

CHAPTER 4

DEVELOPMENT AND ADMINISTRATION OF SERVICES AUTHORIZATION MEASURES (SERVICES DOMESTIC REGULATION)

Article 4.1: Definitions

For the purposes of this Chapter:

authorization means the permission to supply a service, resulting from a procedure to which a person must adhere in order to demonstrate compliance with licensing requirements or qualification requirements; and

public enterprise means an enterprise that is owned, or controlled through ownership interests, by the authorities of the territory represented by a Party.

Article 4.2: Scope

1. This Chapter applies to measures related to authorization and technical standards adopted or maintained by the competent authorities of the territory represented by a Party affecting trade in services by a service supplier of the territory represented by the other Party.

2. This Chapter does not apply to:

- (a) procurement by the authorities of the territories represented by the Parties;
- (b) any service that is supplied in the territory represented by a Party neither on a commercial basis nor in competition with one or more service suppliers;¹
- (c) a subsidy or grant provided by the authorities of the territory represented by a Party or a public enterprise, including loans, guarantees, or insurance supported by the authorities of the territory represented by the Party;
- (d) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than aircraft repair or maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance; or

¹ The Parties, through their Designated Representatives, understand that this limitation has the same scope as Article I:3(c) of the GATS with respect to the authorities of the territories represented by the Parties.

- (e) measures concerning the entry of natural persons into the territory represented by a Party, including conditions of admission for temporary entry.

Article 4.3: Development and Administration of Measures for Supply of a Service Other than a Financial Service

1. Provisions of this Article apply in addition to the provisions of Chapter 3 (Good Regulatory Practices). This Article does not apply to measures affecting the supply of a financial service.

2. Each Party, through its Designated Representative, shall ensure that all measures of general application of the authorities of the territory represented by the Party are administered in a reasonable, objective, and impartial manner.

3. If the authorities of the territory represented by a Party adopt or maintain a measure of general application, the Party, through its Designated Representative, shall, with respect to that measure, ensure that:

- (a) the measure is based on objective and transparent criteria;²
- (b) the competent authority of the territory represented by the Party reaches and administers any decision in a manner independent from any supplier of the service for which authorization is required;
- (c) the procedures in the measure are impartial, adequate for applicants to demonstrate whether they meet the requirements for authorization, and do not in themselves prevent fulfilment of a requirement;
- (d) to the extent practicable, the measure does not require an applicant to approach more than one competent authority of the territory represented by the Party for each application for authorization;³ and
- (e) the measure does not discriminate on the basis of gender.⁴

² For greater certainty, these criteria may include competence and the ability to supply a service, including to do so in a manner consistent with the regulatory requirements of the authorities of the territory represented by the Party, such as health, labor, and environmental requirements. Competent authorities of the territory represented by the Party may assess the weight to be given to each criterion.

³ For greater certainty, a Party, through its Designated Representative, may require multiple applications for authorization if a service is within the jurisdiction of multiple competent authorities of the territory represented by the Party.

⁴ Nothing in this subparagraph shall prevent reasonable and objective differential treatment to achieve a legitimate purpose or temporary measures to accelerate *de facto* equality.

4. If the authorities of the territory represented by a Party require authorization for the supply of a service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) to the extent practicable, permits submission of an application at any time;
- (b) if a specific time period for applications exists, allows a reasonable period for the submission of an application;
- (c) if an examination of the suitability of an individual for authorization is required, schedules the examination at reasonably frequent intervals and provides a reasonable period of time to enable an applicant to request to take the examination;
- (d) to the extent practicable, provides an indicative timeframe for processing an application;
- (e) ascertains without undue delay the completeness of an application for processing under the law of the territory represented by the Party;
- (f) at the request of the applicant, provides without undue delay information concerning the status of the application;
- (g) if an application is considered complete under the law of the territory represented by the Party, within a reasonable period of time after the submission of the application, ensures that the processing of the application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;⁵
- (h) if an application is considered incomplete for processing under the law of the territory represented by the Party, within a reasonable period of time, to the extent practicable:
 - (i) informs the applicant that the application is incomplete;
 - (ii) if the applicant requests, identifies the additional information required to complete the application or otherwise provides guidance on why the application is considered incomplete; and

⁵ A competent authority of the territory represented by the Party may inform 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 the application indicates either acceptance or rejection of the application. For greater certainty, “in writing” includes in electronic form.

