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Agreement  
on Internal Trade



# Guidelines

for Meeting the Obligations of  
the Labour Mobility Chapter

August 2009

FORUM OF LABOUR  
MARKET MINISTERS

Labour Mobility  
Coordinating Group

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Cette publication est également disponible  
en français sous le titre  
Lignes directrices pour satisfaire aux exigences du  
chapitre sur la mobilité de la main-d'œuvre  
de l'Accord sur le commerce intérieur

The Guidelines do not constitute a legal interpretation of the new Chapter 7 of the AIT.

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## Purpose of the Guidelines

The Forum of Labour Market Ministers (FLMM) is pleased to present the *Guidelines for Meeting the Obligations of the Labour Mobility Chapter of the Agreement on Internal Trade (AIT)*.

This publication is intended to assist regulatory authorities in Canada, both government bodies and non-government bodies, who have authority delegated by law to create or implement measures related to certification requirements in a regulated occupation to understand the Labour Mobility Chapter of the AIT and how to comply with its obligations. As the Ministers who are charged with overseeing implementation of the Labour Mobility Chapter on behalf of the federal, provincial and territorial governments, we trust that these guidelines will be a useful tool in helping governments and regulators to eliminate or reduce measures that restrict or impair labour mobility.

The Guidelines have been developed by the Labour Mobility Coordinating Group (LMCG), a committee of officials established by the FLMM. An updated list of provincial and territorial labour mobility coordinators can be found at [www.ait-aci.ca](http://www.ait-aci.ca).

The Guidelines identify the obligations of the Chapter and suggest approaches that governments, regulatory authorities and other groups can adopt to examine their practices and make any changes necessary to comply with the Chapter, the overall goal being to ensure that workers who are certified in any one province or territory have their certification and, thereby, their skills, knowledge and abilities, recognized in other Canadian jurisdictions.

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## Section I

### Introduction

#### Background

In signing the Agreement on Internal Trade (AIT), in 1994, federal, provincial and territorial governments agreed to eliminate unnecessary inter-provincial barriers to the free movement of workers, goods, services and investments.

Chapter 7 of the AIT is the agreement to achieve full labour mobility for workers in regulated occupations (trades and professions) in Canada. The right of each province and territory to adopt occupational standards and, thus, ensure the protection of their public at the level they consider appropriate has, over the years, led to the introduction of a variety of assessment tools, certification and qualifications requirements for the same regulated occupations across Canada. While recognizing the importance of occupational standards for purposes such as ensuring public, consumer and environmental protection, provinces and territories have noted that differing certification requirements have had a secondary effect of limiting mobility for certified workers in these regulated occupations.

In late 2008 and early 2009, The Forum of Labour Market Ministers (FLMM), the Committee on Internal Trade (Trade) and First Ministers approved amendments to Chapter 7 which make it a clearer and more effective tool in ensuring labour mobility for workers in regulated occupations. The Federal Government is also a signatory to the AIT and supports the new Labour Mobility Chapter.

#### Summary of amendments

##### *What has changed?*

The amended Chapter places a greater emphasis on the recognition of certified workers across provinces and territories and on the adoption of common inter-provincial/territorial standards, where possible and practical. The Chapter now states that a certified worker in one province or territory who wishes to relocate to work shall, upon application, be certified for that occupation by the destination province or territory unless an additional requirement is imposed as permitted under the provisions of Articles 706.3 and 706.4 or unless a province or territory has noted the need for an exception as necessary to achieve a legitimate objective. Examples of legitimate objectives include the protection of public health or safety and the protection of the environment. The complete list of legitimate objectives can be found in Section VI of these guidelines. The Chapter now requires greater transparency through the mandatory posting of additional certification requirements for applicants wishing to move to a new province or territory. It clarifies and enforces commitment for action to remove or reduce measures that create barriers to labour mobility.

Since 1994, professional regulatory bodies and other stakeholders have taken steps to comply voluntarily with the obligations of the Labour Mobility Chapter. A great deal of valuable effort has gone into establishing terms for recognition of workers' qualifications. However, barriers which present challenges to labour mobility continue to exist. Provinces and territories have therefore agreed that, after fifteen years, the reasonable period of time initially set out for achieving compliance has expired. Compliance is now mandatory.

