

CHAPTER 12: TEMPORARY ENTRY OF BUSINESS PERSONS

Article 12.01 Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

business activities: legitimate commercial activities undertaken and operated for the purpose of obtaining profits in the market, but not including the possibility of obtaining employment, wages or remuneration from a labor source in the territory of a Party;

business person: a national of a Party who engages in trade of goods, provision of services, or management of investment activities;

labor certification: procedure applied by the competent administrative authority for the purpose of determining if a national of a Party who seeks temporary entry into the territory of the other Party displaces national workers in the same domestic industry or noticeably harms its labor conditions;

national: "national" as defined in Chapter 2 (General Definitions), but not including those permanent or definitive residents;

pattern of practice: a practice repeatedly followed by the immigration authorities of one Party during the representative period immediately before the execution of the same; and

temporary entry: entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

2. For purposes of Annex 12.04, the following terms shall be understood as:

executive functions: functions assigned in an organization to a person who shall have the following basic responsibilities:

- (a) managing the administration of the organization, or of a relevant component, or function within it;
- (b) establishing the policies and objectives of the organization, components or function; or
- (c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders;

management functions: functions assigned in an organization to a person who shall have the following basic responsibilities:

- (a) managing the organization or an essential function within it;
- (b) supervising and controlling the work of other professional employees, supervisors, or administrators;
- (c) having the authority to hire and dismiss or to recommend these actions, and to undertake other actions related to the management of the personnel directly supervised by this person, and to perform senior functions within the organizational hierarchy or functions related to his position; or
- (d) performing discretionary actions related to the daily operation of the function over which this person has authority; and

functions requiring specialized knowledge: functions that require special knowledge of goods, services, research, equipment, techniques, management of an organization or of its interests and their application in international markets, or an advanced level of knowledge or experience in the processes and procedures of the organization.

Article 12.02 General Principles

This Chapter reflects the preferential trading relationship between the Parties, the convenience of facilitating temporary entry on a reciprocal basis and the establishment of transparent criteria and procedures for temporary entry as well as the need to guarantee the security at the borders, and to protect the domestic labor force and permanent employment in their respective territories.

Article 12.03 General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 12.02 and, in particular, shall apply them expeditiously so as to avoid undue delays or the impairment of trade in goods or services or the management of investment activities under this Agreement.
2. The Parties shall endeavor to develop and adopt common criteria, definitions, and interpretations for the implementation of this Chapter.

Article 12.04 Granting 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 12.04 and 12.04 (1).
2. A Party may deny temporary entry to a business person when the temporary entry of that person might adversely affect:

(a) the settlement of a labor dispute underway at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of the services rendered.

4. An authorization of temporary entry under this Chapter does not supersede the requirements demanded by the exercise of a profession or activity according to the specific rules in force in the territory of the Party authorizing the temporary entry.

Article 12.05 Provision of Information

1. In addition to Article 13.03 (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 one (1) year 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 in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner that it enables business persons of the other Party to become acquainted with them.

2. Each Party shall collect, maintain, and make available to the other Party the information regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including specific data for each authorized category.

Article 12.06 Dispute Settlement

A Party may not initiate proceedings under Article 15.05 (Consultations), regarding a denial to grant temporary entry under this Chapter or a particular case arising under Article 12.03, unless:

(a) the matter involves a pattern of practice; and

(b) the affected business person has exhausted the available administrative proceedings regarding that particular matter, in accordance with the domestic law and regulations of that Party.

Article 12.07 Relationship to Other Chapters and Articles

Except as provided in this Chapter, in Chapters 1 (Initial Provisions), 2 (General Definitions), 14 (Administration of the Agreement), 18 (Final Provisions) and in

Articles 13.02 (Information Center), 13.03 (Publication), 13.04 (Provision of Information), 13.05 (Guarantees of Hearing, Legality, and Due Process), and 13.06 (Administrative Proceedings for Adopting Measures of General Applications), no provision in this Agreement shall impose an obligation on a Party regarding its immigration measures.

ANNEX 12.04

Temporary Entry For Business Persons

Section A Business Visitors

1. Each Party shall grant temporary entry and expedite document verification to a business person seeking to engage in a business activity set out in Appendix 12.04 (A) (1), without other requirements than those established by the existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality of a Party; and
- (b) documentation demonstrating the international character of the business activity the business person intends to realize and that the business person is not seeking to enter the local labor market.

2. Each Party shall consider that a business person satisfies the requirements of paragraph 1 (b) 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 most of the profits remain outside such territory.

For purposes of this paragraph, a Party that authorizes temporary entry shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it should be conducted according to its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 12.04 (A) (1), on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 12.04 (A) (2).

4. No Party may:

- (a) as a condition for authorizing temporary entry under paragraph 1 or 3, 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 in accordance with paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry.

The Parties shall consider avoiding or removing their visa or equivalent document requirement.

Section B Traders and Investors

1. Each Party shall grant temporary entry and provide documentation for verification to a business person, who exerts in a capacity that is managerial, executive or requiring specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, and seeks 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;

2. No Party may:

- (a) as a condition for authorizing 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 in accordance with paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

Section C Intra-corporate Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render management, executive or functions requiring specialized knowledge to that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with immigration measures applicable to temporary entry that are in force. A Party may require the person to have been employed continuously by the enterprise for one (1) year immediately preceding the date of the application for admission.

