

## CHAPTER 10

### TRADE IN SERVICES AND ESTABLISHMENT

#### SECTION A

##### GENERAL PROVISIONS

###### ARTICLE 10.1

###### Objective and scope

1. The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down the necessary arrangements for the liberalisation of trade in services and establishment.
2. Nothing in this Chapter shall be construed as requiring the privatisation of public services or imposing any obligation with respect to government procurement.
3. The provisions of this Chapter shall not apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. Consistent with the provisions of this Chapter, each Party retains the right to regulate, to introduce new regulations or to supply services to meet its policy objectives.

5. The provisions of this Chapter shall not apply to any Party's social security systems.

6. The provisions of this Chapter do not apply to services supplied or activities carried out in the exercise of governmental authority, namely any service which is supplied or any activity which is carried out neither on a commercial basis, nor in competition with one or more service suppliers or investors.

7. This Chapter applies to measures of each Party affecting trade in services and establishment, with the exception of:

- (a) national maritime cabotage<sup>1</sup>;
- (b) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;

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<sup>1</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 transportation of passengers or goods between a port or point located in a Signatory MERCOSUR State or a Member State of the European Union and another port or point located in the same Signatory MERCOSUR State or Member State of the European Union, including on its continental shelf, as provided in UNCLOS, as well as traffic originating and terminating in the same port or point located in the Signatory MERCOSUR State or Member State of the European Union.

- (iii) computer reservation system (CRS) services; and
- (iv) ground handling services;

- (c) inland navigation; and
- (d) audiovisual services.

## ARTICLE 10.2

### Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "consumption abroad" means the supply of a service in the territory of a Party to the service consumer of the other Party (mode 2);
- (b) "cross-border supply of services" means the supply of a service from the territory of a Party into the territory of the other Party (mode 1);
- (c) "economic activity" includes any activity of an economic nature, irrespective of whether it is related to services or non-services sectors, subject to the provisions of Article 10.1;
- (d) "enterprise" means a juridical person of a Party, or a branch or a representative office of such juridical person of a Party, set up through establishment as defined pursuant to this Article;

(e) "entry and temporary stay of natural persons" means the entry and temporary stay of key personnel, graduate trainees, business sellers, contractual service suppliers and independent professionals of a Party in the territory of the other Party, in accordance with Section B of this Chapter;

(f) "establishment" means:

- (i) the constitution, acquisition or maintenance of a juridical person<sup>2</sup>; or
- (ii) the creation or maintenance of a branch or representative office of a juridical person, within the territory of a Party for the purpose of performing an economic activity;

(g) "investor" of a Party means any person that seeks to perform or performs an economic activity through establishment in the territory of the other Party<sup>3</sup>;

(h) "juridical person" means any legal entity duly constituted or otherwise organised under 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;

(i) a juridical person is:

- (i) "owned" by natural or juridical persons of a Party if more than 50 % (fifty per cent) of the equity interest in it is beneficially owned by natural or juridical persons of that Party; and

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<sup>2</sup> The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

<sup>3</sup> If the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor (namely, the juridical person) shall, nonetheless, through such establishment, be accorded the treatment provided for investors under the Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and does not need to be extended to any other parts of the investor located outside the territory where the economic activity is performed.

- (ii) "controlled" by natural or juridical persons of a Party if those natural or juridical persons have the power to name a majority of its directors or to legally direct its actions;

(j) "juridical person of a Party" means a juridical person which is either:

- (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or the other Party; or
- (ii) in the case of establishment, owned or controlled by:
  - (A) natural persons of that Party; or
  - (B) juridical persons of that Party identified under point (j)(i);

Notwithstanding point (ii), shipping companies established outside the European Union or MERCOSUR and controlled by natural persons having the nationality of a Member State of the European Union or of a Signatory MERCOSUR State, respectively, shall also be beneficiaries of the provisions of this Chapter, if their vessels are registered in accordance with the laws and regulations in that Member State of the European Union or Signatory MERCOSUR State and fly the flag of a Member State of the European Union or of a Signatory MERCOSUR State<sup>4</sup>;

(k) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(l) "measures adopted or maintained by a Party" means measures taken by:

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

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<sup>4</sup> Point (j) of this Article shall not, under any circumstances, be interpreted in such a way as to allow a shipping company constituted or established in, or incorporated, established or otherwise organised under the laws applicable to a territory subject to a sovereignty dispute involving the Argentine Republic to benefit from the provisions of this Chapter. This provision shall not be interpreted as implying the legitimacy of the laws applied to such territories.

- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (m) "measures by Parties affecting establishment, the cross-border supply of services, consumption abroad, and the entry and temporary stay of natural persons" include measures in respect of:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to, and use of, in connection with the performance of an economic activity, services which are required by those Parties to be offered to the public generally; and
  - (iii) the access, including through establishment, of persons of a Party to the territory of the other Party to perform an economic activity in that territory;
- (n) "natural person" means a person having the nationality, or that is a permanent resident<sup>5</sup>, of one of the Signatory MERCOSUR States or one of the Member States of the European Union according to their respective legislation;
- (o) "sector" of an economic activity means:
  - (i) with reference to a specific commitment, one or more, or all, subsectors of that service or non-service, as specified in the specific commitments contained in Annexes 10-A to 10-E; or
  - (ii) otherwise, the whole of that service or non-service sector, including all of its subsectors;

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<sup>5</sup> If a Party accords substantially the same treatment to its permanent residents as it does to natural persons having the nationality of that Party, its permanent residents shall be covered by the definition of natural persons, in respect of measures affecting the cross-border trade in services, consumption abroad and establishment.

(p) "service supplier" means any person that seeks to supply or supplies a service<sup>6</sup>;  
and

(q) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service.

