

CHAPTER THIRTEEN

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 13.01: Definitions

For purposes of this Chapter:

business person means a national of a Party engaged in trading goods, providing services or conducting investment activities;

executive means a business person within an organization who:

- (a) primarily directs the management of the organization or a major component or function of the organization;
- (b) establishes the goals and policies of the organization, or of a component or function of the organization; and
- (c) exercises wide latitude in decision-making and receives only general supervision or direction from higher-level executives, the board of directors or stockholders of the business organization;

management trainee on professional development means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

manager means a business person within an organization who:

- (a) primarily directs the organization or a department or sub-division of the organization;
- (b) supervises and controls the work of other supervisory, professional or managerial employees;

- (c) has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization); and
- (d) exercises discretionary authority over day-to-day operations;

persons engaged in a specialty occupation means nationals of a Party engaged in a specialty occupation requiring:

- (a) the theoretical and practical application of a body of specialized knowledge and any appropriate certification/license to practice; and
- (b) a post-secondary degree in a specialty requiring four or more years of study as a minimum for entry into the occupation; those minimum requirements for entry are defined:
 - (i) for Canada, in the National Occupation Classification, and
 - (ii) for Panama, in the domestic law regulating each profession;

specialist means an employee possessing specialized knowledge of the company's products or services and their application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures;

specialty occupation means, for Canada, an occupation that falls within the National Occupation Classification levels O or A; and

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

Article 13.02: General Principles

Further to Article 13.03 (General Obligations), this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry in accordance with Annex 13.03, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article 13.03: General Obligations

Each Party shall apply its respective measures relating to the provisions of this Chapter in accordance with Article 13.02, including expeditiously applying those measures so as to avoid unduly impairing or delaying trade in goods or services or investment activities under this Agreement.

Article 13.04: Grant of Temporary Entry

1. A Party shall grant temporary entry to a business person who complies with existing immigration measures applicable to temporary entry under this Chapter, including Annex 13.04.
2. A Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might adversely affect:
 - (a) the settlement of any existing labour dispute at the place or intended place of employment; or
 - (b) the employment of any person who is involved in that dispute.
3. Each Party shall limit its respective fees for processing applications for temporary entry of a business person to the approximate cost of services rendered.

Article 13.05: Provision of Information

1. Further to Article 20.03 (Transparency - Notification and Provision of Information), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall make available, through electronic or other means, information on its measures relating to this Chapter.
2. Each Party shall, subject to its domestic law regarding protection of private information:
 - (a) collect and maintain statistical data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued a work permit or authorization; and
 - (b) on request of the other Party, make available the information referred to in subparagraph (a).

Article 13.06: Contact Points

1. The Parties establish the following Contact Points:

- (a) in the case of Canada:

Director
Temporary Resident Policy and Program Development Division
Immigration Branch
Citizenship and Immigration Canada

- (b) in the case of Panama:

Director
National Immigration Service

Director
National Directorate of Employment, Ministry of Labour and Labour
Development

or the occupants of any successor position notified to the other Party through the Coordinators.

2. The Contact Points shall meet as necessary to exchange information as described in Article 13.05 and to consider matters pertaining to this Chapter, such as:

- (a) the implementation and administration of this Chapter;
- (b) the development and adoption of common criteria, definitions and interpretations for the implementation of this Chapter;
- (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; and
- (d) proposed modifications to this Chapter.

3. The Contact Points shall meet within three years of the entry into force of this Agreement to consider further liberalization to enhance the temporary entry of business persons.

Article 13.07: Dispute Settlement

1. A Party may not initiate proceedings under Chapter Twenty-Two (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person who has been refused temporary entry has exhausted the applicable administrative remedies, which do not include judicial remedies.

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

Article 13.08: Relation to Other Chapters

This Agreement does not impose an obligation on a Party regarding its immigration measures, except as specifically provided in this Chapter or Chapter 20 (Transparency).

Annex 13.04

Temporary Entry for Business Persons

Section A – Business Visitors

1. A Party shall grant temporary entry to a business person to engage in a business activity set out in Appendix 13.04-A:
 - (a) without requiring that person to obtain a work permit or authorization, provided that the business person complies with existing immigration measures applicable to temporary entry; and
 - (b) on presentation of:
 - (i) proof of citizenship or permanent resident status of a Party,
 - (ii) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix 13.04-A and describing the purpose of entry, and
 - (iii) evidence establishing the international scope of the proposed business activity and demonstrating that the business person is not seeking to enter the local labour market.

2. The Parties shall require a business person to satisfy the requirements of paragraph 1(b)(iii) by demonstrating that:
 - (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
 - (b) the business person's principal place of business and the predominant place of accrual of profits remain outside that territory.

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

4. The Parties may not:

- (a) require prior approval procedures, labour certification tests or other procedures of similar effect as a condition for temporary entry under paragraph 1 or 2; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 2.

5. Notwithstanding paragraph 3, a Party may require business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section B – Traders and Investors

1. A Party shall grant temporary entry and provide a work permit or work authorization to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought, or

- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

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

2. A Party may not:

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

3. Notwithstanding paragraph 2, a Party may require business persons' seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

4. Paragraph 2 does not apply to:

- (a) Panama's proportionality requirement as set out in *Labour Code of 1971* and their following modifications, in effect upon the entry into force of this Agreement; or
- (b) labour market opinions applied by Canada in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and the *Immigration and Refugee Protection Regulations*, SOR/2002-227, in effect upon the entry into force of this Agreement.

