

## **Chapter 8**

### **TRADE IN SERVICES**

#### **Article 8.1**

##### **Definitions**

For the purposes of this Chapter:

**“aircraft repair and maintenance services”** means those activities when undertaken on an aircraft or a part thereof while the aircraft or part is withdrawn from service and does not include line maintenance;

**“airport operation services”** means any service for operation or management of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems, for any kind of remuneration. Airport operation services do not include air navigation services, security services and ground handling services;

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

- (a) the constitution, acquisition, or maintenance of a juridical person; or
- (b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose 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;

**“ground handling services”** means the supply of the following services, on a fee or contract basis: ramp handling, aircraft servicing, aircraft cleaning, loading or unloading, cargo and mail handling services, baggage handling, administrative support services, representational services, passenger handling, flight operations and surface transport. Ground handling services do not include: fixed intra-airport transport systems, security functions and self-handling;

**“juridical person of a Party”** means a juridical person which is either:

- (a) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party;  
or
- (b) in the case of the supply of a service through commercial presence, owned or controlled by:
  - (i) natural persons of that Party; or
  - (ii) juridical persons of that Party identified under subparagraph (a);

a juridical person is:

- (a) **“owned”** by persons of a Party if more than fifty per cent of the equity interest in it is beneficially owned by persons of that Party;
- (b) **“controlled”** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (c) **“affiliated”** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

**“line maintenance services”** means any maintenance services that are carried out before flight to ensure that the aircraft is fit for the intended flight. It includes minor repairs and modifications which do not require extensive disassembly and can be accomplished by simple means;

**“measures by a Party affecting trade in services”** includes measures in respect of:

- (a) the purchase or use of, or payment for, a service;
- (b) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
- (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

**“monopoly supplier of a service”** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

**“natural person of a Party”** means a national of a Party as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions);

**“sector”** of a service means:

- (a) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in the respective Schedules of the Parties in Annex 8B (Schedules of Specific Commitments);
- (b) otherwise, the whole of that service sector, including all of its subsectors;

**“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 nor the applicable conditions;

**“service consumer”** means any person that receives or uses a service;

**“service of the other Party”** means a service which is supplied:

- (a) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
- (b) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

**“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”** means a person that supplies a service;<sup>1</sup>

**“services”** includes any service in any sector except services supplied in the exercise of governmental authority;

**“supply of a service”** includes the production, distribution, marketing, sale and delivery of a service;

**“trade in services”** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to a service consumer of the other Party;
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party;
- (d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party; and

**“traffic rights”** means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo, and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged, and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

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<sup>1</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under 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 where the service is supplied.

## **Article 8.2**

### **Scope**

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, “measures by a Party” means measures taken by:
  - (a) central, regional, or local governments and authorities of that Party; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

3. This Chapter shall not apply to measures relating to:
  - (a) financial services as defined in Article 9.1 (Definitions – Financial Services);
  - (b) government procurement;
  - (c) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance;
  - (d) audio-visual services; and
  - (e) cabotage<sup>2</sup> in maritime transport services.<sup>3</sup>
4. 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. For greater

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<sup>2</sup> For India, maritime cabotage is the transportation of passengers or goods between any port or place located in India and any other port or place located in India and transportation of passengers or goods originating or terminating in the same port or place located in India, including transportation of passengers or goods between a port or a place located in India and another port, place, installation or structure situated in the Exclusive Economic Zone (EEZ) of India or on the continental shelf of India. Maritime cabotage shall further include services such as floating storage, offloading, towing, anchor-handling, dredging, off-shore drilling/production, diving support, maintenance support, various types of surveys, cable laying, sea-bed mining operations, pipe-laying, lighterage, salvage, marine construction, hook-up, port and terminal related support services, provided those services are supplied in the above areas by the vessels.

For the United Kingdom, maritime cabotage covers the transportation of passengers or goods between a port or point located in the United Kingdom and another port or point located in the United Kingdom, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, done in Montego Bay, Jamaica, on 10 December 1982, and traffic originating and terminating in the same port or point located in the United Kingdom.

<sup>3</sup> This exclusion shall not affect the additional commitments undertaken by a Party for International Maritime Transport Services in its Schedule in Annex 8A (Schedules of Specific Commitments).

certainty, this Chapter does not apply to measures regarding citizenship, nationality or residence on a permanent basis.