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Each government must now ensure compliance with the obligations of the Chapter by its regional and municipal governments and by all occupational regulatory authorities (government and non government) to which the legislature has delegated authority related to the certification of workers.

### ***Summary of Chapter 7 obligations***

Article 700 sets forth which Articles from Chapter 4 (*General Rules*) of the AIT do or do not apply to Chapter 7.

Article 701 sets forth the overall purpose of Chapter 7 which « is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties ».

Article 702 sets forth the scope and coverage of Chapter 7. The Chapter applies to the following types of measures adopted by a Government: residency requirements, certification requirements and occupational standards. Subsequent Articles of Chapter 7 address these commitments in further detail. Article 702 further specifies that Chapter 7 does not cover social policy measures (examples listed), nor does it cover Quebec's measures pertaining to language requirements.

The amended Chapter 7 further provides that:

- Under Article 705 of the Chapter, no Party to the agreement shall require a worker of another Party to be a resident in its own territory as a condition of eligibility for employment, or certification relating to the worker's occupation;
- Subject to the exceptions outlined below, any worker certified in an occupation by a regulatory authority of one province or territory shall be certified for that occupation by all other provinces and territories to which the worker applies; (Article 706.1)
- Recognition of certification is to be granted expeditiously without further material additional training, experience, examinations, or assessment requirements; (Articles 706.1 and 706.5)
- While provinces and territories maintain their right to adopt occupational standards and, thus, ensure the protection of the public at the level they consider appropriate, provinces and territories agree to examine their measures and to reduce and eliminate barriers to labour mobility. When changing a standard or creating a new standard, provinces and territories shall adopt, to the extent possible and where practical, occupational standards based on common interprovincial standards used in other provinces or, at least, in a manner conducive to labour mobility. They shall notify and afford other provinces and territories the opportunity to comment on proposed new or revised standards. (Article 707)
- Provinces and territories acknowledge their continued commitment to the Inter-provincial Standards Red Seal Program as a well-established means of developing common inter-provincial standards for trades. (Articles 706.2 and 707.2)
- Article 706 states that provinces and territories may impose certain requirements, as a condition of certification, and, in specific circumstances, may impose certification restrictions, limitations, or conditions or may refuse to certify.

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- Exceptions to the obligation that a regulatory authority grant certification to a worker certified in another province or territory without any requirement for material additional training, experience, examinations or assessments are permissible but must be clearly justified as necessary to achieve a legitimate objective (Article 708). Examples of legitimate objectives include public safety and consumer protection. Any measure to be justified as meeting a legitimate objective must be approved by the government maintaining the exception, must not be more restrictive than necessary and must not be a disguised restriction to labour mobility. Approved measures imposed for a legitimate objective must be posted on the Committee on Internal Trade website.
  - Pursuant to Article 709, annual reports on the operation of the Chapter will be prepared by the LMCG on behalf of the FLMM. These reports will, among other things, describe the extent to which there is labour mobility for each occupation. The report will also provide an assessment of the effectiveness of the Chapter, including an assessment of whether there have been any unintended adverse consequences. Recommendations to address any identified concerns will be included.
  - Chapter 17 of the AIT prescribes the *Dispute Resolution Procedures* which applies to all chapters of the agreement, including Chapter 7 (*Labour Mobility*) (Article 710). For more information on complaint procedures, consult the labour mobility coordinator in your province or territory ([www.ait-aci.ca](http://www.ait-aci.ca)).

## Chapter 7: Core principles

### ***Protection of the public interest remains key***

One of the primary roles of regulatory authorities is to ensure the public interest is protected. Provinces and territories want to reach full mobility where possible, while ensuring the protection of the public interest.

### ***Governments and their regulatory authorities maintain the ability to set standards***

Governments and regulatory authorities continue to be able to set the standards they believe are necessary to protect the public interest. In the majority of cases, there is a high level of consistency in occupational standards across Canada. Provinces and territories maintain the authority to impose additional certification requirements for workers from another province/territory so long as they are permitted under Articles 706 (3) and 706 (4) or when the additional certification requirement is justified as necessary to achieve a legitimate objective, as prescribed under Article 708.

### ***Different Pathways to Certification***

Governments agree that there can be different pathways for a worker to acquire the necessary skills, knowledge and abilities required for certification in a regulated occupation. As such, Chapter 7 specifies that a provincial/territorial difference related to, for example, the type or length of education/training required for certification should not “in and of itself” be a justification to deny certification to a worker who is already certified in another province/territory.