## ARTICLE 10.3

### Market access

1. With respect to market access through establishment, the cross-border supply of services, consumption abroad, and the entry and temporary stay of natural persons as provided in Section B of this Chapter, each Party shall accord to enterprises, investors, services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annexes 10-A to 10-E.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annexes 10-A to 10-E, are defined as:

(a) limitations on the number of service suppliers or enterprises in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;

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<sup>6</sup> If the service is not supplied directly by a juridical person, the treatment provided under this Chapter shall be extended to the branch or representative office through which the service is supplied and need not be extended to any parts of the supplier located outside the territory where the service is supplied.

- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on 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;
- (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
- (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor or service supplier of the other Party may perform an economic activity; or
- (f) limitations on 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 the economic activity in the form of numerical quotas or the requirement of an economic needs test.

3. Economic needs tests shall be described concisely and clearly, indicating the elements that render them inconsistent with this Article and specifying the criteria on which the test is based.

## ARTICLE 10.4

### National treatment

1. In the sectors listed in Annexes 10-A to 10-E, and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment<sup>7</sup>, the cross-border supply of services, consumption abroad and the entry and temporary stay of natural persons as provided in Section B of this Chapter, each Party shall accord to enterprises, investors, services and service suppliers of the other Party treatment no less favourable than that it accords to its own like enterprises, investors, services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to enterprises, investors, services and service suppliers of the other Party either formally identical treatment or formally different treatment to that which it accords to its own like enterprises, investors, 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 enterprises, investors, services or service suppliers of the Party compared to like enterprises, investors, services and service suppliers of the other Party.
4. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant enterprises, investors, services or service suppliers.

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<sup>7</sup> The obligation in this paragraph applies also to measures governing the composition of boards of directors of an enterprise, such as nationality and residency requirements.

## ARTICLE 10.5

### List of specific commitments

1. The sectors liberalised by each Party pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations applicable to services, service suppliers, enterprises and investors of the other Party in those sectors are set out in Annexes 10-A to 10-E.
2. The Parties shall not apply any market access or national treatment restrictions other than those contained in Annexes 10-A to 10-E.

## SECTION B

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

## ARTICLE 10.6

### Scope

1. This Section applies to measures of a Party concerning the entry and temporary stay in its territory of key personnel, graduate trainees, business sellers, contractual service suppliers and independent professionals of the other Party in accordance with paragraphs 2 and 3.

2. The provisions of this Section do not apply to measures affecting natural persons seeking access to the employment market of a Party, nor to measures of a Party regarding citizenship, residence or employment on a permanent basis.

3. The provisions of this Section do not prevent either Party from applying measures necessary to regulate the entry and temporary stay of natural persons in its territory, including measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them, provided that such measures do not nullify or impair the benefits accruing to either Party under the terms of a specific commitment<sup>8</sup>.

4. Subject to Articles 10.17 and 10.18, nothing in this Section shall prevent a Party from requiring that natural persons possess the necessary qualifications or professional experience in the territory where the service is supplied, for the sector of activity concerned.

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<sup>8</sup> The sole fact of requiring a visa for a natural person of certain countries and not for those of other countries shall not be regarded as nullifying or impairing benefits under a specific commitment.

## ARTICLE 10.7

### Definitions

1. For the purposes of this Section, the following definitions apply:
  - (a) "business sellers" means natural persons who are representatives of a juridical person of a Party seeking entry and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier; they do not engage in making direct sales to the general public, do not receive remuneration from a source located within the host Party and are not commission agents;
  - (b) "contractual service suppliers" means natural persons employed by a juridical person of a Party which is not established in the territory of the other Party and which has concluded a contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services<sup>9</sup>;

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<sup>9</sup> The service contract referred to in point (b) shall be a *bona fide* contract and comply with the laws and regulations of the Party where the contract is executed.

- (c) "graduate trainees" means natural persons who have been employed by a juridical person of a Party for at least 1 (one) year, who possess a university degree and who are temporarily transferred to an enterprise in the territory of the other Party for career development purposes or to obtain training in business techniques or methods<sup>10</sup>;
- (d) "independent professionals" means natural persons, engaged in the supply of a service and settled as self-employed in the territory of a Party, who have not been established in the territory of the other Party and who have concluded a contract to supply services with a final consumer in the territory of the other Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services<sup>11</sup>;
- (e) "key personnel" means natural persons employed by a juridical person of a Party, other than a non-profit organisation, and who are responsible for the establishment or the proper control, administration and operation of an enterprise, and consists of:
  - (i) "business visitors": natural persons working in a senior position who are responsible for establishing an enterprise; they do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party; and

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<sup>10</sup> The recipient enterprise may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that training be linked to the university degree which has been obtained.

<sup>11</sup> The service contract referred to in point (d) shall be a *bona fide* contract and comply with the laws and regulations of the Party where the contract is executed.

(ii) "intra-corporate transferees": natural persons who have been employed by a juridical person of a Party, or have been partners in it, for at least 1 (one) year, who are temporarily transferred to an enterprise or a head office of that juridical person in the territory of the other Party and who belong to one of the following categories:

(A) managers:

Natural persons working in a senior position within a juridical person, who primarily direct the management of the enterprise receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

- directing the enterprise or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees; or
- having the authority personally to recruit and dismiss or to recommend recruiting, dismissing or other personnel actions;

(B) specialists:

Natural persons working within a juridical person who possess specialised knowledge essential to the enterprise's economic activity, techniques or management.

## ARTICLE 10.8

### Key personnel and graduate trainees

For each sector for which commitments have been undertaken for establishment as listed in Annexes 10-B and 10-E, and subject to any reservations listed in Annexes 10-C and 10-E, each Party shall allow investors of the other Party to employ in their enterprise natural persons of that other Party, if such employees are key personnel or graduate trainees. The entry and temporary stay of key personnel and graduate trainees shall be:

- (a) for the period of time necessary for the fulfilment of the contract or up to 3 (three) years for intra-corporate transferees, whichever is less;
- (b) up to 60 (sixty) days in any period of 12 (twelve) months for business visitors;  
and
- (c) up to 1 (one) year for graduate trainees.