- (iii) provides the applicant with an opportunity⁶ to provide the additional information that is required for the application to be considered complete;

however, if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensures that the applicant is informed of the rejection within a reasonable period of time;

- (i) if an application is rejected, to the extent possible, either upon its own initiative or upon the request of the applicant, informs the applicant of the reasons for rejection and, if applicable, the timeframe for an appeal or review of the decision to reject the application and the procedures for resubmission of an application; an applicant should not be prevented from submitting another application⁷ solely on the basis that an application had been previously rejected; and
- (j) ensures that authorization, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.

5. Each Party, through its Designated Representative, shall ensure that any authorization fee charged by each of the competent authorities of the territory represented by the Party is reasonable, transparent, based on authority set out in a measure, and does not, in itself, restrict the supply of the relevant service.⁸

6. Each Party, through its Designated Representative, shall encourage the competent authorities of the territory represented by the Party, when adopting a technical standard, to adopt technical standards developed through an open and transparent process, and shall encourage any body designated to develop a technical standard to use an open and transparent process.

7. If the authorities of the territory represented by a Party require authorization for the supply of a service, the Party, through its Designated Representative, shall provide to a service supplier the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization. That information shall include:

- (a) any fee;
- (b) the contact information of a relevant competent authority of the territory represented by the Party;

⁶ For greater certainty, providing this opportunity does not require extensions of deadlines.

⁷ Competent authorities of the territory represented by the Party may require that the content of such an application has been revised.

⁸ For the purposes of this paragraph, an authorization fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

- (c) any procedure for appeal or review of a decision concerning an application;
- (d) any procedure for monitoring or enforcing compliance with the terms and conditions of authorizations;
- (e) any opportunities for public involvement, such as through hearings or comments;
- (f) any indicative timeframe for processing of an application;
- (g) any requirement or procedure; and
- (h) any technical standard.

8. If the authorities of the territory represented by a Party require authorization for the supply of a service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) endeavors to accept applications in electronic format;
- (b) endeavors to accept requests in electronic format to take any required examination of the suitability of an individual for authorization and to consider, to the extent practicable, the use of electronic means in other aspects of the examination process; and
- (c) subject to any authentication requirements under the law of the territory represented by the Party, accepts copies of documents, including electronic copies, unless the competent authority of the territory represented by the Party requires original documents to protect the integrity of the authorization process.

9. Each Party, through its Designated Representative, shall endeavor to ensure that measures related to authorization do not impose disproportionate burdens on SMEs.

Article 4.4: Development and Administration of Measures for Supply of a Financial Service

1. This Article applies to measures related to authorization adopted or maintained by the authorities of the territory represented by a Party affecting trade in a financial service by a service supplier of the territory represented by the other Party. Chapter 3 (Good Regulatory Practices) does not apply to a measure covered by this Article.

2. Each Party, through its Designated Representative, shall ensure that all measures of general application are administered in a reasonable, objective, and impartial manner.

3. Each Party, through its Designated Representative, shall, to the extent practicable and in a manner consistent with the legal system of the territory represented by the Party for adopting measures:

- (a) publish in advance any regulation of general application proposed for adoption and the purpose of the regulation; and
- (b) provide interested persons, the authorities of the territory represented by the other Party, and the other Party with a reasonable opportunity to comment on that proposed regulation of general application.

4. At the time that the authorities of the territory represented by a Party adopt a final regulation of general application, the Party, through its Designated Representative, shall, to the extent practicable and in a manner consistent with the legal system of the territory represented by the Party for adopting measures, address in writing the substantive comments received from interested persons, the authorities of the territory represented by the other Party, and the other Party with respect to the proposed regulation. For greater certainty, a Party, through its Designated Representative, may address those comments collectively on an official website maintained by the authorities of the territory represented by the Party.

5. To the extent practicable, each Party, through its Designated Representative, shall allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party, through its Designated Representative, shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons, the authorities of the territory represented by the other Party, or the other Party regarding measures of general application covered by this Article.