5. In respect of air transport services, this Chapter shall not apply to measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
  - (a) aircraft repair and maintenance services;
  - (b) line maintenance services;
  - (c) selling and marketing of air transport services;
  - (d) computer reservation system services;
  - (e) airport operation services; and
  - (f) ground handling services.
6. For greater certainty, Annex 8A (Professional Services) is an integral part of this Chapter.
7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.
8. Notwithstanding Article 29.5 (Choice of Forum – Dispute Settlement), if the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

### **Article 8.3** **Market Access**

1. With respect to market access through the modes of supply identified in the definition of “trade in services” in Article 8.1 (Definitions), each Party shall accord 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 its Schedule in Annex 8B (Schedules of Specific Commitments).<sup>4</sup>

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<sup>4</sup> If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) of the definition “trade in services” in Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (c) of the definition “trade in services” in Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

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 its Schedule in Annex 8B (Schedules of Specific Commitments), are defined as:
- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
  - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (c) limitations on the total number of service operations or on 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;<sup>5</sup>
  - (d) limitations on 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;
  - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
  - (f) 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.
3. If a Party undertakes a market-access commitment in relation to the supply of a service through a mode of supply referred to in subparagraph (a), (b), or (d) of the definition of “trade in services” in Article 8.1 (Definitions), that Party shall not require a service supplier of the other Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident in its territory as a condition for the supply of that service through the relevant mode of supply, unless otherwise specified in its Schedule in Annex 8B (Schedules of Specific Commitments).

#### **Article 8.4** **National Treatment**

1. Each Party shall, in the sectors inscribed in its Schedule in Annex 8B (Schedule of Specific Commitments) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party, in respect

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<sup>5</sup> This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>6</sup>

2. A Party may meet the requirement under paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like 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 services or service suppliers of the Party compared to like services or service suppliers of the other Party.

### **Article 8.5** **Additional Commitments**

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standard or licensing matters, not subject to scheduling, under Article 8.4 (National Treatment) or Article 8.3 (Market Access).
2. A Party making additional commitments under paragraph 1 shall inscribe such commitments in its Schedule in Annex 8B (Schedules of Specific Commitments).

### **Article 8.6** **Schedules of Specific Commitments**

1. Each Party shall set out in its Schedule in Annex 8B (Schedules of Specific Commitments), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.3 (Market Access), and Article 8.5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex 8B (Schedules of Specific Commitments) shall specify:
  - (a) terms, limitations, and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments; and
  - (d) where appropriate, the time frame for implementation of such commitments.

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<sup>6</sup> 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 services or service suppliers.

2. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.3 (Market Access) shall be inscribed in the column relating to Article 8.3 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.
3. For greater certainty, Schedules of Specific Commitments shall be annexed to this Chapter as Annex 8B (Schedules of Specific Commitments) and shall form an integral part thereof.

### **Article 8.7** **Most-Favoured-Nation Treatment<sup>7</sup>**

1. Each Party shall, in respect of the sectors and subsectors set out in its Schedule in Annex 8C (Most-Favoured-Nation Treatment Sectoral Coverage) and subject to any terms, limitations, conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.
2. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.
3. If, after the date of entry into force of this Agreement, a Party enters into any agreement with a non-Party in which it undertakes to provide treatment to services or service suppliers of that non-Party in a sector or subsector not set out in that Party's Schedule in Annex 8C (Most-Favoured-Nation Treatment Sectoral Coverage), more favourable than that it accords under this Agreement to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided for in the agreement with the non-Party to services and service suppliers of the other Party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.
4. This Article shall not be construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

### **Article 8.8** **Domestic Regulation**

1. For the purposes of this Article:

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<sup>7</sup> For greater certainty, this Article does not cover treatment accorded by a Party to services and service suppliers of territories for whose international relations that Party is responsible.



“authorisation” means permission to supply a service, resulting from a procedure to which a person of a Party must adhere in order to demonstrate compliance with licensing requirements or qualification requirements; and

“competent authority” means a central, regional, or local government or authority or non-governmental body in the exercise of powers delegated by a central, regional, or local government or authority, which is entitled to take a decision concerning authorisation for the supply of a service.

2. This Article shall:
  - (a) apply to sectors where specific commitments are undertaken in a Party’s Schedule in Annex 8B (Schedule of Specific Commitments); and
  - (b) not apply to any terms, limitations, conditions, or qualifications set out in a Party’s Schedule pursuant to Articles 8.3 (Market Access) or 8.4 (National Treatment).
3. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
4. Each Party shall maintain or institute as soon as practicable judicial, arbitral, or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. 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.
5. Nothing in paragraph 4 shall 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.
6. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the result of the WTO negotiation on disciplines on such measures, pursuant to Article VI.4 of GATS and shall amend this article, as appropriate, after consultation among the Parties to bring the results of those negotiations into effect under this Chapter. Such disciplines shall aim to ensure that such requirements, *inter alia*:
  - (a) are based on objective and transparent criteria, such as competence and the ability to supply the service;
  - (b) are not more burdensome than necessary to ensure the quality of the service; and
  - (c) in the case of licensing and qualifications procedures, are not in themselves a restriction on the supply of the service.
7. (a) In sectors in which a Party has undertaken commitments, pending the

entry into force of disciplines in these sectors pursuant to paragraph 6, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such commitments in a manner which:

