

CHAPTER 7
TRADE IN SERVICES

Section A: Scope and Definition

ARTICLE 7.1: SCOPE

1. This Chapter applies to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights and air traffic control and air navigation services, other than measures affecting:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (“CRS”) services; and

(iv) ground handling services.

The Parties note the multilateral negotiations pursuant to the review of the Annex on Air Transport Services of the GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

(b) government procurement;

(c) cabotage in maritime transport services;

(d) services provided in the exercise of governmental authority in the territory of a Party;

(e) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, except to the extent provided in Article 7.17 (Subsidies); or

(f) 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, residence or employment on a permanent basis.

3. With regard to delivery of services through movement of natural persons mode, this Chapter shall be read in conjunction with the Chapter 7-Annex-B (Movement of Natural Persons).

4. New services shall be considered for possible incorporation into this Chapter on a mutually agreed basis at future reviews held in accordance with Article 7.23 (Review) or at the request of either Party. The supply of services which is not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation on a mutually agreed basis at future reviews or at the request of either Party.

ARTICLE 7.2: DEFINITIONS

For the purposes of this Chapter:

aircraft repair and maintenance services mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called “line maintenance”;

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;

direct taxes comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

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

juridical person of a Party means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and

whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;

juridical person of the other Party means a juridical person which is either:

(a) constituted or otherwise organized under the law of that other Party, and is engaged in substantive business operations in the territory of that other 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 as identified under subparagraph (a);

a **juridical person** is:

(a) **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise legally direct its actions;

(b) **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;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, measures by Parties taken by:

(a) central, regional, or local governments and authorities; and

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

measures by the Parties affecting trade in services include measures in respect of:

(a) the purchase, payment, or use of a service;

(b) the access to and use of, in connection with the supply of a service, services which are required by the Parties 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 authorized or established formally or in effect by that Party as the sole supplier of that service;

natural person of the other Party means a natural person who resides in the territory of the other Party or elsewhere,

(a) for China, is a natural person who under the Chinese law is a national of China; and

(b) for Mauritius, is a natural person who under Mauritian law is a national of Mauritius;

person of a Party means either a natural person or a juridical person of a Party;

qualification procedures mean administrative procedures relating to the administration of qualification requirements;

qualification requirements mean substantive requirements which a service supplier is required to fulfill in order to obtain certification or a licence;

sector of a service means, with reference to a specific commitment, one or more or all subsectors of that service, as specified in a Party's Schedule, or otherwise the whole of that service sector, including all of its subsectors;

selling and marketing of air transport services mean 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, but do not include the pricing of air transport services nor the applicable conditions;

services include any service in any sector except services supplied in the exercise of governmental authority;

service consumer means any person that receives or uses a service;

a 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 any person of a Party that supplies a service;¹

¹ 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 commercial presence be accorded the treatment

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

trade in services mean the supply of a service:

(a) from the territory of a Party into the territory of the other Party (“cross-border supply mode”);

(b) in the territory of a Party to the service consumer of the other Party (“consumption abroad mode”);

(c) by a service supplier of a Party, through commercial presence in the territory of the other Party (“commercial presence mode”); and

(d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party (“presence of natural persons mode” or “movement of natural persons mode”);

traffic rights mean the right for scheduled and non-scheduled services to operate and/or to 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.

Section B: General Obligations and Disciplines

ARTICLE 7.3: SCHEDULING OF SPECIFIC COMMITMENTS

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 7.4 (National Treatment), 7.5 (Market Access) and 7.7 (Additional Commitments). With respect to sectors where such commitments are undertaken, its Schedule 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

provided for service suppliers in accordance with this Chapter. Such treatment shall be extended to the commercial 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.

- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.
2. Measures inconsistent with both Articles 7.4 (National Treatment) and 7.5 (Market Access) shall be inscribed in the column relating to Article 7.5 (Market Access). In this case the inscription will be considered to provide a condition or qualification to Article 7.4 (National Treatment) as well.
 3. Schedules of Specific Commitments shall be annexed to this Agreement as Annex III (Schedule of Specific Commitments on Trade in Services) and shall form an integral part thereof.