7. If the authorities of the territory represented by a Party adopt or maintain a measure of general application to which this Article applies, the Party, through its Designated Representative, shall, with respect to that measure, ensure that:

- (a) the measure is based on objective and transparent criteria;⁹
- (b) each relevant competent authority of the territory represented by the Party reaches and administers decisions in a manner independent from any supplier of the service for which authorization is required;
- (c) the procedures in the measure are impartial, adequate for applicants to demonstrate

⁹ For greater certainty, these criteria may include competence or ability to supply a financial service, and financial regulatory authorities of the territory represented by the Party may assess the weight given to such criteria.

whether they meet the requirements for authorization, and do not in themselves prevent fulfilment of a requirement; and

- (d) the measure does not discriminate on the basis of gender.¹⁰

8. If the authorities of the territory represented by a Party require authorization for the supply of a financial service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) to the extent practicable, permits submission of an application at any time;
- (b) if specific time periods for applications exist, allows a reasonable period for the submission of an application;
- (c) if an examination of the suitability of an individual for authorization is required, schedules the examination at reasonably frequent intervals and provides a reasonable period of time to enable an applicant to request to take the examination;
- (d) provides to service suppliers the information necessary to comply with requirements or procedures for obtaining, maintaining, amending, and renewing that authorization; that information shall include:
 - (i) any requirement or procedure;
 - (ii) contact information of a relevant competent authority of the territory represented by the Party;
 - (iii) any procedures for appeal or review of decisions concerning applications;
 - (iv) any procedures for monitoring or enforcing compliance with the terms and conditions of authorizations; and
 - (v) any opportunities for public involvement, such as through hearings or comments;
- (e) to the extent practicable, provides an indicative timeframe for processing of an application;
- (f) at the request of the applicant, provides without undue delay information concerning the status of the application;

¹⁰ Nothing in this subparagraph shall prevent reasonable and objective differential treatment to achieve a legitimate purpose or temporary measures to accelerate *de facto* equality.

- (g) to the extent practicable, ascertains without undue delay the completeness of an application for processing under the law of the territory represented by the Party;
- (h) if an application is considered complete under the law of the territory represented by the Party, within a reasonable period of time after the submission of the application, ensures that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;¹¹
- (i) if an application is considered incomplete under the law of the territory represented by the Party, within a reasonable period of time, to the extent practicable:
 - (i) informs the applicant that the application is incomplete;
 - (ii) at the request of the applicant, identifies the additional information required to complete the application, or otherwise provides guidance on why the application is considered incomplete; and
 - (iii) provides the applicant with the opportunity¹² to provide the additional information that is required to complete the application;

however, if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensures that the applicant is informed within a reasonable period of time;
- (j) in the case of a rejected application, to the extent practicable, either on its own initiative or upon the request of the applicant, informs 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 application¹³ solely on the basis that an application had been previously rejected;
- (k) with respect to any authorization fee:¹⁴

¹¹ A competent authority of the territory represented by the Party may inform 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 the application indicates either acceptance or rejection of the application. For greater certainty, “in writing” includes in electronic form.

¹² For greater certainty, providing this opportunity does not require extensions of deadlines.

¹³ Competent authorities of the territory represented by the Party may require that the content of such an application has been revised.

¹⁴ For the purposes of this paragraph, an authorization fee does not include a fee for the use of natural resources, payments for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to the provision of universal service.

- (i) provides applicants with a schedule of fees or information on how fee amounts are calculated; and
 - (ii) does not use the fees as a means of enabling the avoidance of the Party's commitments or obligations under this Article; and
- (l) ensures that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions.

9. If the authorities of the territory represented by a Party require authorization for the supply of a financial service, the Party, through its Designated Representative, shall ensure that each competent authority of the territory represented by the Party:

- (a) endeavors to accept applications in electronic format;
- (b) endeavors to accept requests in electronic format to take any required examination of the suitability of an individual for authorization and to consider, to the extent practicable, the use of electronic means in other aspects of the examination process; and
- (c) subject to any authentication requirements under a law of the territory represented by the Party, accepts copies of documents, including electronic copies, unless the competent authority of the territory represented by the Party requires original documents to protect the integrity of the authorization process.