**CHAPTER 9**

**TRADE IN SERVICES**

# Article 9.1

# Definitions

For the purposes of this Chapter:

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repair and maintenance services** mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

(b) **airport operation services** mean the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

(c) **commercial presence** means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a juridical person; or

(ii) the creation or maintenance of a branch or representative office,

within the territory of a Party for the purpose of supplying a service;

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

(e) **ground handling services** mean the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems;

(f) **juridical person** means any entity duly constituted or otherwise organised 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;

(g) **juridical person of a Party** means a juridical person which is either:

(i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of that Party; or

(B) juridical persons of that other Party identified under subparagraph (i);

(h) **a juridical person** is:

(i) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;

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

(iii) "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;

(i) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(j) **measure** **by a Party** means measures adopted or maintained by:

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

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

(k) **measures by a Party affecting trade in services** include measures in respect of

1. the purchase, payment or use of a service;
2. the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
3. the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

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

(m) **natural person** means

1. for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007*, as amended from time to time, or any successor legislation or a permanent resident of Australia;

(ii) for the UAE, a national or a permanent resident[[1]](#footnote-2) of the UAE.

(n) **person** means either a natural person or a juridical person;

(o) **relevant professional service bodies** mean accreditation, regulatory, professional or other bodies with legal authority to license, approve, admit, register or otherwise authorise individuals as meeting the required professional competency and consumer protection standards to practice a given profession in their territory.

(p) **sector of a service** means:

(i) with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule in Annex 9D (Schedules of Specific Commitments) or Annex 9E (Schedules of Non-Conforming Measures and Reservations); and

(ii) otherwise, the whole of that service sector, including all of its subsectors.

(q) **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. These activities do not include the pricing of air transport services nor the applicable conditions.

(r) **services** include any service in any sector except services supplied in the exercise of governmental authority;

(s) **service consumer** means any person that receives or uses a service;

(t) **service of the other Party** means a service which is supplied:

(i) from or in the territory of theother Party, or in the case of maritime transport, by a vessel registered under the laws of theother Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;

(u) **service supplier** means any person of a Party that seeks to supply or supplies a service;[[2]](#footnote-3)

(v) **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;

(w) **specialty air service** means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;

(x) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;

(y) **trade in services** is defined as the supply of a service:

(i) from the territory of a Party into the territory of the other Party;

(ii) in the territory of a Party to the service consumer of the other Party;

(iii) by a service supplier of a Party, through commercial presence in the territory of the other Party;

(iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party; and

(z) **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.

# Article 9.2

# Scope and Coverage

1. This Chapter applies to measures by a Partyaffecting trade in services.
2. In fulfilling its obligations and commitments under the Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.
3. This Chapter shall not apply to:

(a) government procurement;

(b) services supplied in the exercise of governmental authority;

(c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance;

(d) measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis; and

(e) measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

 (iii) computer reservation system services;

 (iv) airport operation services;

 (v) specialty air services; or

 (vi) ground-handling services.

4. For greater certainty, Annex 9A (Financial Services), Annex 9B (Telecommunications Services), Annex 9C (Foreign Investment Framework for Australia), Annex 9C (Foreign Investment Framework for UAE), Annex 9D (Schedules of Specific Commitments) and Annex 9E (Schedules of Non-Conforming Measures and Reservations) are an integral part of this Chapter.

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# Article 9.3

# Scheduling of Commitments

1. Each Party shall make commitments under Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access) in accordance with either Article 9.8 (Schedules of Specific Commitments) or Article 9.9 (Schedules of Non-Conforming Measures and Reservations).

2. A Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), and Article 9.6 (Market Access). A Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) may also make commitments under Article 9.10 (Additional Commitments).

3. A Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures and Reservations) shall make commitments under the applicable paragraphs in Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access) and Article 9.7 (Local Presence). A Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures and Reservations) may also make commitments under Article 9.10 (Additional Commitments).

# Article 9.4

# National Treatment

1. A Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex 9D (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than it accords to its own like services and service suppliers.[[3]](#footnote-4)

2. A Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures and Reservations) 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, subject to its non-conforming measures and reservations as provided in Article 9.9 (Schedules of Non-Conforming Measures and Reservations).[[4]](#footnote-5)

3. A Party may meet the requirement under paragraph 1 or 2 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.

4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

# Article 9.5

# Most-Favoured-Nation Treatment

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1. A Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) shall, in respect of the sectors and subsectors set out in the Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex 9D (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.

2. A Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures and Reservations) shall, subject to its non-conforming measures and reservations set out in its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations), accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-party.