ARTICLE 7.4: NATIONAL TREATMENT

1. In the sectors inscribed in its Annex III (Schedule of Specific Commitments on Trade in Services), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.²
2. A Party may meet the requirement in 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 by a Party shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of that Party compared to the like service or service suppliers of the other Party.

ARTICLE 7.5: MARKET ACCESS

1. With respect to market access through the modes of supply identified in Article 7.2 (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 Annex III (Schedule of Specific Commitments on Trade in Services).³

² Specific commitments assumed under this Article shall not be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

³ 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 of trade in services contained in

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 Annex III (Schedule of Specific Commitments on Trade in Services), 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;⁴

(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.

ARTICLE 7.6: MOST-FAVoured-NATION TREATMENT

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex III (Schedules of Specific Commitments on Trade in Services), each Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of the other Party treatment

Article 7.2, 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 of trade in services contained in Article 7.2, it is thereby committed to allow related transfers of capital into its territory.

⁴ Sub-paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

no less favourable than the treatment it accords to like services and service suppliers of any non-Party.⁵

2. Treatment granted under other existing or future agreements concluded by a Party and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.

3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it will, upon request from the other Party, accord due consideration to extend to the other Party treatment no less favourable than that provided under that agreement. The former Party shall, upon request from the other Party, afford adequate opportunity to the other Party to negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement.

4. The provisions of this Chapter shall not be so 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 7.7: ADDITIONAL COMMITMENTS

A Party may also negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 7.4 (National Treatment) and 7.5 (Market Access), including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in Annex III (Schedule of Specific Commitments on Trade in Services) .

Section C: Other Provisions

ARTICLE 7.8: DOMESTIC REGULATION

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, on request

⁵ For the purposes of this Article, the term “non-Party” shall not include the following WTO members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

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.

(b) The provisions of subparagraph (a) 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.

3. Where authorisation is required for the supply of a service on which a specific commitment under this Agreement has been made, the competent authorities of a Party shall:

(a) in the case of an incomplete application, at the request of the applicant, promptly identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

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

(c) at the request of the applicant, without undue delay, provide information concerning the status of the application; and

(d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to paragraph 4 of Article VI of the GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

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

(b) not more burdensome than necessary to ensure the quality of the service; and

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

5.

(a) Pending the incorporation of the disciplines referred to in paragraph 4, for sectors where a Party has undertaken specific commitments and subject to terms, limitations, conditions, or qualifications set out therein, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

(b) In determining whether a Party is in conformity with the obligation under subparagraph 5(a), account shall be taken of international standards of relevant international organisations⁶ applied by that Party.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party in accordance with provisions of paragraph 5.

7. A Party shall, in accordance with its laws and regulations, permit services suppliers of the other Party to use enterprise names under which they trade in the territory of the other Party.

ARTICLE 7.9: RECOGNITION

1. For the purposes of the fulfillment, 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, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or maybe accorded autonomously.

⁶ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

2. Where 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 7.6 (Most-Favoured-Nation Treatment) shall be construed to automatically require the Party to accord such 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 a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or in the future, shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party should also be recognised.

4. After the entry into force of this Agreement, the Parties shall ensure that their relevant professional bodies negotiate and conclude, as soon as the date of entry into force of this Agreement, any such agreement or arrangement providing mutual recognition of the education or experience obtained, qualification requirements and procedures and licensing requirements and procedures.

5. 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.

6. In respect of regulated service sectors, other than those mentioned in paragraph 4, upon a request being made in writing by a Party to the other Party in such sectors, the Parties shall encourage that their respective professional bodies negotiate, in that service sector, agreements for mutual recognition of education, or experience obtained, qualifications requirements and procedures, and licensing requirements and procedures in that service sector, with a view to the achievement of early outcome.

ARTICLE 7.10: QUALIFICATIONS RECOGNITION COOPERATION

1. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of vocational qualifications to strengthen cooperation and to explore possibilities for mutual recognition of respective vocational qualifications.

2. The Parties may discuss, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to vocational services.

ARTICLE 7.11: PAYMENTS AND TRANSFERS

1. Except in the circumstances envisaged in Article 7.18 (Restrictions to Safeguard the Balance of Payment), a Party shall not apply any restriction on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose any restriction on any capital transaction inconsistently with its specific commitments regarding such transaction, except under Article 7.18 (Restrictions to Safeguard the Balance of Payment), or at the request of the Fund.

