

Annex VIII
Referred to in Chapter 7

Movement of Natural Persons

Appendix 2
Specific Commitments by Switzerland

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Appendix 2 Specific Commitments by Switzerland

Article I Scope

This Appendix contains the commitments undertaken by Switzerland for the movement of natural persons. It shall apply to persons of Japan.

Section 1: Services sector

Article II Definitions of Categories of Natural Persons

1. The categories of natural persons defined in paragraphs 2 and 3 are relevant for the application of Article III of this Appendix.

2. Essential personnel transferred to Switzerland within a specific business or company (Intra-corporate transferees)

Essential personnel transferred to Switzerland within a specific business or company (hereinafter referred to in this Appendix as "enterprise") of Japan and defined under subparagraphs (a) and (b) who are employees of that enterprise supplying services in Switzerland through a branch, subsidiary or affiliate established in Switzerland, and who have been beforehand employees of their enterprise outside Switzerland for a period of not less than one year immediately preceding their application for admission.

(a) Executives and senior managers
Natural persons who primarily direct the enterprise or one of its departments and who receive only general supervision or direction from high-level executives, the board of directors or the stockholders of the enterprise, to the exclusion of natural persons who directly perform tasks related to the actual supply of services of the enterprise.

(b) Specialists
Highly qualified natural persons who, within an enterprise, are essential for the supply of a specific service by reason of their knowledge at an advanced level of expertise in the field of services, research equipment, techniques or management of the enterprise.

3. Other essential personnel moving to Switzerland

(a) Short-term business visitors and services salespersons

(i) Short-term business visitors responsible for establishing a commercial presence
Natural persons who are employees of an enterprise not having commercial presence in Switzerland and who have been beforehand employees of that enterprise outside Switzerland for a period of not less than one year immediately preceding their application for admission, and who fulfil the conditions of subparagraph 2 (a), and who are entering Switzerland for the purpose of establishing a commercial presence of that enterprise in Switzerland. Short-term business visitors responsible for establishing a commercial presence may not sell services directly to the general public or supply services themselves.

(ii) Services salespersons

Natural persons employed or mandated by an enterprise and who stay temporarily in Switzerland in order to conclude a contract for the sale of a service on behalf of the enterprise, which employs them or has mandated them. Services salespersons may not sell services directly to the general public or supply services themselves.

(b) Contractual service suppliers

(i) Employees of an enterprise

Natural persons who are employees of an enterprise located outside Switzerland not having commercial presence in Switzerland (and other than enterprises supplying services as defined by CPC 872), which has concluded a services contract with an enterprise engaged in substantive business in Switzerland, and who have been beforehand employees of the enterprise located outside Switzerland for a time period of not less than one year immediately preceding their application for admission, and who fulfil the conditions set out in subparagraph 2(b) and who supply a service in Switzerland as professionals in a service sector as set out in subparagraph (b) on behalf of the enterprise located outside Switzerland. As a further requirement, three years of related experience is required. Per contract, entry and temporary stay for a limited number of service suppliers will be granted for a single period of three months, the number of service suppliers depending on the scope of the task to be performed under the contract. Individual service suppliers not employed by the enterprise located outside Switzerland are considered as natural persons seeking access to the Swiss employment market.

(ii) The following service sectors are covered under subparagraph (i):

- (AA) Consultancy services related to the installation of computer hardware (CPC 841)
- (BB) Software implementation services (CPC 842)
- (CC) Research and development services (CPC 851-853)
- (DD) Legal advisory services (part of CPC 861); in the canton of Ticino, legal advisory services on Swiss fiscal law is restricted to "fiduciario commercialista".
- (EE) Auditing services, excluding auditing of banks (part of CPC 86211); at least one of the auditors of a "joint stock company" or a "stock company with unlimited partners" must have its domicile, its principal office or a registered branch in Switzerland
- (FF) Accounting review services (CPC 86212)
- (GG) Business tax planning and consulting services (CPC 86301)
- (HH) Business tax preparation and review services (CPC 86302)
- (II) Management consulting services (CPC 865)
- (JJ) Architectural services (CPC 8671)
- (KK) Engineering services (CPC 8672); for cadastral activities and related activities a Swiss licence is necessary, which is delivered to qualified surveyors after passing an exam.

(LL) Integrated engineering services (CPC 8673)

(MM) Urban planning services (CPC 86741)

(NN) Related scientific and technical
consulting services (CPC 8675)

(OO) Technical testing and analysis services
(CPC 8676)

(PP) Maintenance and repair of aircrafts (part
of CPC 8868)

(c) Installers and maintainers

Qualified specialists supplying installation or maintenance services for machinery or industrial equipment. The supply of that service has to occur on a fee or contractual basis, pursuant to an installation or maintenance contract between the builder of the machinery or industrial equipment and the owner of that machinery or industrial equipment, both of whom are enterprises, excluding any supply of services in connection with enterprises supplying services as defined by CPC 872.

Article III

General Provisions, Conditions and Limitations for Entry and Temporary Stay

1. Commitments for entry and temporary stay of natural persons in the categories defined in paragraphs 2 and 3 of Article II of this Appendix shall be in accordance with and subject to the provisions, including definitions, of Chapter 6, notwithstanding any provisions of Chapter 7. In particular, any limitations and conditions contained in Appendix 2 of Annex III shall apply. Commitments under this Section shall apply only to services sectors in which Switzerland has undertaken specific commitments under the GATS.