## ARTICLE 10.9

### Business sellers

For each sector for which commitments have been undertaken for the cross-border supply of services and for establishment, listed in Annexes 10-A, 10-B and 10-E, and subject to any reservations listed in Annexes 10-C and 10-E, each Party shall allow the entry and temporary stay of business sellers for a period of up to 90 (ninety) days in any period of 12 (twelve) months<sup>12</sup>.

## ARTICLE 10.10

### Contractual service suppliers and independent professionals

1. For the sectors specified in Annexes 10-D and 10-E and subject to any reservations listed therein, each Party shall allow the supply of services into its territory by contractual service suppliers of the other Party, through the presence of natural persons, subject to the following conditions:
  - (a) the juridical person employing the natural person must have obtained a service contract for a period not exceeding 12 (twelve) months;
  - (b) the natural persons entering the other Party must have an appropriate education or experience relevant to the service to be provided;

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<sup>12</sup> This Article is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between individual Signatory MERCOSUR States and individual Member States of the European Union.

- (c) the natural person shall not receive remuneration for the supply of a service other than the remuneration paid by the contractual service supplier during the stay of the natural person in the other Party;
- (d) the entry and temporary stay of natural persons in the territory of the Party concerned shall be for a cumulative period of not more than 6 (six) months in any period of 12 (twelve) months or for the duration of the contract, whichever is less; and
- (e) access accorded pursuant to the provisions of this Article relates only to the service activity which is the subject of the contract and it does not confer entitlement on natural persons to use the professional title of the Party where the service is provided.

2. For the sectors specified in Annexes 10-D and 10-E, and subject to any reservations listed therein, each Party shall allow the supply of services into its territory by independent professionals of the other Party, through the presence of natural persons, subject to the following conditions:

- (a) the natural persons must have obtained a service contract for a period not exceeding 12 (twelve) months;
- (b) the natural persons entering the other Party must have an appropriate education and professional qualifications relevant to the service to be provided;
- (c) the entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than 6 (six) months in any period of 12 (twelve) months or for the duration of the contract, whichever is less; and

- (d) access accorded pursuant to the provisions of this Article relates only to the service activity which is the subject of the contract and it does not confer entitlement on the natural person to use the professional title of the Party where the service is provided.

## SECTION C

### REGULATORY FRAMEWORK

#### SUB-SECTION 1

#### PROVISIONS OF GENERAL APPLICATION

#### ARTICLE 10.11

##### Mutual recognition

1. Nothing in this Chapter shall prevent a Party from requiring that natural persons possess the necessary qualifications or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of investors and service suppliers, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

## ARTICLE 10.12

### Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to, or affect, this Chapter.

2. The measures referred to in paragraph 1 shall include measures applying to all modes of supply, including on the process of entry and temporary stay of the categories of natural persons defined in Article 10.7. Information about these measures shall be kept up to date. Each Party shall facilitate access to relevant information by indicating to the other Party where relevant publications and websites can be found.

3. If publication of the measures referred to in paragraph 1 is not practicable, such measures shall be made otherwise publicly available.

4. Each Party shall respond promptly to all requests by the other Party for specific information on any of its relevant measures of general application referred to in paragraph 1, including measures regarding the entry and temporary stay of service suppliers as referred to in paragraph 2.

5. Each Party shall establish one or more enquiry points to provide specific information to services providers of the other Party, upon request, on any of its measures of general application referred to in paragraph 1. The Parties shall notify each other of these enquiry points no later than 1 (one) year after the entry into force of this Agreement. Enquiry points need not be depositories of laws and regulations.

6. Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

## SUB-SECTION 2

### DOMESTIC REGULATION

#### ARTICLE 10.13

##### Scope

1. This Sub-Section only applies to sectors for which a Party has undertaken specific commitments as listed in Annexes 10-A to 10 E and to the extent that these specific commitments apply.
2. This Sub-Section does not apply to measures to the extent that they constitute limitations pursuant to Articles 10.3 and 10.4.
3. In sectors where specific commitments are undertaken as listed in Annexes 10-A to 10-E, each Party shall ensure that all measures of general application affecting trade in services and establishment are administered in a reasonable, objective and impartial manner.
4. Each Party shall comply with this Sub-Section with regard to measures relating to licensing requirements and procedures and qualification requirements and procedures.

5. This Sub-Section applies to measures of each Party relating to licensing and qualification requirements and procedures that affect:

- (a) the cross-border supply of services;
- (b) the establishment in their territory of an enterprise defined in Article 10.2; or
- (c) the temporary stay in their territory of categories of natural persons defined in Article 10.7.

## ARTICLE 10.14

### Definitions

For the purposes of this Sub-Section, the following definitions apply:

- (a) "competent authority" means any central, regional or local government or authority, or any non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities and which is entitled to take a decision concerning the authorisation to supply a service or concerning the authorisation to establish an enterprise in order to perform an economic activity;
- (b) "licensing procedures" means administrative and procedural rules that a service supplier or an investor seeking authorisation to supply a service or to establish an enterprise must adhere to in order to demonstrate compliance with licensing requirements;

- (c) "licensing requirements" means substantive requirements other than qualification requirements with which a service supplier or investor is required to comply in order to obtain, from a competent authority, a decision concerning the authorisation to supply a service or concerning the authorisation to establish an enterprise in order to perform an economic activity, including a decision to amend or renew such authorisation;
- (d) "qualification procedures" means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service; and
- (e) "qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service.

## ARTICLE 10.15

### Conditions for licensing

1. Measures of each Party relating to licensing requirements shall be based on criteria which are:
  - (a) proportionate to a public policy objective;
  - (b) clear and unambiguous;

- (c) objective; and
- (d) made public in advance.

2. A licence should be granted by the competent authority as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining a licence have been met.