ARTICLE 7.12: TRANSPARENCY

1. Each Party shall ensure that:

(a) regulatory decisions, including the basis for such decisions, are promptly published or otherwise made available to all interested persons; and

(b) its measures relating to public networks or services are made publicly available, including the requirements, if any, for permits.

2. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public networks or services are made publicly available, including:

(a) the circumstances in which a licence is required;

(b) all applicable licencing procedures;

(c) the period of time normally required to reach a decision concerning a licence application;

(d) the cost of, or fees for applying for, or obtaining, a licence; and

(e) the period of validity of a licence.

3. Each Party shall, in accordance with its laws and regulations, ensure that, on request, an applicant receives reasons for the denial of, revocation of, refusal to renew, or the imposition or modification of conditions on, a licence.

4. The provisions of this Chapter shall not require any Party to disclose confidential information that would impede law enforcement or otherwise be contrary to public interest or which would prejudice the legitimate commercial interest of particular enterprises, public or private.

ARTICLE 7.13: CONTACT POINTS

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendment to the details of their contact points.

ARTICLE 7.14: 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 in its Schedule in Annex III (Schedule of Specific Commitments on Trade in Services).

2. Where a Party's monopoly supplier 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 specific commitments in its Schedule in Annex III (Schedule of Specific Commitments on Trade in Services), the 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 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, that Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments in its Schedule in Annex III, (Schedule of Specific Commitments on Trade in Services), it shall notify the other Party no later than three months before the intended implementation of the grant of monopoly rights, and paragraphs 1(b) and 2 of Article 7.22 (Modification of Schedules) shall apply.

5. The provisions of 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 such suppliers in its territory.

ARTICLE 7.15: BUSINESS PRACTICES

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 7.11 (Payments and Transfers), may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party (“requesting Party”), enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed (“requested Party”) shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party shall also provide other information available to the requesting Party, in accordance with its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 7.16: SAFEGUARD MEASURES

The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Chapter so as to incorporate the results of such multilateral negotiations.

ARTICLE 7.17: SUBSIDIES

1. The Parties note the multilateral negotiations pursuant to Article XV of the GATS on the question of subsidies. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Chapter so as to incorporate the results of such multilateral negotiations.

2. Where a Party considers that it is adversely affected by a subsidy of the other Party, it may request consultations with that Party. Such requests shall be accorded sympathetic consideration.

ARTICLE 7.18: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services in respect of which it has undertaken specific commitments, including on payments or transfers for transactions relating to such commitments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.
2. The restrictions referred to in paragraph 1 shall:
 - (a) be consistent with *the Articles of Agreement of the International Monetary Fund*;
 - (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
 - (e) be applied in such a manner that the other Party is treated no less favourably than any country that is not a Party to this Agreement.
3. In determining the incidence of such restrictions, the Parties may give priority to the supply of services which are more essential to their economic development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restriction adopted or maintained under paragraph 1, or any change therein, shall be promptly notified to the other Party.

ARTICLE 7. 19: DISCLOSURE OF CONFIDENTIAL INFORMATION

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

ARTICLE 7. 20: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;⁷
- (b) necessary to protect human, animal, or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety; or
- (d) inconsistent with Article 7.4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

ARTICLE 7. 21 SECURITY EXCEPTIONS

1. Nothing in this Chapter shall be construed:
- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;

⁷ The public exception may be invoked only by where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(iii) taken in time of war or other emergency in international relations;
or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. Each Party shall inform the other Party to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

ARTICLE 7.22: MODIFICATION OF SCHEDULES

1. A Party (referred to in this Article as the “modifying Party”) may modify or withdraw any commitment in its Schedule at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article, provided that:

(a) it notifies the other Party (referred to in this Article as the “affected Party”) of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and

(b) At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is not less favourable to trade than provided for in its Schedule in Annex III (Schedule of Specific Commitments on Trade in Services) prior to such negotiations.

3. The Parties shall endeavour to conclude negotiations on such compensatory adjustment to the satisfaction of both Parties within a mutually agreed timeframe, failing which the matter may be resolved in accordance with the provisions of Chapter 15 (Dispute Settlement) of this Agreement.