3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.

4. For sectors and subsectors either not set out in a Party’s Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex 9D (Schedules of Specific Commitments) pursuant to paragraph 1, or subject to a Party’s non-conforming measures and reservations set out in its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations) pursuant to paragraph 2, if, after the date of entry into force of this Agreement, a Party subsequently enters into any agreement with a non-party in which it provides treatment to services or service suppliers of that non-party more favourable than it accords to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

# Article 9.6

# Market Access

1. With respect to market access through the modes of supply identified in subparagraph (y) of Article 9.1 (Definitions), a Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex 9D (Schedules of Specific Commitments).[[5]](#footnote-6)

2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 9.8 (Schedules of Specific Commitments), or subject to its non-conforming measures and reservations, as provided in Article 9.9 (Schedules of Non-Conforming Measures and Reservations), 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;[[6]](#footnote-7)

(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 9.7

# Local Presence

A Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures) shall not require a service supplier of the other Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in subparagraphs (y)(i), (ii), or (iv) of Article 9.1 (Definitions), subject to its non-conforming measures as provided in Article 9.9 (Schedules of Non-Conforming Measures).

# Article 9.8

# Schedules of Specific Commitments

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 9D (Schedules of Specific Commitments), the specific commitments it undertakes under Article 9.4 (National Treatment), Article 9.6 (Market Access), and Article 9.10 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex 9D (Schedules of Specific Commitments) shall specify:

(a) terms, limitations, and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate, the timeframe for implementation of such commitments.

2. Measures inconsistent with both Article 9.4 (National Treatment) and Article 9.6 (Market Access) shall be inscribed in the column relating to Article 9.6 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 9.4 (National Treatment) as well.

# Article 9.9

# Schedules of Non-Conforming Measures and Reservations

1. For a Party making commitments in accordance with this Article, Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access), and Article 9.7 (Local Presence) shall not apply to:

(a) any existing non-conforming measure that is maintained by that Party at:

(i) the central level of government, as set out by that Party in Part A of its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations);

(ii) a regional level of government, as set out by that Party in Part A of its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations); or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access) or Article 9.7 (Local Presence).

2. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access), and Article 9.7 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities set out in Part B of its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations).

# Article 9.10

# Additional Commitments

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1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:

(a) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), or Article 9.6 (Market Access), for a Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitment); or

(b) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access), or Article 9.7 (Local Presence) for a Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures and Reservations).

2. A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex 9D (Schedules of Specific Commitments).

3. A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations)

# Article 9.11

# Modification of Schedules

1. Except as provided in paragraph 2, a Party (“modifying Party”) may modify or withdraw any commitment in its Schedule in Annex 9D (Schedules of Specific Commitments) at any time after three years from the date on which that commitment entered into force, provided that:

(a) it notifies the other Party (“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;

(b) upon notification of a Party’s intent to make such modification or withdrawal, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment; and

(c) such an agreement between the Parties has been reached.

2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually advantageous commitment that is no less favourable to trade than provided for in the Schedules in Annex 9D (Schedules of Specific Commitments) prior to such negotiations.

3. If agreement under paragraph 1(c) is not reached between the modifying Party and the affected Party within three months, the modifying Party may refer the matter to a panel in accordance with the procedures set out in Chapter 25 (Dispute Settlement) or, where agreed between the Parties, to an alternative arbitration procedure. The modifying Party may modify or withdraw a commitment once it has made the compensatory adjustments in conformity with the findings of the panel.

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

**Article 9.****12**

**Transparency**

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other’s markets. Each Party shall promote regulatory transparency in trade in services.

2. For sectors and subsectors set out in a Party’s Schedule in Annex 9D (Schedules of Specific Commitments), or subject to a Party’s non-conforming measures and reservations set out in its Schedule in Annex 9E (Schedules of Non-Conforming Measures and Reservations, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

3. Each Party shall publish promptly, or otherwise make publicly available, and, except in emergency situations, at the latest by the time of their entry into force:

(a) all relevant measures of general application which pertain to or affect the operation of this Chapter; and

(b) all international agreements pertaining to or affecting trade in services to which the Party is a signatory.

4. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall publish in advance, or otherwise make publicly available in advance, any measures of general application affecting trade in services that it proposes to adopt which significantly affect trade in services covered by this Chapter.