3. If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall select candidates through an impartial and transparent selection procedure which provides, in particular, adequate publicity about the launch, conduct and completion of the procedure. Subject to the provisions specified by this Article, each Party may take into account public policy objectives when establishing the rules for the selection procedures.

## ARTICLE 10.16

### Licensing procedures

- 1. Licensing procedures shall be clear and made public in advance. Each Party shall ensure that the licensing procedures used by, and the related decisions of, their competent authorities are objective and impartial with respect to all applicants.
- 2. Licensing procedures shall not be dissuasive and shall not unduly complicate or delay the provision of the service.

3. Any licensing fees<sup>13</sup> which applicants may incur from their application shall be reasonable and shall not in themselves restrict the supply of the service. To the extent practicable, those fees should be proportionate to the cost of the licensing procedures in question.

4. The competent authorities of a Party shall, to the extent practicable, provide an indicative timeframe for processing an application. Applications shall be processed within a reasonable period of time. The period shall run only from the time when all documentation has been received by the competent authorities. If justified by the complexity of the issue, the time period may be extended, by the competent authority, for a reasonable time. The extension and its duration shall be duly motivated and shall be notified to the applicant, to the extent practicable, before the original period has expired.

5. In the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation. In such a case, the period referred to in paragraph 4 may be suspended by the competent authorities until they have received all documentation.

6. If a request is rejected because it fails to comply with the required procedures or formalities, the applicant shall be informed of the rejection and of the available means of redress as quickly as possible.

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<sup>13</sup> Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal services.

## ARTICLE 10.17

### Qualification requirements

1. Qualification requirements shall be based on criteria which are:
  - (a) proportionate to a public policy objective;
  - (b) clear and unambiguous;
  - (c) objective; and
  - (d) made public in advance.
2. If a Party imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of the other Party. If the competent authority of a Party considers that membership in a relevant professional association in the territory of another Party is indicative of the level of competence or extent of experience of the applicant, such membership shall be given due consideration.
3. For the supply of professional services, the scope of examinations and of any other qualification requirements by a competent authority shall be related to the rights to practise a profession for which authorisation is being sought, so as to avoid unduly restricting persons of the other Party from applying.

4. Provided that an applicant has presented all necessary supporting evidence of his or her qualifications, the competent authority, in verifying and assessing such qualifications, shall identify any deficiency and inform the applicant of requirements to meet such deficiency. Such requirements may include course work, examinations and training. The presentation by an applicant of a Party of evidence of qualifications obtained in the territory of a third country shall not in itself constitute an a priori reason for the competent authority of the other Party to reject the application and refrain from making an assessment of the qualifications presented.
5. If examinations are required, each Party shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.
6. Once qualification requirements and any other applicable regulatory requirements have been fulfilled, each Party should ensure that a service supplier is allowed to supply the service without undue delay.

## ARTICLE 10.18

### Qualification procedures

1. Qualification procedures shall be based on criteria which are:
  - (a) clear and unambiguous;
  - (b) objective; and

(c) made public in advance.

2. Each Party shall ensure that the qualification procedures used by, and the related decisions of, their competent authorities are impartial with respect to all applicants.

3. An applicant shall, in principle, not be required to approach more than 1 (one) competent authority for qualification procedures.

4. If specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. To the extent practicable, the competent authority shall accept applications in electronic format under the same conditions of authenticity as an application submitted in paper format.

5. Authenticated copies should be accepted by the competent authority, if possible, in place of original documents.

6. If the competent authority rejects an application, it shall inform the applicant, to the extent practicable in writing, without undue delay. It shall inform the applicant, upon request, of the reasons for the rejection of the application and identify any deficiencies and ways in which those deficiencies can be addressed. It shall inform the applicant of the timeframe for an appeal against the decision, if available. It shall permit an applicant to resubmit an application within a reasonable time limit.

7. Each Party shall ensure that the processing of an application, including the verification and assessment of a qualification, is completed within a reasonable timeframe from the date of the submission of a complete application. Each Party shall endeavour to establish a normal timeframe for the processing of an application.

8. Each Party shall ensure that any fees relating to qualification procedures are commensurate with the costs incurred by the competent authorities and do not in themselves restrict the supply of the service.

## ARTICLE 10.19

### Review of administrative decisions

Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected investor or service supplier of the other Party, for the prompt review of, and if justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or the entry and temporary stay of natural persons supplying services. If such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

## SUB-SECTION 3

### POSTAL SERVICES

#### ARTICLE 10.20

##### Scope

1. This Sub-Section sets out the principles of the regulatory framework for postal services regarding which each Party has undertaken specific commitments, as listed in Annexes 10-A and 10-E, in accordance with this Sub-Section.
2. This Sub-Section does not require a Party to liberalise services reserved to 1 (one) or more designated operators as listed in Annexes 10-A and 10-E.

#### ARTICLE 10.21

##### Definitions

For the purposes of this Sub-Section, the following definitions apply:

- (a) "essential requirements" means general non-economic reasons for imposing conditions on the supply of postal services and may include the confidentiality of correspondence, the security of the network as regards the transport of dangerous goods, data protection, environmental protection and regional planning;

- (b) "licence" means any form of authorisation or permission<sup>14</sup> setting out rights and obligations specific to the postal sector, granted to an individual supplier by a regulatory authority, or any other competent body, and which is required before supplying a given service;
- (c) "postal item" means an item addressed in the final form in which it is to be carried by a postal service provider, whether public or private, and may include items such as a letter, parcel, newspaper, catalogue and others;
- (d) "postal service"<sup>15</sup> means services involving the collection, sorting, transport and delivery of postal items, irrespective of the destination (domestic or foreign), the speed of the service (priority, non-priority, urgent, express or others) or the operator (public or private);
- (e) "regulatory authority" means the independent body or bodies charged with the regulation of postal services mentioned in this Sub-Section; and
- (f) "universal service" means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

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<sup>14</sup> For greater certainty, this includes the grant of a concession, registration, declaration, notification or individual licences.

