

CHAPTER 9
TRADE IN SERVICES

Article 9.1: Definitions

For the purposes of this Chapter:

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

commercial presence means any type of business or professional establishment, including through:

- (i) the constitution, acquisition or maintenance of an enterprise; or
- (ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purposes of supplying a service;

computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

controlled means having the power to name a majority of directors or otherwise legally direct an enterprise's actions;

enterprise of the other Party means an enterprise which is either:

- (i) constituted or otherwise organised in accordance with the law of the other Party; or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of the other Party; or
 - (B) enterprises of the other Party identified under subparagraph (A);

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an

aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

measures adopted or maintained by a Party means measures adopted or maintained by:

- (i) central, regional, or local governments or authorities; or
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

owned means holding more than 50 per cent of the equity interest in an enterprise;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that supplies a service;^{1,2}

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; and

trade in services or supply of a service means the supply of a service:

¹ Where the service is not supplied directly by an enterprise but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the enterprise) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers in accordance with this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory of a Party where the service is supplied.

² For greater certainty, ‘service supplier of a Party’ includes a person of a Party that seeks to supply a service.

- (i) from the territory of a Party into the territory of the other Party;
- (ii) in the territory of a Party to a person of the other Party;
- (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
- (iv) by a natural person of a Party in the territory of the other Party.

Article 9.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to services offered to the public generally and the use of them in connection with the supply of a service;
- (d) the presence, including commercial presence, in a Party's territory of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. This Chapter shall not apply to:

- (a) government procurement;
- (b) services supplied in the exercise of governmental authority; and
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

3. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment.

4. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

- (a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;
- (b) selling and marketing of air transport services;
- (c) computer reservation system services;
- (d) specialty air services;
- (e) airport operation services; and
- (f) ground handling services.

5. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

6. If the Annex on Air Transport Services of GATS is amended unless the Parties otherwise agree, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

Article 9.3: National Treatment³

1. Each Party shall accord to services and service suppliers of the other Party, treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 9.4: Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than it accords, in like circumstances, to services and service suppliers of any non-Party.

³ For greater certainty, whether treatment is accorded in “like circumstances” under Article 9.3 or Article 9.4 depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives or on the basis of nationality. Where treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives, that treatment is not inconsistent with Article 9.3 or Article 9.4.

Article 9.5: Market Access⁴

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁵ or
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 9.6: Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service⁶.

Article 9.7: Non-Conforming Measures

1. Articles 9.3, 9.4, 9.5 and 9.6 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:

⁴ For greater certainty, the Parties consider limitations on the participation of foreign capital in terms of maximum percentage equity limits on foreign shareholding or the total value of individual or aggregate foreign investment to breach Article 9.3.

⁵ Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

⁶ For greater certainty, cross-border supply of a service means the supply of a service, except where it is by a service supplier of a Party through commercial presence in the territory of the other Party.

- (i) the central level of government, as set out by that Party in its Schedule to Annex I (Trade in Services and Investment Schedules); or
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I (Trade in Services and Investment Schedules); or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.3, Article 9.4, Article 9.5 or Article 9.6.

2. Articles 9.3, 9.4, 9.5 and 9.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II (Trade in Services and Investment Schedules).

Article 9.8: Domestic Regulation⁷

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Party shall ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a non-discriminatory basis to a service supplier of the other Party. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
4. While recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures that it adopts or maintains are:

⁷ For greater certainty, this Article is without prejudice to a Party's rights and obligations under the WTO Agreement.

(a) based on objective and transparent criteria, such as competence and the ability to supply the service; and

(b) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.

5. In determining whether a Party is in conformity with its obligations under paragraph 4(a), account shall be taken of international standards of relevant international organisations⁸ applied by that Party.

6. If a Party requires authorisation for the supply of a service, not otherwise excluded through Article 9.7, it shall ensure that its competent authorities:

(a) where specific time periods exist for applications, allow an applicant a reasonable period for the submission of an application;

(b) upon submission from the applicant, initiate the processing of an application without undue delay;

(c) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant provide guidance on why the application is considered incomplete;

(iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application; and

(iv) where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(d) to the extent practicable, establish an indicative timeframe for the processing of an application;

(e) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

⁸ “Relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

(f) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(g) if an application is rejected, to the extent practicable, inform the applicant in writing of the reasons for the rejection, either directly or on request, as appropriate. The applicant will have the possibility of resubmitting, at its discretion, a new application;

(h) if appropriate, accept copies of documents that are authenticated in accordance with the Party's laws and regulations in place of original documents; and

(i) to the extent practicable, ensure that authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

7. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service⁹.

8. Each Party shall, where it requires authorisation for supply of a service, promptly publish¹⁰ or otherwise make publicly available the information necessary for a service supplier, or a person seeking to supply a service, to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia* and where applicable:

(a) fees;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;

(e) opportunities for public involvement, such as through hearings or comments;

(f) indicative timeframes for processing of an application;

(g) the requirements and procedures; and

⁹ For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auctions, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

¹⁰ For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website.

(h) technical standards.

9. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable applicants to request to take the examination.

10. Further to paragraph 9, each Party should explore, as appropriate, the possibility of:

(a) using electronic means for conducting such examinations;

(b) conducting such examinations orally; and

(c) providing opportunities for taking such examinations in the territory of the other Party.