4. The modifying Party may not modify or withdraw its commitment until it has made the compensatory adjustments in conformity with the findings of the arbitral tribunal in accordance with paragraph 3 of this Article.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitral tribunal, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the arbitral tribunal.

ARTICLE 7.23: REVIEW

1. The Parties shall consult within two years of the date of entry into force of this Agreement and every two years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.
2. Upon request by a Party, and with the consent of the other Party, they may proceed to review this Chapter and specifically its Schedule in Annex III (Schedule of Specific Commitments on Trade in Services), with the view to facilitating the reduction and elimination of adverse effects on trade in services.
3. Where a Party unilaterally liberalises a measure affecting market access of a service supplier or suppliers of the other Party, the other Party may request consultations to discuss the measure. Following such consultations, if the Parties agree to incorporate the liberalised measure into the Agreement as a new commitment, the relevant Schedule in Annex III (Schedule of Specific Commitments on Trade in Services) shall be amended.
4. The supply of any service which are not technically or technologically feasible when this Agreement comes into force shall, when it becomes feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

ARTICLE 7.24: DENIAL OF BENEFITS

1. Subject to prior notification and consultation, 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:
 - (a) owned or controlled by persons of a non-Party or of the denying Party;
and
 - (b) who does not meet the requirement of “juridical person of a Party” provided in Article 7.2 of this Chapter.

CHAPTER 7-ANNEX-A FINANCIAL SERVICES

ARTICLE 1: SCOPE

1. This Annex provides for measures additional to Chapter 7 (Trade in Services) in relation to financial services.
2. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a financial service:
 - (a) from the territory of a Party into the territory of the other Party;
 - (b) in the territory of a Party to the service consumer of the other Party;
 - (c) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
 - (d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party.

ARTICLE 2: DEFINITIONS

1. For the purposes of this Annex, “services supplied in the exercise of governmental authority” as referred to in Chapter 7 (Trade in Services) of this Agreement means the following:
 - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; or
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government, except where a Party allows the activities referred to in paragraph 1(b) or paragraph 1(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.
2. The definition of “service supplied in the exercise of governmental authority” in Article 7.2 (Definitions) of Chapter 7 (Trade in Services) shall not apply to services covered by this Annex.

3. For the purposes of this Annex:

(a) **financial service** is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(i) direct insurance (including co-insurance):

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency;

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities; and

(F) other negotiable instruments and financial assets, including bullion;

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in paragraphs 3(a)(v) through 3(a)(xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) **financial service supplier** means any natural or juridical person of a Party wishing to supply or supplying financial services but does not include a public entity; and

(c) **public entity** means:

(i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity performing functions normally performed by a central bank or monetary authority, when exercising those functions.

ARTICLE 3: DOMESTIC REGULATION

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, including for:

(a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or

(b) ensuring the integrity and stability of that Party's financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding that Party's commitments or obligations under this Chapter.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 4: RECOGNITION

1. A Party may recognise prudential measures of the other Party, or a non-Party, in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the other Party, or a non-Party concerned, or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

ARTICLE 5: REGULATORY TRANSPARENCY

1. The Parties recognise that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market.
2. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available.
3. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations⁸ of the Party are promptly published or otherwise made publicly available.
4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons⁹ of the other Party regarding measures of general application to which this Annex applies.
5. Each Party's regulatory authorities shall make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.
6. Each Party's regulatory authorities shall make administrative decisions on a completed application of a financial service supplier of the other Party seeking to supply a financial service in that Party's territory within 180 days and shall notify the applicant of the decision where possible in writing, without undue delay:
 - (a) an application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information has been received; and
 - (b) where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

⁸ In the case of China, "self-regulatory organisation" means an organisation recognised as a self-regulatory body by the central government according to China's laws and regulations; and in the case of Mauritius, "self-regulatory organisation" means a self-regulatory organisation whose object is to regulate the operations of its members or of the users of its services, their standards of practice and business conduct in order to better protect investors and consumers of securities or related services and includes such other organisation as may be declared or recognised as a self-regulatory organisation by the Financial Services Commission.

