall limit any fees for processing applications for temporary entry of business persons in a manner consistent with Article 14.2(1).

**Article 14.4: Provision of Information**

1. Further to Article 20.2 (Publication), each Party shall:
- (a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and
  - (b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and make available in its own territory, and in the territory of the other Party, explanatory material, including references to applicable laws and regulations, in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.
2. Each Party shall collect and maintain, and make available upon request to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, with a view towards including data specific to each occupation, profession, or activity.

**Article 14.5: Committee on Temporary Entry**

1. The Parties hereby establish a Committee on Temporary Entry, comprising representatives of each Party, including immigration officials.

2. The Committee shall:
  - (a) establish a schedule for its meetings;
  - (b) establish procedures to exchange information on measures that affect the temporary entry of business persons under this Chapter;
  - (c) consider the development of measures to further facilitate temporary entry of business persons on a reciprocal basis under the provisions of Annex 14.3;
  - (d) consider the implementation and administration of this Chapter; and
  - (e) consider the development of common criteria and interpretations for the implementation of this Chapter.

**Article 14.6: Dispute Settlement**

1. A Party may not initiate proceedings under Article 22.5 (Commission – Good Offices, Conciliation, and Mediation) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 14.2 unless:
  - (a) the matter involves a pattern of practice; and
  - (b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph (1)(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

**Article 14.7: Relation to Other Chapters**

1. Except for this Chapter, Chapters One (Initial Provisions), Two (General Definitions), Twenty-One (Administration of the Agreement), Twenty-Two (Dispute Settlement), and Twenty-Four (Final Provisions), and Articles 20.1 (Contact Points), 20.2 (Publication), 20.3 (Notification and Provision of Information), and 20.4 (Administrative Proceedings), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

## **Article 14.8: Transparency in Development and Application of Regulations<sup>1</sup>**

1. Further to Chapter Twenty (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding regulations relating to the temporary entry of business persons.
2. Further to Article 20.2 (Publication), to the extent possible, each Party shall, on request, provide to interested persons a concise statement addressing comments received on proposed regulations relating to the temporary entry of business persons at the time that it adopts the final regulations.
3. Further to Article 20.2 (Publication), to the extent possible, each Party shall allow a reasonable period of time between the date it publishes final regulations governing entry of business persons and the date they take effect.
4. Each Party shall, within a reasonable period after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application.

## **Article 14.9: Definitions**

For purposes of this Chapter:

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

**immigration measure** means any law, regulation, or procedure affecting the entry and sojourn of aliens;

**national** has the same meaning as the term “natural person who has the nationality of a Party” as defined in Annex 2.1 (Country-Specific Definitions);

**professional** means a national of a Party who is engaged in a specialty occupation requiring:

- (a) theoretical and practical application of a body of specialized knowledge, and

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<sup>1</sup> For greater certainty, “regulations” includes regulations establishing or applying to licensing authorization or criteria.

- (b) attainment of a post-secondary degree in the specialty requiring four or more years of study<sup>2</sup> (or the equivalent of such a degree) as a minimum for entry into the occupation; and

**temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

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<sup>2</sup> Chile recognizes the Baccalaureate Degree, Master's Degree, and the Doctoral Degree conferred by institutions in the United States as such degrees. The United States recognizes the *licenciatura* degree and *titulo profesional* and higher degrees conferred by institutions in Chile as such degrees.

## **Annex 14.3**

### **Temporary Entry for Business Persons**

#### **Section A – Business Visitors**

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 14.3(A)(1), without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

## **Section B – Traders and Investors**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought, or
- (b) establish, develop, administer, or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive, or involves essential skills, provided that the business person otherwise complies with immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

## **Section C – Intra-Company Transferees**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge, provided that the business person otherwise complies with immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:
  - (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
  - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

#### **Section D – Professionals**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity as a professional, or to perform training functions related to a particular profession, including conducting seminars, if the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

2. Notwithstanding the educational requirements set out in the definition of “professional” in Article 14.9, each Party shall grant temporary entry to a business person seeking to engage in a business activity as a professional in a profession set out in Appendix 14.3(D)(2), provided that the business person possesses the credentials specified in the Appendix and complies with the requirements of paragraph 1 of this Section.