2. No 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 in accordance with paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

ANNEX 12.04 (1)

Special Provisions Regarding Temporary Entry of Business Persons

For the Republic of China (Taiwan):

1. It shall be considered that business persons that enter the Republic of China (Taiwan) under any of the categories established on Annex 12.04 are carrying out activities that are useful or advantageous for the country.
2. The business person should obtain a visitor or resident visa prior to entry. A visitor visa of ninety (90) day stay and multiple entry with validity no longer than one (1) year may be issued to eligible business persons. The business person in possession of a resident visa may stay in the Republic of China (Taiwan), provided the work permit remains valid. The duration of stay may be extendable for consecutive periods as long as the conditions justifying it are maintained. Such a person may not require permanent residence unless satisfying the provisions of the Immigration Law.
3. If a business person is defined as a resident in the Mainland China area by the *Statute Governing the Relations Between the People of the Taiwan Area and the Mainland Area* and its Regulations, the person must apply for entry permit according to the said statute and regulations.

For the Republic of El Salvador:

1. It shall be considered that business persons that enter the Republic of El Salvador under any of the categories established on Annex 12.04 are carrying out activities that are useful or advantageous for the country.
2. Business persons that enter the Republic of El Salvador under any of the categories established on Annex 12.04 will be entitled to a business stay permit for ninety (90) days that can be extended for the same period and will be authorized by the Dirección General de Migración, establishing the type of business to be carried out in the country, being able to exclusively carry out those activities. In case that the nature of the job requires a longer period of stay, a temporary resident permit will be granted for one (1) year, which can be renewed for consecutive periods where the conditions that originated its approval remain. Such persons may not request a permanent stay, unless they fulfill the general provisions of the *Ley de Migración* (Legislative Decree No 2772, December 19, 1958 and its amendments) and its Regulation (Executive Decree N° 33, May 9, 1959).

For the Republic of Honduras:

1. It shall be considered that business persons that enter the Republic of Honduras under any of the categories established on Annex 12.04 are carrying out activities that are useful or advantageous for the country.

2. Business persons that enter the Republic of Honduras under any of the established categories on Annex 12.04 will be entitled to a business stay special permit for ninety (90) days that can be extended for another consecutive period and will be authorized by the Dirección General de Migración y Extranjería when the conditions that originated its approval remain. Such persons may not request a permanent stay, unless they fulfill the general provisions of the *Ley de Migración y Extranjería* (Decreto N° 208 del 3 de marzo de 2003, Acuerdo N° 018-2004, *Reglamento de la Ley de Migración y Extranjería* del 3 de mayo de 2004 y el Acuerdo N° 21-2004 del 8 de junio de 2004).

APPENDIX 12.04 (A) (1)

Business Visitors

Research and Design

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

Cultivation, Manufacture, and Production Purchasing

- Purchasing and production personnel at managerial level conducting commercial operation for an enterprise established in the territory of the other Party.

Marketing

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise established 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 on goods or services for an enterprise established in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise established in the territory of the other Party.

After-sale Services

- Installation, 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 Services

- Consultants conducting business activities at the level of the provision of cross-border services.
- Management and supervisory personnel engaging in a commercial operation for an enterprise established in the territory of the other Party.

- Financial services personnel engaging in commercial operation for an enterprise established 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.

APPENDIX 12.04 (A) (2)

Existing Immigration Measures

In the case of the Republic of China (Taiwan):

- (a) *Immigration Law*, promulgated on May 21, 1999, amended on February 6, 2003;
- (b) *Enforcement Rules of the Immigration Law*, promulgated on October 30, 1999, amended on April 1, 2004;
- (c) *Statute Governing Issuance of the Republic of China (Taiwan) Visas on Foreign Passports*, promulgated on June 02, 1999, amended on January 22, 2003;
- (d) *Regulations for Issuance of the Republic of China (Taiwan) Visas on Foreign Passports*, promulgated on May 31, 2000, amended on June 2, 2004;
- (e) *Employment Service Act*, promulgated on May 8, 1992, amended on May 16, 2003; and
- (f) *Enforcement Rules of the Employment Service Act*, promulgated on August 5, 1992, amended by the Council of Labor Affairs on January 13, 2004.

In the case of the Republic of El Salvador:

- (a) *Ley de Migración*, Legislative Decree N° 2772 of December 19, 1958, published on the Diario Oficial N° 240, volume 181, of December 23, 1958;
- (b) *Reglamento de la Ley de Migración*, Executive Decree N° 33 of March 9, 1959, published on the Diario Oficial N° 56, volume 182, of March 31, 1959; and
- (c) *Ley de Extranjería*, Legislative Decree N° 299 of February 18, 1986, published on the Diario Oficial N° 34, volume 290, of February 20, 1986.

In the case of the Republic of Honduras:

- (a) *Ley de Migración y Extranjería*, Decree N° 208-2003 of March 3, 2004, in force sixty (60) days after its publication on the Diario Oficial “La Gaceta”;
- (b) *Acuerdo N° 018-2004, Reglamento de la Ley de Migración y Extranjería* of May 3, 2004;
- (c) *Acuerdo N° 21-2004* of June 8, 2004; and

(d) *Acuerdo N° 8 sobre Procedimientos y Facilidades Migratorias a Inversionistas y Comerciantes Extranjeros* of August 19, 1998.