

CHAPTER 10 MOVEMENT OF NATURAL PERSONS

ARTICLE 10.1: SCOPE

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party under any of the categories referred to in Annex 10-A.
2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, or residence or employment on a permanent basis.
3. Nothing contained in this Agreement shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.¹

ARTICLE 10.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **immigration measure** means any measure² affecting the entry and stay of foreign nationals in a Party;
- (b) **immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person of a Party temporary entry to the other Party;
- (c) **natural person of a Party** means a natural person who under the law of the Party,
 - (i) for Australia, is an Australian citizen or a permanent resident of Australia; and
 - (ii) for China, is a natural person who under Chinese law is a national of China;

¹ The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to that other Party under this Chapter.

² "Measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.

- (d) **temporary employment entry** means entry by a natural person of a Party, including a skilled worker, into the territory of the other Party in order to temporarily work under an employment contract concluded pursuant to the law of the receiving Party, without the intent to establish permanent residence; and
- (e) **temporary entry** means entry by a natural person covered by this Chapter, including, where relevant, temporary employment entry, without the intent to establish permanent residence.

ARTICLE 10.3: EXPEDITIOUS APPLICATION PROCEDURES

1. Each Party shall expeditiously process complete applications for immigration formalities received from natural persons of the other Party covered by this Chapter, including further immigration formality requests or extensions thereof.

2. Each Party shall, on request and within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting temporary entry is lodged, notify the applicant, either directly or through their authorised representative, of:

- (a) receipt of the application;
- (b) the status of the application; and
- (c) where a decision has been made, the decision concerning the application, including:
 - (i) if approved, the period of stay and other conditions; or
 - (ii) if refused, the reasons for refusal.

3. The Parties affirm their voluntary commitments established in the *APEC Business Travel Card Operating Framework*.

4. Each Party shall ensure that fees charged by its competent authorities in respect of the processing of an immigration formality are reasonable and do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

5. Each Party shall endeavour, to the extent possible, to provide facilities for online lodgement and processing of immigration formalities.

ARTICLE 10.4: GRANT OF TEMPORARY ENTRY

1. Each Party shall set out in Annex 10-A the specific commitments it undertakes for each of the categories of natural persons specified therein. The Parties may make commitments in respect of the temporary employment entry of natural persons.
2. Where a Party makes a commitment under paragraph 1, it shall grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent provided for in that commitment, provided that those natural persons:
 - (a) follow the prescribed application procedures for the relevant immigration formality; and
 - (b) meet all relevant eligibility requirements for such temporary entry.
3. In respect of the specific commitments on temporary entry in this Chapter, unless otherwise specified in Annex 10-A, neither Party shall:
 - (a) impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party; or
 - (b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.
4. Each Party shall limit any fees for processing applications for temporary entry of natural persons in a manner consistent with Article 10.3.
5. Temporary entry granted in accordance with this Chapter does not replace the requirements needed to carry out a profession or activity according to the applicable laws and regulations in force in the territory of the Party authorising the temporary entry.

ARTICLE 10.5: TRANSPARENCY

Further to the commitments in Chapter 13 (Transparency), each Party shall:

- (a) provide to the other Party such materials as will enable it to become acquainted with that Party's measures relating to this Chapter;
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish on the internet where possible or, if not, otherwise make publicly available in a consolidated manner, explanatory material, relevant forms and documents, and average processing times regarding temporary entry under this Chapter in such a manner as will enable natural persons of the other Party to become acquainted with them;

- (c) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter; and
- (d) upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly published or otherwise made available pursuant to subparagraph (b).

ARTICLE 10.6: COMMITTEE ON MOVEMENT OF NATURAL PERSONS

1. The Parties hereby establish a Committee on Movement of Natural Persons that shall meet within two years of entry into force of this Agreement, or as agreed by the Parties or on the request of the FTA Joint Commission, to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

- (a) reviewing the implementation and operation of this Chapter; and
- (b) identification and recommendation of measures to promote increased movement of natural persons between the Parties; and to improve the commitments undertaken by the Parties under this Chapter, on a mutually advantageous basis.

ARTICLE 10.7: DISPUTE SETTLEMENT

1. The Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this Chapter.

2. The dispute settlement procedures in Chapter 15 (Dispute Settlement) shall not apply to this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the natural persons of a Party concerned have exhausted administrative remedies, where available, regarding the particular matter.