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## Section II

### **Introductory Articles in Chapter 7 (Articles 700-704)**

Articles 700 to 704 set forth a number of introductory and general principles for the Labour Mobility Chapter, such as its purpose, scope and coverage, and the extent of obligations for the governments (Parties) who have signed the AIT.

#### **General rules**

Article 700 sets forth which Articles from the General Rules Chapter of the AIT (contained in Chapter 4) do or do not apply to Chapter 7. Articles 404 (Legitimate Objectives) and Article 405 (Reconciliation) do not apply to Chapter 7, for example, because Chapter 7 contains its own versions of these articles that have been modified for application to labour mobility.

#### **Purpose**

Article 701 sets forth the overall purpose of Chapter 7: that governments ensure that workers who are certified in any one province or territory will be recognized as qualified to practice that occupation anywhere in Canada.

#### **Scope and coverage**

Article 702 sets forth the scope and coverage of Chapter 7. The Chapter applies to the following types of measures adopted by a Government: residency requirements, certification requirements and occupational standards. Subsequent Articles of Chapter 7 address these commitments in further detail. Article 702 further specifies that Chapter 7 does not cover social policy measures (examples listed), nor does it cover Quebec's measures pertaining to language requirements.

#### ***Occupational titles and scope of practice***

Article 706.1 states that any worker certified for an occupation in one province or territory shall, upon application, be certified “in that occupation” by each other Party which regulates that occupation.

Occupational nomenclature is not always consistent across Canada. Sometimes, there are different titles used by provinces and territories for the same profession or trade. Other times, even though a profession or trade has the same title across jurisdictions, there could be a significant difference in the “scope of practice”. Such scenarios may need to be considered when applying Article 706.1.

For purposes of Chapter 7, the scope of practice for an occupation refers to the range of activities that a qualified practitioner of an occupation may practice. It establishes the boundaries of an occupation, especially in relation to other occupations where similar activities may be performed. The scope of practice for an occupation may be established through governing legislation or through internal regulations adopted by a regulatory authority. Scopes of practice may differ across provinces and territories for the same occupation and, depending on the significance of that difference, may impact a worker's ability to be certified in another jurisdiction without any additional requirement.

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Any questions regarding the equivalency of occupations across provinces and territories (such as when a difference in scope of practice constitutes a different occupation) should be directed to a labour mobility coordinator at [www.ait-aci.ca](http://www.ait-aci.ca)

## **Extent of obligations**

*Article 703 of the Chapter identifies which entities within a province or territory are covered by the obligations of Chapter 7 and the extent of their obligations to comply with Chapter 7.*

### ***Governments***

Chapter 7 applies to the provincial, territorial and federal governments, i.e., the signatory Parties to the AIT. Departments, ministries and similar agencies of government are required to examine their practices to ensure they comply with the obligations of the Chapter. For example, in posting employment opportunities as an employer, governments cannot require that applicants reside within the province or territory as a condition of eligibility for employment (*see Section III: Residency Requirements*).

Where a government regulates an occupation directly through a ministry, agency or other government organization, the government's regulatory authority shall examine practices related to the certification of workers to ensure they are consistent with the obligations of Chapter 7.

Provinces and territories have agreed that regional, local, district and other forms of municipal government are required to comply with the obligations of the Chapter.

Each government is responsible for determining the process to review and approve any exceptions to labour mobility put forward under Article 708 (*Legitimate Objectives*), including the level of approval required and which ministries or agencies will be involved. Each province or territory's Labour Market Minister is responsible for coordinating and submitting to the FLMM its government approved exceptions to labour mobility under Chapter 7 which must include a rationale as to why the measure is necessary to achieve a legitimate objective.

Governments have agreed to ensure that legislation and regulations governing regulated occupations are amended, as may be required, to enable regulatory authorities to proceed with certification in accordance with the obligations of the Chapter.

### ***Non-governmental bodies that exercise authority delegated by law***

In the case of many occupations, the authority to regulate the occupation has been delegated by a jurisdiction to a non-governmental body, such as a self-regulating "College", a professional "*ordre*", or similar organization or association.

Compliance with the obligations of the Chapter by occupational regulatory authorities with delegated authority is mandatory, since governments have agreed to "ensure" their compliance.