<sup>15</sup> "Postal services" covers the CPC 7511 and CPC 7512.

## ARTICLE 10.22

### Prevention of anti-competitive practices in the postal sector

Each Party shall ensure that a supplier of postal services subject to a universal service obligation or a postal monopoly does not engage in anti-competitive practices such as:

- (a) using revenues derived from the supply of such service to cross-subsidise the supply of an express postal service or any non-universal postal service; and
- (b) differentiating among customers such as businesses, large volume mailers or consolidators 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, if such differentiation is not based on objective or impartial criteria.

## ARTICLE 10.23

### Universal service

Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on its scope and implementation. Each Party may adopt the necessary measures in order to safeguard the implementation, development and maintenance of the universal postal service. Such measures and obligations shall not be regarded as anti-competitive per se if they are applied in a transparent, non-discriminatory and proportionate way.

## ARTICLE 10.24

### Licences to provide postal services

1. Each Party may require licences for the supply of postal services. A licence should be granted wherever possible, by means of a simplified authorisation procedure in accordance with national laws and regulations.
2. A licence may require compliance with essential requirements, including quality standards and respect for the exclusive and special rights of designated operators of reserved services or of universal postal services.
3. If a Party requires a licence:
  - (a) it shall make publicly available in an easily accessible form:
    - (i) the rights and obligations resulting from such a licence;
    - (ii) the criteria, terms and conditions for licensing; and
    - (iii) to the extent possible, the period of time normally required to reach a decision concerning an application for a licence;
  - (b) the procedures for granting a licence shall be transparent, non-discriminatory, proportionate and based on objective criteria; and

(c) any licensing fees<sup>16</sup> which the applicants may incur from their application shall be reasonable and shall not in themselves restrict the supply of the service.

4. The status of an application for a licence and the reasons for the refusal to grant a licence shall be made known to the applicant upon request. Each Party shall, in accordance with its laws and regulations, maintain or establish a procedure for applicants to appeal against the refusal to grant a licence to a domestic independent body. Such a procedure shall be transparent, non-discriminatory and based on objective criteria.

## ARTICLE 10.25

### Independence of the regulatory body

Each Party may designate a regulatory body, whether specific to the postal service sector or not. The regulatory body shall be legally separate from, and not accountable to, any supplier of postal services. The decisions of, and the procedures used by, the regulatory bodies shall be impartial with respect to all market participants.

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<sup>16</sup> Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to the provision of universal services.

## SUB-SECTION 4

### TELECOMMUNICATIONS SERVICES

#### ARTICLE 10.26

##### Scope

1. This Sub-Section sets out principles of the regulatory framework for telecommunications services, other than broadcasting<sup>17</sup>, regarding which each Party has undertaken specific commitments in accordance with this Chapter.
2. Nothing in this Sub-Section shall be construed:
  - (a) as requiring a Party to authorise a supplier of telecommunications services of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in Annexes 10-A, 10-B, 10-C and 10-E; or
  - (b) as requiring a Party to oblige service suppliers under its jurisdiction, to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

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<sup>17</sup> "Broadcasting" means radiocommunication in which transmissions are intended for direct reception by the general public, and may include sound transmission and television transmission. Suppliers of broadcasting services shall be considered as suppliers of public telecommunications transport services, and their networks, as public telecommunications transport networks, if and to the extent that such networks are also used for providing public telecommunications transport services.

## ARTICLE 10.27

### Definitions

For the purposes of this Sub-Section, the following definitions apply:

- (a) "essential telecommunications facilities"<sup>18</sup> means facilities of a public telecommunications transport network and public telecommunications transport 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;
- (b) "interconnection" means linking with suppliers of telecommunications transport networks or telecommunications transport services in order to allow the users of one supplier of telecommunications services to communicate with users of another supplier of telecommunications services and to access telecommunications services provided by another supplier of telecommunications services;

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<sup>18</sup> For the Republic of Paraguay and the Oriental Republic of Uruguay, "essential telecommunications facilities" means facilities of a public telecommunications transport network and a public telecommunications transport service in accordance with the definition provided in their national law.

- (c) "licence" means any form of authorisation, including registration, declaration or notification procedures or others as defined in the laws and regulations of a Party, setting out rights and obligations specific to the telecommunications sector granted to an individual service supplier of telecommunications services by a regulatory authority which is required for the provision of a telecommunications service;
- (d) "major supplier" in the telecommunications sector is a supplier of telecommunications transport 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 services, as a result of control over essential facilities or the use of its position in that market;
- (e) "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (f) "public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally;
- (g) "regulatory authority" means the body or bodies charged with the regulation of telecommunications mentioned in this Sub-Section;
- (h) "service supplier" means a person that has been granted a licence to supply telecommunications services;
- (i) "telecommunications services" means all services which consist in the transmission and reception of electro-magnetic signals and excludes services providing, or exercising editorial control over, the content transmitted; and

(j) "universal service" means the set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price.

## ARTICLE 10.28

### Regulatory authority

1. Each Party shall ensure that its regulatory authority for telecommunications services is legally distinct and functionally independent from any supplier of telecommunications services.
2. The regulatory authority shall be sufficiently empowered and resourced to regulate the sector. The competences of the regulatory authority shall be made public in an easily accessible and clear form, in particular if those tasks are assigned to more than one body.
3. The decisions of, and the procedures used by, the regulatory authority shall be impartial with respect to all market participants.
4. A supplier of telecommunications services affected by a decision of a regulatory authority shall have the right to appeal against that decision to a domestic appeal body that is independent of the parties involved and of the regulatory authority. If the appeal body is not judicial in character, written reasons for its decision shall be given and its decisions shall also be subject to review by an impartial and independent domestic judicial or administrative authority.