5. Each Party shall respond promptly to any request by the other Party for specific information on:

(a) any measures referred to in paragraph 3(a) or international agreements referred to in paragraph 3(b); and

(b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

# Article 9.13

# Domestic Regulation

1. Subject to paragraph 2, this Article applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.

2. This Article does not apply to a sector or measure to the extent that such sector or measure is not subject to Article 9.4 (National Treatment) or Article 9.6 (Market Access) by reason of a Party’s commitments made in accordance with either Article 9.8 (Schedules of Specific Commitments) or Article 9.9 (Schedules of Non-Conforming Measures and Reservations).

3. If a Party adopts or maintains measures relating to the authorisation for the supply of a service, the Party shall ensure that:

(a) such measures are based on objective and transparent criteria;[[7]](#footnote-8)

(b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist;

(c) the procedures do not in themselves unjustifiably prevent the fulfilment of requirements; and

(d) such measures do not discriminate between men and women.[[8]](#footnote-9)

4. If a Party requires authorisation for the supply of a service, the Party shall promptly publish,[[9]](#footnote-10) or otherwise make publicly available in writing, the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, *inter alia*, where it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) fees;

(d) 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 licenses or qualifications;

(g) opportunities for public involvement, such as through hearings or comments; and

(h) indicative timeframes for processing of an application.

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

6. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities, to the extent practicable, permit submission of an application at any time throughout the year.[[10]](#footnote-11) If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application.

7. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format; and

(b) accept copies of documents, that are authenticated in accordance with the Party’s domestic laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

8. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) to the extent practicable, provide an indicative timeframe for processing of an application;

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

(c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party’s domestic laws and regulations;

(d) if they consider an application complete for processing under the Party’s domestic laws and regulations,[[11]](#footnote-12) 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,[[12]](#footnote-13) to the extent possible in writing;[[13]](#footnote-14)

(e) if they consider an application incomplete for 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[[14]](#footnote-15) to provide the additional information that is required to complete the application,

 however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time; and

(f) if an application is rejected, to the extent possible, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application[[15]](#footnote-16) solely on the basis of a previously rejected application.

9. The competent authorities of a Party shall ensure that authorisation, once granted, enters into effect without undue delay, subject to applicable terms and conditions.[[16]](#footnote-17)

10. Each Party shall ensure that the authorisation fees[[17]](#footnote-18) charged by its competent authorities are reasonable, transparent, based on authority set out in a measure, and do not in themselves restrict the supply of the relevant service.

11. If a Party requires an examination for authorisation for the supply of a service, that Party 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. Having regard to the cost, administrative burden, and the integrity of the procedures involved, the Parties are encouraged to accept requests in electronic format to take such examinations, and to consider, to the extent practicable, the use of electronic means in other aspects of examination processes.

12. If a Party adopts or maintains measures relating to the authorisation for the supply of a service, the Party shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorisation is required.[[18]](#footnote-19)

13. 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,[[19]](#footnote-20) designated to develop technical standards, to use open and transparent processes.

# Article 9.14

# Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to paragraph 3, 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 a non-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 may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, nothing in Article 9.5 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

3. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-party of the type referred in paragraph 1,that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, 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’s territory should also be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

# Article 9.15

# Professional Services

1. The Parties recognise that professional services play an essential role in facilitating trade and investment across both goods and services sectors and in promoting economic growth and business confidence.

2. Each Party shall endeavour to encourage its relevant professional service bodies to strengthen cooperation and establish dialogues with the relevant professional service bodies of the other Party with a view to:

(a) sharing knowledge and expertise in advancing the development of best practice in accreditation, licensing and regulation of professions;

(b) pursuing mutually acceptable standards and criteria for accreditation, licensing and registration with respect to professional service sectors; and

(c) streamlining the recognition of professional qualifications and licensing or registration procedures, including through the negotiation of mutual recognition or similar arrangements in professional services sectors of mutual interest.

3. Each Party shall encourage its relevant professional service bodies to consider, where appropriate, existing international frameworks - both plurilateral and multilateral - that relate to professional services as pathways to mutual recognition or similar arrangements.

4. In accordance with its laws and regulations, each Party shall encourage relevant professional service bodies to consider implementing procedures that:

(a) allow for the temporary, or project-specific licensing of professional service suppliers of the other Party. Such a regime should not operate to prevent a professional of the other Party from gaining a local licence once that professional satisfies the applicable local licensing requirements; and

(b) permits professional services firms of the other Party, respecting conventions of the Party (“host Party”) on the use of firm names, to use a firm name of their choice in the host Party’s jurisdiction.

5. Each Party shall encourage its relevant professional service bodies to administer policy and processes in a manner that is as transparent and streamlined as possible.