⁹ "Interested persons" in this Article should only be persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

7. On the written request of an unsuccessful applicant, a regulatory authority that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application in writing.

ARTICLE 6: DISPUTE SETTLEMENT

Arbitrators on an arbitral tribunal established in accordance with Chapter 15 (Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

ARTICLE 7: CONSULTATIONS

A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request.

CHAPTER 7-ANNEX-B MOVEMENT OF NATURAL PERSONS

ARTICLE 1: SCOPE

1. This Annex shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party under categories as referred to in Annex III (Schedules of Specific Commitments on Trade in Services).
2. This Annex 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, 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 that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Annex.¹⁰

ARTICLE 2: DEFINITIONS

1. For the purposes of this Annex:
 - (a) **natural person of a Party** means a natural person of a Party as defined in Chapter 7 (Trade in Services).
 - (b) **temporary entry** means entry by a natural person covered by Annex III (Schedules of Specific Commitments on Trade in Services) without the intent to establish permanent residence and for the purpose of engaging in activities, which are clearly related to their respective business purposes.
 - (c) **immigration measure** means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, affecting the entry and stay of foreign nationals in the territory of a Party.

ARTICLE 3: OBJECTIVES

¹⁰ 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 Annex.

This Annex reflects the preferential trading relationship between the Parties, their mutual desire to facilitate temporary entry for a natural person in accordance with Annex III (Schedules of Specific Commitments on Trade in Services), while recognizing the need to ensure border security and to protect domestic labour force and permanent employment in their respective territories.

ARTICLE 4: GENERAL PRINCIPLES FOR GRANT OF TEMPORARY ENTRY

1. Each Party shall set out in Annex III (Schedules of Specific Commitments on Trade in Services) the specific commitments it undertakes for each of the categories of natural persons specified therein.
2. Where a Party makes a commitment under paragraph 1, that Party shall grant temporary entry of natural persons of the other Party, as provided for in the commitment, given that such natural persons are otherwise qualified under all applicable immigration measures.
3. Temporary entry granted in accordance with this Annex does not replace the requirements needed to carry out a profession or activity in accordance with the applicable laws and regulations in force in the territory of the Party authorizing the temporary entry.

ARTICLE 5: TRANSPARENCY

Each Party shall, upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly published and made available in such a manner as will enable natural persons of the other Party to become acquainted with them.

ARTICLE 6: RELATION WITH OTHER CHAPTERS OF THE AGREEMENT

1. Except for this Annex, Chapters 1 (Initial Provisions and Definitions), 13 (Transparency), 14 (Administrative and Institutional Provisions), 15 (Dispute Settlement), 16 (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 Annex.
2. Nothing in this Annex shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

CHAPTER 7-ANNEX-C TCM COOPERATION

China and Mauritius are committed to strengthening cooperation in the field of Traditional Chinese Medicine (hereinafter referred to as “TCM”) services, as well as trade in TCM and complementary medicines. The Parties shall:

- (a) exchange information and discuss policies, regulations, and actions related to TCM services in order to find opportunities for further cooperation;
- (b) establish a recognition system of TCM practitioners, including the coverage of TCM services in its national medical system in accordance with the national legislation of Mauritius;
- (c) encourage cooperation between competent authorities, relevant professional bodies, and registration authorities for TCM practitioners in both Parties, with a view to clarifying and providing advice on the recognition and accreditation of qualifications of TCM practitioners in accordance with national legislations;
- (d) encourage future collaboration between competent authorities, registration authorities, and relevant professional bodies of the Parties to facilitate trade in TCM and complementary medicines, in a manner consistent with the Parties’ relevant regulatory frameworks;
- (e) encourage and support cooperation on TCM research and development; and
- (f) encourage competent authorities of TCM in both Parties, i.e. the State Administration of Traditional Chinese Medicine of the People’s Republic of China, the Ministry of Health and Quality of Life of Mauritius, and the Traditional Medicine Board of Mauritius, to strengthen communication and cooperation, to undertake consultation in particular on the accreditation of qualifications of TCM practitioners and the registration of TCM, and to support private institutions carrying out cooperation among TCM healthcare, teaching and research and other areas so that more high-quality TCM services can be supplied in Mauritius for the benefit of its people.