## ARTICLE 10.29

### Licences to provide telecommunication services

1. Each Party shall ensure that a licence is granted, by means of a simplified procedure wherever possible.
2. Each Party shall ensure that the terms and conditions for the granting of rights of use of numbers and frequencies are made publicly available.
3. If a licence is required by a Party:
  - (a) all the licensing criteria shall be made publicly available;
  - (b) the reasonable period of time normally required to reach the decision on whether to grant a licence, after the submission of the complete application, shall be public;
  - (c) if the grant of a licence is refused, the reasons for such a refusal shall be made known in writing to the applicant on request; and
  - (d) the applicant for a licence shall be able to seek recourse to a domestic appeal body to establish whether a licence has been unduly refused.

## ARTICLE 10.30

### Anti-competitive practices

Each Party shall adopt or maintain appropriate measures for the purpose of preventing all suppliers of telecommunications services who, alone or together, are a major<sup>19</sup> supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices may include an abuse of a dominant position, and all individual or concerted practices, conduct or recommendations which have the effect of restricting, limiting, hindering, distorting or preventing current or future competition in the relevant market.

## ARTICLE 10.31

### Access to essential telecommunications facilities

Each Party shall ensure that a major supplier<sup>20</sup> in its territory grants access to its essential telecommunications facilities to suppliers on reasonable and non-discriminatory<sup>21</sup> terms and conditions, including in relation to rates, technical standards, specifications, quality and maintenance.

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<sup>19</sup> For the Oriental Republic of Uruguay, the scope of this Article applies to all suppliers of telecommunications services.

<sup>20</sup> For the Oriental Republic of Uruguay, the scope of this Article applies to all suppliers.

<sup>21</sup> For the purposes of this Subsection, "non-discrimination" is understood to refer to national treatment as defined in Article 10.4, as well as to reflect sector-specific usage of the term to mean terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or public telecommunications transport services under like circumstances.

## ARTICLE 10.32

### Interconnection

1. Each Party shall ensure that any supplier authorised to provide telecommunications services in its territory shall have the right to negotiate interconnection with other suppliers of public telecommunications transport networks and public telecommunications transport services. Interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers concerned.
2. Each Party shall ensure that suppliers of telecommunications services that acquire information from another supplier of telecommunications services during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect, at all times, the confidentiality of information transmitted or stored.
3. Interconnection with a major supplier<sup>22</sup> shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:
  - (a) under non-discriminatory terms and conditions, including technical standards and specifications, and rates, and of a quality no less favourable than that provided for their own like services of such a major supplier, or for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

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<sup>22</sup> For the Oriental Republic of Uruguay, the scope of this Article applies to all suppliers of telecommunications services.

- (b) in a timely fashion, on terms and conditions, including technical standards and specifications, that are transparent, reasonable having regard to economic feasibility and sufficiently detailed, so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) on request by another supplier of telecommunication services, and subject to an assessment by the regulatory authority if appropriate, at any technically feasible points in addition to the network termination points offered to the majority of users, subject to reasonable charges.

4. The rules applicable for interconnection to a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers, as appropriate.

6. Each Party shall ensure that a supplier of telecommunications services requesting interconnection with a major supplier has a right of recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body to resolve disputes regarding appropriate terms, conditions and rates for interconnection. Such an independent domestic body may be the regulatory authority referred to in Article 10.28.

## ARTICLE 10.33

### Scarce resources

Each Party shall conduct its procedures for granting rights of use of scarce resources including frequencies, numbers and rights of way, in an objective, timely, transparent and non-discriminatory manner. To the extent possible, each Party shall make publicly available the current state of allocated frequency bands, but detailed identification of frequencies for specific government uses is not required.

## ARTICLE 10.34

### 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. Each Party shall administer the universal service obligations in a transparent, objective, non-discriminatory and proportionate manner.
  
2. If the designation of a universal service provider is open to multiple service suppliers of telecommunications networks or services, such procedures shall be open to all service suppliers. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

## ARTICLE 10.35

### Confidentiality of information

Each Party shall ensure the confidentiality of telecommunications and of related traffic data transmitted by means of public telecommunications transport networks and public telecommunications transport services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

## ARTICLE 10.36

### Disputes between suppliers

Each Party shall ensure that, in the event of a dispute arising between suppliers, the regulatory authority<sup>23</sup> concerned issues, on request of either party to the dispute, a binding decision to resolve the dispute in the shortest possible timeframe.

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<sup>23</sup> For greater certainty, in the case of MERCOSUR, this refers to the regulatory authority of each Signatory MERCOSUR State.

## ARTICLE 10.37

### International mobile roaming services

1. Each Party shall endeavour to cooperate on promoting transparent and reasonable rates for international roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.
2. Each Party shall ensure that suppliers of telecommunications services providing international mobile roaming services for voice, text messaging and data provide those services:
  - (a) with a similar quality to that provided to their own retail customers in their country of establishment; and
  - (b) with clear and readily available information in respect of access to the services and the prices thereof.
3. The Parties shall cooperate on monitoring the achievement of paragraphs 1 and 2 as well as on other issues related to international mobile roaming services that may be identified.
4. This Article does not oblige a Party to regulate rates or conditions for international mobile roaming services.

## SUB-SECTION 5

### FINANCIAL SERVICES

#### ARTICLE 10.38

##### Scope

This Sub-Section applies to measures by a Party affecting the supply of financial services.

#### ARTICLE 10.39

##### Definitions

1. For the purposes of this Sub-Section, the following definitions apply:

- (a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party; financial services comprise the following activities:
  - (i) insurance and insurance-related services:
    - (A) direct insurance (including co-insurance):
      - (1) life; and
      - (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; and

(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 or forward rate agreements;
- (5) transferable securities; and
- (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 the 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 by suppliers of other financial services; and

- (L) advisory, intermediation and other auxiliary financial services on all activities listed in points (A) to (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, except public entities, wishing to supply or supplying financial services;
- (c) "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;
- (d) "self-regulatory organisation" means a non-governmental body, including any organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party;
- (e) "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.