- (i) does not comply with the criteria outlined in subparagraphs 6(a), (b), or (c); and
    - (ii) could not reasonably have been expected of that Party at the time the commitments in those sectors were made.
  - (b) In determining whether a Party is in conformity with its obligations under subparagraph 7(a), international standards of relevant international organisations<sup>8</sup> applied by that Party shall be taken into account.
8. If a Party requires authorisation for the supply of a service, the Party shall:
- (a) promptly publish<sup>9</sup> information necessary for obtaining an authorisation. Where it exists, the information may include:
    - (i) the licensing and qualification requirements and procedures;
    - (ii) contact information of relevant competent authorities;
    - (iii) fees;
    - (iv) procedures for appeal or review of decisions concerning applications;
    - (v) indicative or fixed timeframes for processing applications; and
    - (vi) the length of authorisations, and where relevant, dates for renewal;
  - (b) endeavour to ensure that the information referred to in subparagraph (a) is easily accessible through electronic means, and to the extent practicable, is consolidated into a single online portal; and
  - (c) encourage its competent authorities to respond, to the extent practicable, to any reasonable request for information or assistance.
9. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation for the supply of a service. If a service is within the jurisdiction of

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<sup>8</sup> The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties.

<sup>9</sup> For the purposes of these disciplines, “publish” means to include in an official publication, such as an official journal, or on an official website.

multiple competent authorities, multiple applications for authorisation may be required.

10. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:
- (a) to the extent practicable, permit the submission of an application at any time throughout the year.<sup>10</sup> If a specific time period for applying exists, the Party shall ensure that its competent authorities allow a reasonable period of time for the submission of an application;
  - (b) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions; and endeavour to allow for the completion of any relevant authorisation procedures without the physical presence of the applicant in the territory of that Party;
  - (c) where they deem appropriate, accept copies of documents that are authenticated in accordance with its laws and regulations, in place of original documents;
  - (d) to the extent practicable, establish a fixed or indicative timeframe for the processing of an application;
  - (e) to the extent practicable, confirm in writing<sup>11</sup> that an application has been received;
  - (f) upon request of the applicant, provide without undue delay information concerning the status of the application;
  - (g) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, ensure that the processing of the application is completed and the applicant is informed of the decision concerning the application, to the extent possible in writing;<sup>12</sup>
  - (h) if they consider an application incomplete for processing under the Party's laws and regulations, within a reasonable period of time, to the extent practicable:
    - (i) inform the applicant that the application is incomplete;
    - (ii) upon request of the applicant, identify the additional information required to complete the application, or otherwise

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<sup>10</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

<sup>11</sup> References to "in writing" in subparagraphs (e) and (g) include in electronic format.

<sup>12</sup> Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that the lack of a response after a specified period of time from the date of submission of an application indicates either acceptance or rejection of the application.

provide guidance on why the application is considered incomplete; and

(iii) provide the applicant with the opportunity<sup>13</sup> to correct deficiencies in the application; and

(i) if an application is rejected:

(i) inform the applicant of the decision within a reasonable period of time; and

(ii) to the extent practicable, either upon their own initiative or upon request of the applicant, provide the applicant with the reasons for rejection and with specific guidance to address the issues identified in order to obtain an authorisation. The applicant will have the possibility of resubmitting, at its discretion, a new application.

11. Each Party shall ensure, in accordance with its laws and regulations, that authorisation for the supply of a service, once granted, enters into effect without undue delay.<sup>14</sup>

12. Each Party shall ensure that the authorisation fees<sup>15</sup> charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of a service. Each Party shall endeavour to accept the payment of those authorisation fees by electronic means.

13. Each Party shall provide adequate procedures to verify the competence of professionals of the other Party.

14. If a Party requires an examination for authorisation for the supply of a service, it shall, to the extent practicable:

(a) provide a reasonable period of time prior to the examination to enable interested persons to submit an application;

(b) ensure that the examination is scheduled at reasonably frequent intervals;

(c) accept a request in electronic format to take the examination; and

(d) consider the use of electronic means for conducting the examination and other aspects of the examination process.

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<sup>13</sup> The opportunity does not require a competent authority to provide extensions of deadlines.

<sup>14</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

<sup>15</sup> For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions or mandated contributions to universal services provision.

