

ANNEX III TO CHAPTER 13 (TRADE IN SERVICES)

DISCIPLINES ON DOMESTIC REGULATION

Introduction

1. The purpose of the disciplines in this Annex is to facilitate trade in services by ensuring that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards do not constitute unnecessary barriers to trade in services. In applying the disciplines in this Annex, the Parties shall also comply with the criteria set out in Paragraphs 4(a) to (c) of Article 9 (Domestic Regulation).

2. The Parties recognise the right of each Party to regulate, and to introduce new regulations to support government policy objectives.

Definitions

3. For the purposes of this Annex:
- (a) **licensing requirements** are substantive requirements, other than qualification requirements, with which a natural person or an enterprise is required to comply in order to obtain, amend or renew authorisation to supply a service;
 - (b) **licensing procedures** are administrative or procedural rules that a natural person or an enterprise, seeking authorisation to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements;
 - (c) **qualification requirements** are substantive requirements relating to the competence of a natural person to supply a service, and which are

required to be demonstrated for the purpose of obtaining authorisation to supply a service;

- (d) **qualification procedures** are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service; and
- (e) **technical standards** are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the compliance with and enforcement of such standards.

General Provisions

4. The disciplines in this Annex apply to measures adopted or maintained by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.
5. Nothing in this Annex shall apply to any measure adopted or maintained by a Party consistent with its Schedules to Annexes I and II.
6. The Parties shall ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards are not formulated, introduced, implemented, administered or applied with a view to creating unnecessary barriers to trade in services.
7. The Parties shall ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards shall be pre-established, based on objective and transparent

criteria and relevant to the supply of the services to which they apply.

8. Nothing in these disciplines prevents either Party from exercising its right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with its obligations and commitments under this Chapter.

Transparency

9. Each Party shall ensure that measures of general application relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, as well as detailed information regarding these measures, are promptly published through printed or electronic means, or otherwise. Where publication is not practicable, such information shall be made publicly available. This information shall include:

- (a) whether any authorisation, including application and/or renewal where applicable, is required for the supply of a service;
- (b) the official titles, addresses and contact information of relevant competent authorities;
- (c) applicable licensing requirements and criteria, terms and conditions of licences, and licensing procedures and fees;
- (d) applicable qualification requirements, criteria and procedures for verification and assessment of qualifications, including fees;
- (e) applicable technical standards;
- (f) procedures relating to appeals or reviews of applications;

- (g) monitoring, compliance or enforcement procedures, including notification procedures for non-compliance;
- (h) where applicable, how public involvement in the licensing process, such as hearings and opportunity for comment, is provided for;
- (i) exceptions, derogations or changes to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards; and
- (j) the normal timeframe for processing of an application.

10. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from any service suppliers regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. Such enquiries may be addressed through the contact points established under Article 5 (Contact Points) of Chapter 15 (Transparency).

Licensing Requirements

11. Where residency requirements for licensing exist, each Party shall consider whether less trade restrictive means could be employed to achieve the purposes for which these residency requirements were established.

Licensing Procedures

12. Each Party shall ensure that licensing procedures, including application procedures and, where applicable, renewal procedures, are as simple as possible, are not more burdensome than necessary to ensure that applicants fulfil or

comply with the licensing requirements, and do not in themselves constitute a restriction on the supply of services.

13. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing process (“competent authority”) are impartial with respect to all applicants. The competent authority should be operationally independent of and not accountable to any supplier of the services for which the licence is required.

14. An applicant should be required to approach only one competent authority for an application for a licence.

15. An applicant should be permitted to submit an application at any time, except where licences are limited in numbers, including in public tendering. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.

16. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant and, to the extent feasible, identify the additional information required to complete the application, and, where appropriate, provide the opportunity to correct deficiencies.

17. The competent authority shall, where appropriate, accept copies of documents authenticated in accordance with its domestic law in place of original documents.

18. If an application for a licence is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of any rights of review of, or appeal

against, the decision, including the timeframe for review or appeal. An applicant should be permitted, within reasonable time limits, to resubmit an application.

19. Each Party shall ensure that the processing of an application for a licence, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.

20. Each Party shall ensure that a licence, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

21. Each Party shall ensure that any licensing fees²³ are determined with regard to the administrative costs involved. This shall not preclude the recovery of any additional costs of administering licensing requirements and any other administrative activities related to the regulation of the relevant services.

Qualification Requirements

22. Where a Party imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of the other Party. In verifying and assessing qualifications, the competent authority shall, where appropriate, give due consideration to relevant professional experience of the applicant as a complement to educational qualifications. Where membership in a relevant professional association in the Area of another Party is indicative of the level of competence

²³ Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

or extent of experience of the applicant, such membership shall also be given due consideration.

23. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall, to the extent possible, identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include course work, examinations, training, and work experience. Where appropriate, each Party shall provide the possibility for applicants to fulfil such requirements in the home, host or any third jurisdiction.

24. Residency requirements, other than those consistent with a Party's Schedules to Annexes I and II shall not be a pre-requisite for assessing and verifying the competence of a service supplier of the other Party.

25. Each Party shall ensure that a service supplier is informed without undue delay when qualification requirements have been fulfilled.

Qualification Procedures

26. Each Party shall ensure that qualification procedures are as simple as possible, are not more burdensome than necessary to ensure that applicants meet the qualification requirements, and do not in themselves constitute a restriction on the supply of services.

27. An applicant should be required to approach only one competent authority for qualification procedures.

28. An applicant should be permitted to submit an application at any time. The competent authority shall initiate the processing of an application without undue delay.

29. Where examinations are required, each Party shall ensure that they are scheduled at reasonably frequent

intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.

30. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant and, to the extent feasible, identify the additional information required to complete the application, and, where appropriate, provide the opportunity to correct deficiencies.

31. The competent authority shall, where appropriate, accept copies of documents authenticated in accordance with its domestic law in place of original documents.

32. If an application for verification and assessment of qualification is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of any rights of review of, or appeal against, the decision, including the timeframe for review or appeal. An applicant should be permitted, within reasonable time limits, to resubmit an application.

33. Each Party shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.

34. Each Party shall ensure that any fees charged for qualification procedures are determined with regard to the administrative costs involved. This shall not preclude the recovery of any additional costs of administering qualification requirements and any other administrative activities related to the regulation of the relevant services.

Technical Standards

35. Each Party shall ensure that technical standards are not prepared or adopted with a view to creating unnecessary obstacles to trade in services. For this purpose, each Party shall ensure that such technical standards are based on objective and transparent criteria and are relevant to meet specific government policy objectives.

36. Each Party shall ensure that any measures relating to the application, monitoring, compliance and enforcement of technical standards are not more burdensome than necessary to ensure that a service conforms with the relevant technical standards, taking into account the risks that non-fulfilment would create.

37. The Parties shall encourage maximum transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

38. Where technical standards are required and relevant international standards are applicable or their completion is imminent, the Parties should take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of specific government policy objectives.