2. For the purposes of this Sub-Section and only in relation to services covered by this Sub-Section, "services supplied in the exercise of governmental authority" means:

- (a) activities conducted by a central bank or 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 of, with the guarantee of, or using the financial resources of, the government.

If a Party allows any of the activities referred to in points (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "financial services" shall include such activities, which will then fall within the scope of this Chapter.

3. The general definition of "services supplied in the exercise of governmental authority" included in Article 10.1(6) shall not apply to services covered by this Sub-Section.

## ARTICLE 10.40

### Prudential carve-out

1. Nothing in this Agreement shall be construed as preventing a Party from taking measures for prudential reasons, including:
  - (a) protecting investors, depositors, financial market participants, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier; or
  - (b) ensuring the integrity and stability of a Party's financial system.
2. If such measures do not conform with the provisions of this Sub-Section, they shall not be used as a means of avoiding the Party's commitments or obligations under this Sub-Section.
3. Nothing in this Agreement shall be construed as requiring a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

## ARTICLE 10.41

### Effective and transparent regulation in the financial services sector

1. Each Party shall make its best endeavours to make available in advance to all interested persons any measure of general application that the Party proposes to adopt. Such a measure shall be made available:
  - (a) by means of an official publication; or
  - (b) in other written or electronic form.
2. Each Party's appropriate financial authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.
3. On the request of an applicant, the appropriate financial authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards include those adopted by the G20, the Financial Stability Board, the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions, the Financial Action Task Force on Money Laundering, the Global Forum on Transparency and Exchange of Information for Tax Purposes of the OECD and the International Financial Reporting Standards. To this end, the Parties shall cooperate and exchange information and experience on these matters.

## ARTICLE 10.42

### New financial services

1. Each Party shall permit a financial service supplier of the other Party, established in its territory, to provide in its territory any new financial services within the scope of the sub-sectors of financial services committed in Annexes 10-A, 10-B, 10-C and 10-E and subject to the terms, limitations, conditions and qualifications established therein.
2. A new financial service shall be provided in accordance with the laws and regulations of the Party in whose territory it is intended to be supplied and is subject to the approval, regulation and supervision of the competent authorities of that Party.

## ARTICLE 10.43

### Recognition of prudential measures

1. A Party may recognise prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.
2. A Party that is party to an agreement or arrangement with a third country such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

## ARTICLE 10.44

### Self-regulatory organisations

1. If a Party requires membership or participation in, or access to, any self-regulatory organisation, in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or if a Party provides directly or indirectly to a self-regulatory organisation privileges or advantages in supplying financial services, that Party shall ensure that such self-regulatory organisations observe the application of Article 10.4 to financial service suppliers established in the territory of that Party.
2. For greater certainty, nothing in this Article prevents a self-regulatory organisation referred to in paragraph 1 from adopting its own non-discriminatory requirements or procedures. Insofar as such measures are taken by non-governmental bodies and are not taken in relation to the exercise of powers delegated by central, regional, or local governments or authorities, they are not considered to be measures of a Party and do not fall within the scope of this Chapter.

## ARTICLE 10.45

### Payment and clearing systems

On the basis of regulatory requirements and in accordance with Article 10.4, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing facilities operated by public entities and to official funding and refinancing available in the normal course of ordinary business. This Article is not intended to confer access to a Party's lender-of-last-resort facilities (the national central bank or any other monetary authority).

## SUB-SECTION 6

### E-COMMERCE

#### ARTICLE 10.46

##### Objective and scope

1. The Parties, recognising that electronic commerce increases trade opportunities in many economic activities, agree to promote the development of electronic commerce between them, including by co-operating on the issues raised by electronic commerce under the provisions of this Sub-Section.
2. This Sub-Section applies to measures that affect trade by electronic means.
3. The Parties recognise the principle of technological neutrality in electronic commerce.
4. The provisions of this Sub-Section shall not apply to gambling services, broadcasting services, audiovisual services, services of notaries or equivalent professions and legal representation services.

## ARTICLE 10.47

### Definitions

For the purposes of this Sub-Section, the following definitions apply:

- (a) "consumer" means any natural person, or juridical person if provided for in national laws and regulations of each Party, using or requesting a public telecommunications transport service, defined in point (e) of Article 10.27, for purposes outside of their trade, business or profession;
- (b) "direct marketing communication" means any form of advertising by which a person communicates marketing messages directly to end-users via a public telecommunications network and, for the purposes of this Agreement, covers at least electronic mail, text and multimedia messages (SMS and MMS);
- (c) "electronic authentication service" means a service that enables the confirmation of:
  - (i) the electronic identification of a person; or
  - (ii) the origin and integrity of data in electronic form;

- (d) "electronic signature" means data in electronic form which is attached to or logically associated with other electronic data and fulfils the following requirements:
  - (i) it is used by a natural person to agree on the electronic data to which it relates or by a juridical person to ensure the origin and integrity of the electronic data to which it relates; and
  - (ii) it is linked to the electronic data to which it relates in such a way that any subsequent alteration in the data is detectable; and
- (e) "end-user" means any person using or requesting a publicly available telecommunications service, either as a consumer or for trade, business or professional purposes.

## ARTICLE 10.48

### Customs duties on electronic transmissions

1. A Party shall not impose custom duties on electronic transmissions between a person of one Party and a person of the other Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees, or other charges on electronic transmissions, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

## ARTICLE 10.49

### Principle of no prior authorisation

1. The Parties shall endeavour not to require prior authorisation of the supply of a service by electronic means, solely on the ground that the service is provided by electronic means, or to adopt or maintain any other requirement having equivalent effect.
2. Paragraph 1 does not apply to telecommunications services as defined in point (i) of Article 10.27 and financial services as defined in point (a) of Article 10.39(1).
3. For greater certainty, nothing shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective in accordance with:
  - (a) Article 10.1(4);
  - (b) Article 10.40;
  - (c) Article 20.1; and
  - (d) Article 20.2.