3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued within one year after the date of the institution of proceedings (not including any review or appeal) for such remedy, and the failure to issue such a determination is not attributable to delays caused by the natural persons concerned.

ARTICLE 10.8: RELATION TO OTHER CHAPTERS

1. Except for this Chapter, Chapters 1 (Initial Provisions and Definitions), 13 (Transparency), 14 (Institutional Provisions), 15 (Dispute Settlement), 16 (General Provisions and Exceptions), and 17 (Final Provisions), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures within the scope of this Chapter.
2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

ANNEX 10-A
SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS

Section A: Australia's Specific Commitments

1. Australia requires a natural person of China seeking temporary entry to its territory under the provisions of Chapter 10 (Movement of Natural Persons) and this Annex to obtain appropriate immigration formalities prior to entry. Grant of temporary entry in accordance with this Annex is contingent on meeting eligibility requirements contained within Australia's migration law and regulations, as applicable at the time of an application for grant of temporary entry. Eligibility requirements for grant of temporary entry in accordance with paragraphs 5 through 11 of this Annex include, but are not limited to, employer nomination and occupation requirements.

BUSINESS VISITORS OF CHINA

2. Entry and temporary stay shall be granted to business visitors of China referred to in paragraph 4(a) for a period of up to 90 days.

3. Entry and temporary stay shall be granted to business visitors of China referred to in paragraph 4(b) for a period of up to six months, with the possibility of further stay for up to one year.

4. A business visitor of China means a natural person of China who is:

- (a) seeking to travel to Australia for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who must not engage in making direct sales to the general public or in supplying goods or services themselves; or
- (b) a service seller, who is a natural person not based in Australia whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who is a sales representative of a service supplying enterprise, seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplying enterprise.

INTRA-CORPORATE TRANSFEREES OF CHINA

5. Entry and temporary stay shall be granted to intra-corporate transferees of China referred to in paragraph 6(a), (b) and (c) for a period of up to four years, with the possibility of further stay.

6. An intra-corporate transferee of China means an employee of an enterprise of China established in Australia through a branch, subsidiary or affiliate which is lawfully and actively operating in Australia, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Australia, and who is:

- (a) an executive or a senior manager, who is a natural person responsible for the entire or a substantial part of the operations of the enterprise in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or
- (b) a specialist, who is a natural person with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's standards, for that occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for temporary entry.
- (c) a manager, who is a natural person within an enterprise who primarily directs the enterprise or a department or subdivision of the enterprise, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor unless the employees supervised are professionals.

INDEPENDENT EXECUTIVES OF CHINA

7. Entry and temporary stay shall be granted to independent executives of China for a period of up to four years.

8. An independent executive of China means an executive of an enterprise headquartered in China who is establishing a branch or subsidiary of that enterprise in Australia, and who is a natural person that will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision

or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.

CONTRACTUAL SERVICE SUPPLIERS OF CHINA

9. Entry and temporary stay shall be granted to contractual service suppliers of China for a period of up to four years, with the possibility of further stay.

10. A contractual service supplier of China means a natural person of China who has trade, technical or professional skills and experience and who is assessed as having the necessary qualifications, skills and work experience accepted as meeting Australia's standards for their nominated occupation and is:

- (a) an employee of an enterprise of China that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or
- (b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.

11. Entry and temporary stay shall be granted for a period of up to four years, with the possibility of further stay, for up to a combined total of 1,800 per year, of Chinese chefs, Wushu martial arts coaches, Mandarin language tutors and Traditional Chinese Medicine practitioners, entering as contractual service suppliers of China.

INSTALLERS AND SERVICERS OF CHINA

12. Entry and temporary stay shall be granted to installers and servicers of China for a period of up to three months.

13. A natural person of China is an installer or servicer of machinery and/or equipment where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer must abide by Australian workplace standards and conditions and cannot perform services which are not related to the installation or servicing activity which is the subject of the contract.

ACCOMPANYING SPOUSES AND DEPENDANTS

14. For a natural person of China who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months and who has a

spouse or dependant, Australia shall, upon application, grant the accompanying spouse or dependant the right of entry and temporary stay, movement and work for an equal period to that of the natural person.

Section B: China's Specific Commitments

(See China's Schedule of Specific Commitments in Annex III.)