6. Further to Article 9.20 (Review), the Parties shall review the progress of implementing this Article and consider initiatives to further promote the recognition of professional qualifications, registration and temporary licensing, including through the possible negotiation of a separate Annex on Professional Services.

7. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications, professional experience, credentials, or other criteria specified under each Party’s laws and regulations in the jurisdiction of the Party where the service is supplied.

# Article 9.16

# Payments and Transfers

1. Except under circumstances envisaged in Article 24 4 (Restrictions to Safeguard the Balance of Payments - General Provisions and Exceptions), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (IMF) under the IMF Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations regarding such transactions, except under Article 24.4 (Restrictions to Safeguard the Balance of Payments - General Provisions) or at the request of the IMF.

# Article 9.17

# Monopolies and Exclusive Service Suppliers

1. A Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) or Article 9.9 (Schedules of Non-Conforming Measures and Reservations) 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 the Party’s obligations underArticle 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.6 (Market Access), and for a Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures and Reservations), Article 9.7 (Local Presence), subject to any conditions or qualifications set out in Annex 9D (Schedules of Specific Commitments) or except as provided for in Annex 9E (Schedules of Non-Conforming Measures and Reservations).

2. Where a Party’s monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party’s obligations under Article 9.4, (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment) or Article 9.6 (Market Access), which are subject to any conditions or qualifications set out in Annex 9D (Schedules of Specific Commitments) or non-conforming measures set out in Annex 9E (Schedules of Non-Conforming Measures and Reservations); that Party shall ensure that such supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such obligations.

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 paragraphs 1, 2 or 3, it may request the other Party establishing, maintaining or authorising such monopoly supplier to provide information concerning the supplier’s relevant operations in its territory.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

# Article 9.18

# Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 9.17 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, on request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

# Article 9.19

# Denial of Benefits

1. A Party may deny the benefits of this Chapter:

(a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-party;

(b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party;

(c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws and regulations of a non-party; and

(ii) by a person of a non-party which operates or uses the vessel in whole or in part.

2. A Party may deny the benefit of this Chapter to a service supplier of the other Party, if the service supplier is a juridical person owned or controlled by persons of a non-party, and the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

3. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person owned or controlled by persons of a non-party or of the denying Party that has no substantial business activities in the territory of the other Party.

# Article 9.20

# Review

1. In any review of this Agreement conducted in accordance with Article 26.5 (Final Provisions), the Parties shall review this Chapter and related Annexes and Schedules so as to progressively liberalise trade in services between the Parties.

2. Further to paragraph 1, the Parties shall review their approach to the scheduling of commitments in accordance with Article 9.8 (Scheduling of Commitments), including whether a Party making commitments in accordance with Article 9.8 (Schedules of Specific Commitments) considers its appropriate to transition to making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures).

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 shall be amended**.**

1. With respect to the UAE, the term “permanent resident” shall mean any natural person who is in possession of a valid residency permit under the laws and regulations of the UAE. [↑](#footnote-ref-2)
2. Where the service is not supplied directly by a juridical person of a Party but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person of a Party) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied. [↑](#footnote-ref-3)
3. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers. [↑](#footnote-ref-4)
4. Nothing in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers. [↑](#footnote-ref-5)
5. 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 (y)(i) of Article 9.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (y)(iii) of Article 9.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory. [↑](#footnote-ref-6)
6. Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services. [↑](#footnote-ref-7)
7. Such criteria may include, inter alia, competence and the ability to supply a service, including to do so in a manner consistent with a Party’s regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion. [↑](#footnote-ref-8)
8. Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by a Party of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this subparagraph. [↑](#footnote-ref-9)
9. For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website. The Parties are encouraged to consolidate electronic publications into a single portal. [↑](#footnote-ref-10)
10. Competent authorities are not required to start considering applications outside of their official working hours and working days. [↑](#footnote-ref-11)
11. Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing". [↑](#footnote-ref-12)
12. Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application. [↑](#footnote-ref-13)
13. "In writing" may include in electronic form. [↑](#footnote-ref-14)
14. Such opportunity does not require a competent authority to provide extensions of deadlines. [↑](#footnote-ref-15)
15. Competent authorities may require that the content of such an application has been revised. [↑](#footnote-ref-16)
16. Competent authorities are not responsible for delays due to reasons outside their competence. [↑](#footnote-ref-17)
17. 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. [↑](#footnote-ref-18)
18. For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions. [↑](#footnote-ref-19)
19. The term “relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of each Party. [↑](#footnote-ref-20)