## ARTICLE 10.50

### Conclusion of contracts by electronic means

Each Party shall ensure that their legal system allows contracts to be concluded by electronic means and that its laws and regulations regarding contractual processes neither create obstacles for the use of electronic contracts nor result in such contracts being deprived of legal effect and validity on the ground that they have been made by electronic means, unless provided for in their laws and regulations<sup>24</sup>.

## ARTICLE 10.51

### Electronic signature and authentication services

1. A Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic signature and electronic authentication service solely on the basis that it is in electronic form.

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<sup>24</sup> This Article shall not apply to contracts that create or transfer rights in real estate; contracts requiring by law the involvement of courts, public authorities or professions exercising public authority; contracts of suretyship granted or collateral securities furnished by persons acting for purposes outside their trade, business or profession; and contracts governed by family law or by the law of succession.

2. A Party shall not adopt or maintain measures regulating electronic signature and electronic authentication services that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or
  - (b) prevent parties to an electronic transaction from having the opportunity to prove to judicial and administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic signature and electronic authentication services.

## ARTICLE 10.52

### Unsolicited direct marketing communications

1. Each Party shall endeavour to effectively protect end-users against unsolicited direct marketing communications.
2. Each Party shall endeavour to ensure that persons do not send direct marketing communications to consumers who have not given their consent<sup>25</sup> to receive such communications.

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<sup>25</sup> Consent shall be defined in accordance with each Party's own laws and regulations.

3. Notwithstanding paragraph 2, each Party shall allow persons which have collected, in accordance with its laws and regulations, a consumer's contact details in the context of the sale of a product or a service, to send direct marketing communications to that consumer for their own similar products or services.

4. Each Party shall endeavour to ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

## ARTICLE 10.53

### Consumer protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers, including from fraudulent and misleading commercial practices, when they engage in electronic commerce transactions.

2. For the purposes of paragraph 1, the Parties shall adopt or maintain measures that contribute to consumer trust, including measures that proscribe fraudulent and deceptive commercial practices. Such measures shall provide for, *inter alia*:

(a) the right of consumers to clear and thorough information regarding the service and its provider;

- (b) the obligation of traders to act in good faith and abide by honest market practices, including in response to questions by consumers;
- (c) the prohibition of charging consumers for services not requested or provided for a period in time not authorised by the consumer; and
- (d) access to redress for consumers to claim their rights, including as regards their right to remedies for services paid and not provided as agreed.

3. The Parties recognise the importance of cooperation between their respective agencies in charge of consumer protection or other relevant bodies on activities related to electronic commerce, in order to protect consumers and enhance consumer trust.

#### ARTICLE 10.54

##### Regulatory cooperation on e-commerce

1. The Parties shall maintain cooperation and dialogue on the regulatory issues raised by electronic commerce on the basis of mutually agreed terms and conditions, which shall address the following issues, among others:

- (a) the recognition and facilitation of interoperable cross-border electronic signature and authentication services;

- (b) the liability of intermediary service providers with respect to the transmission or storage of information;
- (c) the treatment of direct marketing communications;
- (d) the protection of consumers in the ambit of electronic commerce;
- (e) the promotion of paperless trading; and
- (f) any other issue relevant to the development of electronic commerce.

2. The cooperation referred to in paragraph 1 shall focus on exchange of information on the Parties' respective laws and regulations on these issues as well as on the implementation of such laws and regulations.

## ARTICLE 10.55

### Understanding on computer services

1. The Parties agree that, for the purpose of liberalising trade in services in accordance with Articles 10.3 and 10.4, the following shall be considered as computer and related services, regardless of whether they are delivered via a network, including the internet:

- (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;

- (b) computer programmes, defined as the sets of instructions required to make computers work and communicate (in and of themselves), as well as consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programmes;
- (c) data processing, data storage, data hosting or database services;
- (d) maintenance and repair services for office machinery and equipment, including computers; and
- (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.

2. For greater certainty, services enabled by computer and related services shall not necessarily be regarded as computer and related services in themselves.

## SECTION D

### FINAL PROVISIONS AND EXCEPTIONS

#### ARTICLE 10.56

##### Contact points

1. No later than one 1 (one) year after the date of entry into force of the Agreement, each Party shall designate contact points and notify the other Party of their contact details with a view to:
  - (a) facilitating the provision of information to the other Party regarding the implementation of this Chapter, such as:
    - (i) commercial and technical aspects of the supply of services; and
    - (ii) the registration, recognition and obtaining of professional qualifications; and
  - (b) considering any other issues regarding the implementation of this Chapter that are referred by a Party.
2. Each Party shall promptly notify the other Party of any changes to these contact points.

## ARTICLE 10.57

### Subcommittee on trade in services and establishment

1. The Subcommittee on trade in services and establishment, established pursuant to Article 22.3(4), shall have the following functions, in addition to those listed in Article 22.3:

- (a) conduct the preparatory technical work in the event of a revision of this Chapter in accordance with Article 10.58; and
- (b) discuss relevant subjects for trade in services and establishment, including opportunities for the expansion of mutual investment in services and non-services sectors.

2. The Subcommittee on trade in services and establishment may invite, on an ad hoc basis, representatives of relevant entities, with the necessary expertise relevant to the issues to be addressed.

## ARTICLE 10.58

### Review clause

In light of its objectives, this Chapter may be reviewed no earlier than 3 (three) years after the date of entry into force of this Agreement, or in the context of an overall review of this Agreement.

## ARTICLE 10.59

### Denial of benefits

A Party may deny the benefits of this Chapter to:

- (a) the supply of a service, if it establishes that the service is supplied from or in the territory of a third country; or
- (b) a juridical person, if it establishes that it is a juridical person of a third country.