Each province and territory is responsible for determining the specific role that regulatory authorities will play in its process for reviewing exceptions to labour mobility

Provincial and territorial governments have agreed, to the extent possible and where practical, to continue to take steps to reconcile differences in occupational standards. To achieve this goal, multi-lateral discussions will need to continue to take place among regulatory authorities and governments from provinces and territories for each regulated occupation.

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### *Other non-governmental bodies*

In addition to regulatory authorities with delegated authority, there are other types of organizations which represent workers in an occupation or industry or which otherwise play a role in a worker being recognized as certified for an occupation. Examples of these groups include professional associations, unions, industrial associations and educational and training institutions. Governments have agreed, through appropriate measures, to seek compliance with the obligations of Chapter 7 by these other bodies.

### **Who is responsible for implementing Chapter 7?**

#### ***Parties to the Agreement***

The Agreement on Internal Trade was signed by First Ministers in July, 1994, making the provincial, territorial and federal governments the “Parties” to the Agreement. Each government is responsible for implementing the Agreement within their areas of jurisdiction and for ensuring that those organizations and entities covered by the Agreement, including the Labour Mobility Chapter, take the necessary actions to comply with its obligations.

#### ***Committee on Internal Trade (CIT)***

The Committee on Internal Trade (CIT) is composed of Ministers Responsible for Internal Trade representing each Party. The role of the CIT is to supervise the implementation of the AIT in its entirety; assist in the resolution of disputes arising out of the interpretation and application of the Agreement and consider any other matter that may affect the operation of the Agreement.

#### ***Forum of Labour Market Ministers (FLMM)***

Within each government, various departments and ministries have responsibility for overseeing certain chapters of the Agreement. Responsibility for coordinating implementation of the Labour Mobility Chapter rests with the Forum of Labour Market Ministers (FLMM), a group of ministers with responsibility for labour market issues.

#### ***Labour Mobility Coordinating Group (LMCG)***

The FLMM has established the Labour Mobility Coordinating Group (LMCG), made up of officials from each government that signed the Agreement, to coordinate implementation activities on its behalf. LMCG members assist governmental and non-governmental bodies in meeting their obligations under the Chapter. Among other activities, the LMCG is responsible for developing the present guidelines.

The LMCG is also responsible for collecting information and preparing progress reports on the implementation of the Chapter, including conducting an assessment of whether there have been any unintended adverse consequences in the Chapter’s implementation. The LMCG will provide appropriate recommendations to address any identified concerns.

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### ***Other intergovernmental committees***

In addition to the FLMM, other intergovernmental committees of ministers have been involved in implementation activities associated with the Labour Mobility Chapter. The Conference of Health Ministers, the Council of Ministers of Education and the Canadian Council of Directors of Apprenticeship (CCDA), are three committees that have assisted the FLMM with activities for health occupations, teaching occupations and trades, respectively.

The CCDA will assist the LMCG in monitoring the progress of the implementation of Chapter 7 with respect to the Red Seal trades and other regulated trades and will also provide input for progress reports on the implementation of the Chapter.

### **Relationship to other agreements**

In addition to signing the multi-lateral AIT, some governments have entered into bilateral labour mobility agreements with another government within Canada. Article 704 states that, in such a case and where any discrepancy exists between the obligations of the AIT and another labour mobility agreement between two or more provinces and territories, whichever agreement is more conducive to labour mobility in that particular case shall prevail and only as between the Parties that are signatory to that agreement.

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## Section III

### Residency Requirements (Article 705)

Article 705 of the Chapter states that no party to the agreement shall require a worker of a party to be a resident in its territory as a condition of:

- eligibility for employment; or
- certification relating to the worker's occupation.

This means that no department, corporation or agency of government shall require a worker to be resident in its territory as a condition of eligibility for employment with that organization. However, as a condition of employment, an organization may require that a worker reside within a certain distance from the regular place of work in order to meet a safety or response time requirement.

With respect to the Federal Government, paragraph 2 of Article 705 now prescribes that a department, corporation or agency coming under its jurisdiction shall not require a worker of a province or territory to be a resident of a particular geographically defined territory as a condition of eligibility to apply for appointment or hiring for one of its positions, when the hiring process is open to the general public.