3. To assist in the implementation of this Chapter, the Parties shall exchange by the date of entry into force of this Agreement illustrative lists of professions that meet the definition of professional. To facilitate the evaluation of applications for temporary entry, the Parties shall also exchange information on post-secondary education.

4. Neither Party may:
  - (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or

- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

5. Notwithstanding paragraph 4(a), a Party may require a business person seeking temporary entry under this Section to comply with procedures applicable to temporary entry of professionals, such as an attestation of compliance with the Party's labor and immigration laws.

6. Notwithstanding paragraphs 1 and 4, a Party may establish an annual numerical limit, which shall be set out in Appendix 14.3(D)(6), regarding temporary entry of business persons of the other Party seeking to engage in business activities as a professional.

7. A Party establishing a numerical limit pursuant to paragraph 6, unless the Parties otherwise agree, may, in consultation with the other Party, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by the Parties.

8. Nothing in paragraphs 6 or 7 shall be construed to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

## **Appendix 14.3(A)(1)**

### **Business Visitors**

#### **Meetings and Consultations**

- Business persons attending meetings, seminars, or conferences; or engaged in consultations with business associates.

#### **Research and Design**

- Technical, scientific, and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

#### **Growth, Manufacture, and Production**

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

#### **Marketing**

- Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

#### **Sales**

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise located in the territory of the other Party.

#### **Distribution**

- Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

#### **After-Sales Service**

- Installers, repair and maintenance personnel, and supervisors, possessing specialized

knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

### **General Service**

- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.
- Financial services personnel (insurers, bankers, or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides, or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.
- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

### **Definitions**

For purposes of this Appendix, **territory of the other Party** means the territory of the Party other than the territory of the Party into which temporary entry is sought.

**Appendix 14.3(D)(2)**

<b>PROFESSION</b>	<b>MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS</b>
Disaster Relief Claims Adjuster	Baccalaureate or <i>Licenciatura</i> degree, or <i>Titulo Profesional</i> , and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims.
Management Consultant	Baccalaureate or <i>Licenciatura</i> degree, or <i>Titulo Profesional</i> . If the degree is in a discipline not related to the area of the consulting agreement, then equivalent professional experience as established by statement or professional credential attesting to three years experience in a field or specialty related to the consulting agreement is required.
Agricultural Manager	Baccalaureate or <i>Licenciatura</i> degree; or <i>Titulo Profesional</i> ; or post-secondary certificate <sup>1</sup> requiring three years of study in the specialty and three years experience in the specialty.
Physical Therapist	Baccalaureate or <i>Licenciatura</i> degree; or <i>Titulo Profesional</i> ; or post-secondary certificate requiring three years of study in the specialty and three years experience in the specialty.

<sup>1</sup> **Post-secondary certificate** means a certificate issued on completion of post-secondary study, by an institution recognized by the Government of Chile, or accredited by the relevant competent authority in the United States.

## **Appendix 14.3(D)(6)**

### **United States**

1. Beginning on the date of entry into force of this Agreement, the United States shall annually approve as many as 1,400 initial applications of business persons of Chile seeking temporary entry under Section D of Annex 14.3 to engage in a business activity at a professional level.
2. For purposes of paragraph 1, the United States shall not take into account:
  - (a) the renewal of a period of temporary entry;
  - (b) the entry of a spouse or children accompanying or following to join the principal business person;
  - (c) an admission under section 101(a)(15)(H)(i)(b) of the *Immigration and Nationality Act*, 1952, as may be amended, including the worldwide numerical limit established by section 214(g)(1)(A) of that Act; or
  - (d) an admission under any other provision of section 101(a)(15) of that Act relating to the entry of professionals.