2. Switzerland reserves the right to maintain, modify or adopt any measures relating to the entry and temporary stay of natural persons for business purposes, except for measures concerning natural persons falling within the categories defined in paragraphs 2 and 3 of Article II of this Appendix who shall be subject to the limitations and conditions set out in subparagraphs (a) to (f) and to the condition that entry and stay of foreign service suppliers in Switzerland are subject to authorisation (requirement of residence permit and work permit).

- (a) working conditions prevailing in the branch and the place of activity provided by law and/or collective agreement, in particular with respect to remuneration and working hours;
- (b) measures limiting professional and geographical mobility within Switzerland, such as the requirement of an authorisation to change the place of residence;
- (c) regulations related to statutory systems of social security and public retirement plans, in particular with respect to qualifying period and residence requirement;
- (d) requirement that the enterprise employing such natural persons cooperate, upon request, with the authorities in charge of the enforcement of such measures;
- (e) eligibility for subsidies, tax incentives and tax credits may be limited to natural persons domiciled in a particular geographical subdivision of Switzerland; and
- (f) all other provisions of the legislation relating to immigration, entry, stay and work.

3. For essential personnel as defined in paragraph 2 of Article II of this Appendix, the period of stay is limited to three years, which may be extended to a maximum of five years. For other essential personnel as defined in paragraph 3 of Article II of this Appendix, the period of stay is limited to 90 days within one year; if an authorisation for such a period of stay is renewed for the following year, the applicant must stay abroad at least two months between the two consecutive periods of stay in Switzerland.

4. Natural persons staying in or entering Switzerland with an open-ended or extendable residence permit based on an employment contract which does not limit the period of employment in Switzerland are not considered as persons residing in or entering Switzerland for the purpose of temporary stay or temporary employment in Switzerland.

Article IV

Most-Favoured-Nation Treatment Limitation

Measures based on bilateral agreements between the Principality of Liechtenstein, or the European Community and/or its Member States, and Switzerland providing for the movement of all categories of natural persons supplying services are not subject to Article 45.

Section 2: Non-services sectors

Article V

Definitions of Categories of Natural Persons

1. The categories of natural persons defined in paragraphs 2 and 3 are relevant for the application of Article VI of this Appendix.

2. Essential personnel transferred to Switzerland within a specific enterprise (Intra-corporate transferees)

Essential personnel transferred to Switzerland within a specific enterprise of Japan and defined under subparagraphs (a) and (b) who are employees of that enterprise operating in a non-services sector in Switzerland through a branch, subsidiary or affiliate established in Switzerland, and who have been beforehand employees of their enterprise outside Switzerland for a period of not less than one year immediately preceding their application for admission.

(a) Executives and senior managers

Natural persons who primarily direct the enterprise or one of its departments and who receive only general supervision or direction from high-level executives, the board of directors or the stockholders of the enterprise, to the exclusion of natural persons who directly perform tasks related to the actual production process of the enterprise.

(b) Specialists

Highly qualified natural persons who, within an enterprise, are essential for the production process by reason of their knowledge at an advanced level of expertise in the field of production, research equipment, techniques or management of the enterprise.

3. Other essential personnel moving to Switzerland

(a) Short-term business visitors responsible for establishing a commercial presence

Natural persons who are employees of an enterprise not having commercial presence in Switzerland and who have been beforehand employees of that enterprise outside Switzerland for a period of not less than one year immediately preceding their application for admission, and who fulfil the conditions of subparagraph 2 (a), and who are entering Switzerland for the purpose of establishing a commercial presence of that enterprise in Switzerland.

(b) Salespersons

Natural persons employed or mandated by an enterprise and who stay temporarily in Switzerland in order to conclude a contract for the sale of goods on behalf of the enterprise, which employs them or has mandated them. Such salespersons may not sell goods directly to the general public.

Article VI

General Provisions, Conditions and Limitations for Entry and Temporary Stay

1. Notwithstanding any provisions of Chapter 7, the commitments for entry and temporary stay of persons defined in paragraphs 2 and 3 of Article V of this Appendix shall be in accordance with and subject to the relevant legislation of Switzerland, in particular the Federal Law on Foreigners (LEtr, RS 142.20) and any of its subordinate acts.
2. For essential personnel as defined in paragraph 2 of Article V of this Appendix, the period of stay is limited to three years, which may be extended to a maximum of five years. For other essential personnel as defined in paragraph 3 of Article V of this Appendix, the period of stay is limited to 90 days within one year; if an authorisation for such a period of stay is renewed for the following year, the applicant must stay abroad at least two months between the two consecutive periods of stay in Switzerland.
3. The numerical ceiling provided for under Swiss Law shall no longer be applied to natural persons of Japan in the categories defined in paragraphs 2 and 3 of Article V of this Appendix.
4. For the purposes of this Section, the provisions of Articles 53, 58 and 60 shall apply, *mutatis mutandis*.

5. Natural persons staying in or entering Switzerland with an open-ended or extendable residence permit based on an employment contract which does not limit the period of employment in Switzerland are not considered as natural persons residing in or entering Switzerland for the purpose of temporary stay or temporary employment in Switzerland.

Article VII
Definitions

Notwithstanding Article 64, for the purposes of this Section, the definitions contained in paragraphs (b), (f), (g), (h), (k) and (l) of Article 44 shall apply, *mutatis mutandis*.