

CHAPTER 5

REGULATORY FRAMEWORK

SECTION 1

DOMESTIC REGULATION

ARTICLE 146

Scope and definitions

1. This Section applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, formalities and technical standards that affect:
 - (a) cross-border trade in services;
 - (b) establishment or operation; or
 - (c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party as set out in Article 140.

As far as measures relating to technical standards are concerned, this Section only applies to measures that affect trade in services. For the purposes of this Section, the term "technical standards" does not include regulatory or implementing technical standards for financial services.

2. This Section does not apply to licensing requirements and procedures, qualification requirements and procedures, formalities and technical standards pursuant to a measure:

- (a) that does not conform with Article 128 or 129 and is referred to in points (a) to (c) of Article 133(1) or with Article 135, 136 or 137 and is referred to in points (a) to (c) of Article 139(1) or with points (b) and (c) of Article 141(1), or Article 142(3) or with points (b) and (c) of Article 143(1) and is referred to in Article 144; or
- (b) referred to in Article 133(2) or Article 139(2).

3. For the purposes of this Section, the following definitions apply:

- (a) "authorisation" means the permission to carry out any of the activities referred to in points (a) to (c) of paragraph 1 resulting from a procedure a natural or legal person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements, technical standards or formalities for the purposes of obtaining, maintaining or renewing that permission; and

- (b) "competent authority" means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in point (a).

ARTICLE 147

Submission of applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

ARTICLE 148

Application timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

ARTICLE 149

Electronic applications and acceptance of copies

If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) to the extent possible provide for applications to be completed by electronic means, including from within the territory of the other Party; and
- (b) accept copies of documents, that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

ARTICLE 150

Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) process applications throughout the year. Where that is not possible, this information should be made public in advance, to the extent practicable;

- (b) to the extent practicable, provide an indicative timeframe for the processing of an application. That timeframe shall be reasonable to the extent practicable;
- (c) at the request of the applicant, provide without undue delay information concerning the status of the application;
- (d) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;
- (e) if they consider an application complete for the purposes of processing under the Party's domestic laws and regulations,¹ within a reasonable period of time after the submission of the application ensure that:
 - (i) the processing of the application is completed; and
 - (ii) the applicant is informed of the decision concerning the application, to the extent possible, in writing;²

¹ Balancing resource constraints against the potential burden on businesses, in cases where it is reasonable to do so, competent authorities may require that all information is submitted in a specified format to consider it "complete for the purposes of processing".

² Competent authorities may meet the requirement set out in point (ii) by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application. The reference to "in writing" should be understood as including electronic format.

- (f) if they consider an application incomplete for the purposes of processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:
- (i) inform the applicant that the application is incomplete;
 - (ii) at the request of the applicant identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and
 - (iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application;¹

however, if none of the actions referred to in points (i), (ii) and (iii) is practicable, and the application is rejected due to incompleteness, the competent authorities shall ensure that they inform the applicant within a reasonable period of time; and

- (g) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application; an applicant shall not be prevented from submitting another application solely on the basis of a previously rejected application.

¹ Such "opportunity" does not require a competent authority to provide extensions of deadlines.

2. The Parties shall ensure that their competent authorities grant an authorisation as soon as it is established, on the basis of an appropriate examination, that the applicant meets the conditions for obtaining it.

3. The Parties shall ensure that, once granted, an authorisation enters into effect without undue delay, subject to the applicable terms and conditions.¹

ARTICLE 151

Fees

1. For all economic activities other than financial services, each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable and transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity. Having regard to the cost and administrative burden, each Party is encouraged to accept payment of authorisation fees by electronic means.

2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

¹ Competent authorities are not responsible for delays due to reasons outside their competence.

3. Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

ARTICLE 152

Assessment of qualifications

If a Party requires an examination to assess the qualifications of an applicant for authorisation, it shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall accept requests in electronic format to take such examinations and shall consider the use of electronic means in other aspects of examination processes.

ARTICLE 153

Publication and information available

1. If a Party requires authorisation, the Party shall promptly publish the information necessary for persons carrying out or seeking to carry out the activities referred to in Article 146(1) for which the authorisation is required to comply with the requirements, formalities, technical standards and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, to the extent it exists:

- (a) the licensing and qualification requirements and procedures and formalities;
- (b) contact information of relevant competent authorities;
- (c) authorisation fees;
- (d) applicable technical standards;
- (e) procedures for appeal or review of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences or qualifications;
- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for the processing of an application.

For the purposes of this Section, "publish" means to include in an official publication, such as an official journal, or on an official website. Parties shall consolidate electronic publications into a single online portal or otherwise ensure that competent authorities make them easily accessible through alternative electronic means.

2. Each Party shall require each of its competent authorities to respond to any request for information or assistance, to the extent practicable.

ARTICLE 154

Technical standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations, designated to develop technical standards to do so through open and transparent processes.

ARTICLE 155

Conditions for authorisation

1. Each Party shall ensure that measures relating to authorisation are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner and may include, inter alia, competence and the ability to supply a service or any other economic activity, including to do so in compliance with a Party's regulatory requirements such as health and environmental requirements. For the avoidance of doubt, the Parties understand that in reaching decisions a competent authority may balance criteria.
2. The criteria referred to in paragraph 1 shall be:
 - (a) clear and unambiguous;
 - (b) objective and transparent;
 - (c) pre-established;
 - (d) made public in advance;
 - (e) impartial; and
 - (f) easily accessible.

3. If a Party adopts or maintains a measure relating to authorisation, it shall ensure that:
 - (a) the competent authority concerned processes applications, and reaches and administers its decisions, objectively and impartially and in a manner independent of the undue influence of any person carrying out the economic activity for which authorisation is required; and
 - (b) the procedures themselves do not prevent fulfilment of the requirements.

ARTICLE 156

Limited numbers of licences

If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality, objectivity and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 157

Review procedures for administrative decisions

A Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected investor or service supplier of the other Party, for the prompt review of, and if justified appropriate remedies for, administrative decisions that affect establishment or operation, cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of the other Party. For the purposes of this Section, "administrative decisions" means a decision or action with a legal effect that applies to a specific person, good or service in an individual case and covers the failure to take an administrative decision or take such action when that is so required by a Party's law. If such procedures are not independent of the competent authority entrusted with the administrative decision concerned, a Party shall ensure that the procedures in fact provide for an objective and impartial review.