11. Each Party shall ensure that physical presence in the territory of the other Party is not required for the submission of an application for a license or qualification.

12. Each Party shall endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions in accordance with domestic law.

13. Where a Party permits a service supplier of the other Party to provide a professional service, that Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.

14. Subject to its laws and regulations, a Party shall permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party and otherwise ensure that the use of enterprise names is not unduly restricted.

15. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

Article 9.9: Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained,

requirements met, or licences or certifications granted, in the territory of the other Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the other Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of a non-Party, nothing in Article 9.4 shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between the other Party and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

6. As set out in Annex 9-A, the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 9.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-

Party or by persons of the denying Party that has no substantial business activities in the territory of the other Party.

Article 9.11: Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons¹¹ regarding its laws and regulations that relate to the subject matter of this Chapter.

2. If a Party does not provide advance notice and opportunity for comment in accordance with Article 19.2 (Publication) of Chapter 19 (Transparency) with respect to its laws and regulations that relate to the subject matter of this Chapter, it shall on request of the other Party, provide in writing the reasons for not doing so.

Article 9.12: Payments and Transfers

1. Each Party shall permit all transfers and payments that relate to the supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws and regulations¹² that relate to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

¹¹ For the purpose of this paragraph “interested persons” refers to a person whose direct interest in trade in services could be potentially affected by such laws and regulations.

¹² For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party’s laws and regulations relating to its social security, public retirement or compulsory savings programmes.

Article 9.13: Review

1. The Parties shall review this Chapter and related Annexes and Schedules within three years of the date of entry into force of this Agreement with a view to substantially reducing or eliminating discrimination and enhancing market access between the Parties with regard to trade in services. The review shall include the identification of measures to increase trade in services under this Chapter and related Annexes and Schedules between the Parties. Unless the Parties otherwise agree, the initial review, including actions to incorporate the results into this Agreement, shall be completed within two years of initiating the review.
2. The Parties shall subsequently review this Chapter and related Annexes and Schedules every five years thereafter, with a view to substantially reducing or eliminating all remaining discrimination and enhancing market access between the Parties with regard to trade in services.
3. At each review the Parties shall also consider other trade in services issues of mutual interest.

Article 9.14: Committee on Trade in Services

1. The Parties hereby establish a Committee on Trade in Services (Trade in Services Committee) consisting of representatives of the Parties.
2. The Trade in Services Committee shall meet within two years from the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.
3. The Trade in Services Committee's functions shall be to:
 - (a) review the implementation of this Chapter;
 - (b) implement Article 9.13;
 - (c) consider any other matters related to this Chapter identified by either Party;
 - (d) consider matters related to Chapter 10 (Financial Services), Chapter 11 (Telecommunications), Chapter 12 (Movement of Natural Persons) and Chapter 13 (Electronic Commerce), and direct the activities of the Professional Services Working Group; and
 - (e) report to the Joint Committee as required.

ANNEX 9-A

PROFESSIONAL SERVICES

General Provisions

1. Each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for certification and licensing and to provide recommendations to the Professional Services Working Group with respect to any professional service.
2. Without limiting the potential scope of work, the standards and criteria referred to in paragraph 1 may include and be developed with regard to the following matters:
 - (a) education – accreditation of schools or academic programs;
 - (b) examinations – qualifying examinations for certification and licensing, including alternative methods of assessment, such as oral examinations and interviews;
 - (c) experience – length and nature of experience required for licensing;
 - (d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
 - (e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;
 - (f) scope of practice – extent of, or limitations on, permissible activities;
 - (g) local knowledge – requirements for knowledge of such matters as local laws, regulations, geography, or climate; and
 - (h) consumer protection – alternatives to any residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.
3. For the purpose of transparency, on request of the other Party, a Party shall, provide information concerning standards and criteria for the certification and licensing of professional service suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria.
4. Each Party shall encourage its relevant bodies to take into account other multilateral agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

Professional Services Working Group

5. The Parties hereby establish a Professional Services Working Group (Working Group), comprising representatives of each Party, to facilitate implementation of paragraphs 1 through 4. The Working Group shall meet annually or as agreed by the Parties.
6. The issues that the Working Group should consider, for professional services generally and, as appropriate, for individual professional services, include:
 - (a) procedures for fostering the development of mutual recognition arrangements between relevant bodies,
 - (b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and
 - (c) other issues of mutual interest relating to the supply of professional services; and
 - (d) supporting Indonesia to reference the Indonesian Qualifications Framework to the ASEAN Qualifications Reference Framework with Australia's technical assistance.
7. In implementing this Annex, the Working Group shall consider, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional services.
8. To assist the Working Group in its activities, the Parties shall, as appropriate, encourage the involvement of their respective peak professional services sector industry bodies. The Parties shall consider and provide a response to any joint views, advancing projects where feasible and mutually agreed.
9. The Parties shall encourage peak bodies to provide initial joint views no later than one year after the first meeting of the Working Group.
10. Each Party shall encourage its relevant bodies to implement any decisions or recommendations of the Working Group within an agreed time.
11. The Working Group, at each meeting, shall review the implementation of the Annex and progress made, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and agree on the further direction of its work.