5. Panama shall accord to business persons of Canada treatment no less favourable than that it accords, with respect to the proportionality requirement referred to in paragraph 4(a), to business persons of a non-Party.

6. If Panama ceases to apply the proportionality requirement referred to in paragraph 4(a) to business persons of Canada, Canada shall not require the labour market opinions referred to in paragraph 4(b) for business persons of Panama.

Section C – Intra-Company Transferees

1. A Party shall grant temporary entry and provide a work permit or work authorization to a business person employed by an enterprise seeking to render services to that enterprise or its subsidiary or affiliate, as an executive or manager, a specialist, or a management trainee on professional development, provided that the business person complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. A Party may not:

(a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or

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

3. Notwithstanding paragraph 2, a Party may require business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

4. Paragraph 2 does not apply to:
 - (a) Panama's proportionality requirement as set out in *Labour Code of 1971* and their following modifications in effect upon the entry into force of this Agreement; or
 - (b) labour market opinions applied by Canada in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 and the *Immigration and Refugee Protection Regulations*, SOR/2002-227, in effect upon the entry into force of this Agreement.
5. Panama shall accord to business persons of Canada treatment no less favourable than that it accords, with respect to the proportionality requirement referred to in paragraph 4(a), to business persons of a non-Party.
6. If Panama ceases to apply the proportionality requirement referred to in paragraph 4(a) to business persons of Canada, Canada shall not require the labour market opinions referred to in paragraph 4(b) for business persons of Panama.

Section D – Persons Engaged in Specialty Occupations

1. A Party shall grant temporary entry and provide a work permit or work authorization to a business person seeking to engage in a specialty occupation in Appendix 13.04-D:
 - (a) if the business person complies with existing immigration measures applicable to temporary entry; and

- (b) on presentation of:
 - (i) proof of nationality, citizenship or permanent residency status of a Party, and
 - (ii) documentation demonstrating that the business person is seeking to enter the other Party to engage, as part of a services contract granted by a juridical person or a services consumer in the other Party, in the field for which the business person has the appropriate qualifications.

2. A Party may not:

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

3. Notwithstanding paragraph 2, a Party may require business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section E – Spouses

1. A Party shall grant temporary entry and provide a work permit or work authorization to the spouse of a business person who qualifies for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees), or Section D (Persons Engaged in Specialty Occupations), if the spouse complies with existing immigration measures applicable to temporary entry.

2. A Party may not:

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

3. Notwithstanding paragraph 2, a Party may require spouses of business persons seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose nationals would be affected with a view to avoiding the imposition of the requirement.

4. Paragraph 2 does not apply to:

- (a) Panama's proportionality requirement as set out in Labour Code of 1971 and their following modifications in effect upon the entry into force of this Agreement; or
- (b) labour market opinions applied by Canada in accordance with the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 and the *Immigration and Refugee Protection Regulations*, SOR/2002-227, in effect upon the entry into force of this Agreement.

5. Panama shall accord to spouses of business persons of Canada treatment no less favourable than that it accords, with respect to the proportionality requirement referred to in paragraph 4(a), to spouses of business persons of a non-Party.

6. If Panama ceases to apply the proportionality requirement referred to in paragraph 4(a) to spouses of business persons of Canada, Canada shall not require the labour market opinions referred to in paragraph 4(b) for spouses of business persons of Panama.

Appendix 13.04-A

Business Visitors

Research and Design

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

Cultivation, Manufacture and Production

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

Marketing

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

Trade fair and promotional personnel attending a trade convention.

Sales

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

Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

After-Sales or After-Lease Service

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

Management and Supervisory

Personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial Services

Insurers, bankers or investment brokers engaging in commercial transactions for an enterprise located in the territory of the other Party where the provision of such financial services does not require the authorization of the competent authority of the Party.

Public Relations and Advertising

Personnel consulting with business associates, or attending or participating in conventions.

Tourism

Tour and travel agents, tour guides or tour operators attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Translation/Interpretation

Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party, except for services performed by government-authorized translators.

Appendix 13.04-D

Persons Engaged in Specialty Occupations

The specialty occupations listed below are covered under this Chapter:

General

- Accommodation Service Manager
- Actuary
- Forestry Professional
- Geomatics Professional
- Graphic Designer and Illustrator
- Industrial Designer
- Land Surveyor
- Logistics Professional/Logistics Expert
- Management Consultant
- Mathematician
- Primary Production Manager (except Agriculture and related professions), includes a manager who plans, organizes, directs, controls and evaluates the operations of establishments in the following primary industries: forestry and logging, mining and quarrying, oil and gas drilling, production and servicing operations, and commercial fishing.
- Statistician
- Aeronautical Engineer
- Electronics Engineer
- Software Engineer and Designer
- Systems Engineer

Computer and Information Systems

- Database Analyst and Data Administrator
- Information and Communication Technology Professional
- Information Systems Analyst
- Software Developer
- Web Designer and Developer
- Computer Programmer
- Interactive Media Developer

Science

- Archeologist
- Anthropologist
- Astronomer
- Biologist (including Ecologist, Animal Geneticist, Food Scientist)
- Geochemist
- Geologist
- Geophysicist
- Meteorologist
- Paleontologist
- Physicist