15. Each Party may encourage its competent authorities to establish fast-track procedures for service suppliers seeking to renew or extend their current authorisations.
16. If a Party adopts or maintains measures relating to authorisation for the supply of a service, it shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of a service for which authorisation is required.<sup>16</sup>

## **Article 8.9**

### **Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the 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 licences or certifications granted, in the territory of a non-Party, nothing in Article 8.7 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.
3. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to that agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, that Party shall afford adequate opportunity for 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 which 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. As set out in Annex 8A (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory that have expressed mutual interest for negotiating mutual recognition agreements or similar arrangements for recognition of professional qualifications to enter into those negotiations in accordance with that Annex.

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<sup>16</sup> For greater certainty, this paragraph does not mandate a particular administrative structure. It refers to the decision-making process and administering of decisions.

**Article 8.10**  
**Denial of Benefits**

1. A Party may deny the benefits of this Chapter:
  - (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
  - (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party; or
  - (c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
    - (i) by a vessel registered under the laws and regulations of a non-Party; and
    - (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.
2. A Party may deny the benefits of this Chapter to a service supplier of the other Party, if the service supplier is a juridical person owned or controlled by person 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 juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

**Article 8.11**  
**Transparency**

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.
2. Notwithstanding Article 25.7 (Non-Application of Dispute Settlement – Transparency), as far as measures of general application affecting trade in services are concerned, the provisions of Article 25.2 (Publication – Transparency) shall be applicable for central, regional, and local governments and authorities of a Party and shall be subject to Chapter 29 (Dispute Settlement).
3. Each Party shall publish promptly and, except in emergency situations, no later than the time of their entry into force, all international agreements pertaining to or affecting trade in services to which a Party is a signatory.
4. Each Party shall respond promptly to any request by the other Party for specific information on any of its measures of general application, including any new, or any changes to existing, laws, regulations or administrative guidelines, or its

international agreements, that the requesting Party considers may pertain to or affect trade in services.

### **Article 8.12**

#### **Disclosure of Confidential Information**

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Party confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

### **Article 8.13**

#### **Monopolies and Exclusive Service Suppliers**

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under specific commitments.
2. Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining, or authorising that supplier to provide specific information concerning the relevant operations.
4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
  - (a) authorises or establishes a small number of service suppliers; and
  - (b) substantially prevents competition among those suppliers in its territory.

### **Article 8.14**

#### **Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.13 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. Each Party shall, on request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such request and shall

cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

#### **Article 8.15**

##### **Payments and Transfers**

1. Except under the circumstances envisaged in Article 28.3 (Measures to Safeguard the Balance of Payments – General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments.
2. Each Party shall permit international transfers or payments for current transactions relating to its specific commitments to be made in a freely convertible currency at the market rate of exchange prevailing at the time of transfer.
3. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund (“IMF”) under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 28.3 (Measures to Safeguard the Balance of Payments – General Provisions and Exceptions) or on request of the IMF.

#### **Article 8.16**

##### **Safeguard Measures**

1. The Parties note that Article X of GATS provides for multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The Parties shall review the issue of emergency safeguard measures related to trade in services in light of any provisions agreed under Article X of GATS with a view to their incorporation into this Chapter.
2. In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Party to address those difficulties.

#### **Article 8.17**

##### **Subsidies**

1. Notwithstanding subparagraph 3(c) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light



of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. A Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations with the other Party on such matters. On receipt of such a request, the requested Party shall enter into consultations with the requesting Party, with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has adversely affected trade in services between the Parties. During the consultations, the Party granting the subsidy may consider a request of the other Party for information relating to the subsidy.
3. Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any request made or consultations held under this Article or any other dispute arising under this Article.

### **Article 8.18 Cooperation**

The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

### **Article 8.19 Subcommittee on Trade in Services**

1. The Parties hereby establish a Subcommittee on Trade in Services (“Subcommittee”) composed of relevant government representatives of each Party.<sup>17</sup>
2. The Subcommittee shall:
  - (a) review and monitor the implementation and operation of this Chapter, Chapter 9 (Financial Services), Chapter 10 (Temporary Movement of Natural Persons), Chapter 11 (Telecommunications), and Chapter 12 (Digital Trade) (“the relevant Chapters”);
  - (b) consider ways to further enhance trade between the Parties in the areas covered by the relevant Chapters;
  - (c) consider any other matters related to this Chapter identified by either Party; and

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<sup>17</sup> Representatives of the authorities responsible for financial services are specified in paragraph 2 of Article 9.17 (Institutional Arrangements – Financial Services).

- (d) facilitate the exchange of information between the Parties in relation to the relevant Chapters.
- 3. The Subcommittee may:
  - (a) make recommendations, or refer matters, to the Joint Committee; and
  - (b) refer matters to any ad hoc or standing working group or any other subsidiary body related to the relevant Chapters.
- 4. The Subcommittee shall meet one year after the date of entry into force of this Agreement, and thereafter as agreed by both Parties.
- 5. The Subcommittee shall report to the Joint Committee as required.