Article 705 also means that no Party or occupational regulatory authority shall impose a residency requirement as a condition of certification on a worker who wishes to have his or her qualifications recognized in order to practice his or her occupation or to use a reserved title in the province or territory coming under the jurisdiction of that Party or regulatory authority.

A residency requirement may still be permissible where it can be demonstrated that its purpose is to achieve a legitimate objective and provided that the measure is no more restrictive to labour mobility than necessary to achieve that legitimate objective. The residency requirement shall not constitute a disguised restriction to labour mobility (see Section VI).

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#### *What do governments and regulatory authorities need to do*

- ✓ Governments need to examine their governing legislation and their internal policies and practices to determine whether they include any residency requirements as a condition of eligibility for employment.
- ✓ In collaboration with the Public Service Commission, the federal government needs to examine legislation and internal policies governing hiring practices for positions opened to the general public within its departments, corporations or agencies.
- ✓ Regulatory authorities and provincial and territorial governments need to examine legislation governing regulated occupations as well as their internal policies and practices to determine whether they include any residency requirements as a condition for certification of workers.

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- ✓ Where a residency requirement has been identified, determine whether it will be removed and take appropriate steps to do so, including adopting or amending legislation, where needed.
  
  - ✓ A regulatory authority or government seeking to maintain a residency requirement on the basis of the ‘legitimate objective’ provision of Article 708 in Chapter 7 ( *Section VI of the Guidelines*) should consult with the provincial/territorial labour mobility coordinator or federal contact ([www.ait-aci.ca](http://www.ait-aci.ca)).

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## Section IV

### Recognition of Occupational Certification (Article 706)

Obligations imposed by the Chapter are intended to ensure that practices related to occupational certification do not result in unnecessary barriers to worker mobility. Article 706 deals with the recognition of workers' occupational certificates, as well as, with additional certification requirements permitted by the provisions of the Chapter.

#### Certification of workers currently certified in another Canadian province or territory

As prescribed in paragraph (1) of Article 706, governments of provinces and territories have agreed to certify a worker who is already certified in the same occupation in another jurisdiction without any requirement for material additional training, experience, examination or assessment. This obligation exists, for example, even if training or education requirements are different between provinces/territories, or even if examination or assessment requirements are different between provinces/territories. Therefore, subject to the application of other provisions in the Chapter, a worker who is certified for an occupation in one province or territory and who wishes to be recognized as qualified for that occupation in any other province or territory shall, upon receipt of a completed application, be certified by that receiving province or territory in a timely manner.

#### What may constitute a material requirement?

Based on information provided by regulatory bodies, each province and territory will assess and determine what additional measures it deems as material. This may be determined on a case-by-case basis for each occupation which it regulates. Questions on the material nature of a requirement should be directed to the corresponding province or territory's labour mobility coordinator ([www.ait-aci.ca](http://www.ait-aci.ca)).

When determining whether a requirement is material or not, provinces and territories may consider such factors, including:

- the requirement itself (exam, training, declaration)
- cost of the requirement;
- options to complete the requirement (online, in person);
- delay in an ability and time required to complete a requirement;
- whether a temporary or conditional certificate is granted while the applicant completes the requirement.

An example of a non-material measure could be a requirement to sign a document attesting to the fact that the worker has read relevant legislation.

An example of a material measure could be a requirement to complete an exam on relevant legislation, which follows a 12 month university course or program. If a material measure is to be maintained, an exception to labour mobility, as required to achieve a legitimate objective, must be filed.

### ***Internationally trained workers***

Some workers who are certified in a regulated occupation in Canada were initially trained and certified in another country. By certifying an individual, a regulatory authority is indicating that the individual has met the occupational standard that identifies the necessary abilities, skills and knowledge. Once an internationally-trained individual is certified by a province/territory, he or she cannot be treated any differently for certification purposes than a domestically-trained worker.

### ***Grandparented Workers***

As occupational standards and entry requirements for certification change over time, many provinces and territories take the approach of “grandparenting” workers who were certified according to a different set of occupational standards or entry requirements. Typically, such “grandparented” workers maintain their certification and ability to practice their occupation even though they were certified under a previous set of standards or requirements.

Chapter 7 makes no distinction for a worker who is currently certified, in a province or territory, on the basis of having met a set of occupational standards or entry requirements linked to a “grandparenting” clause previously enacted in that jurisdiction. If regulatory authorities have any specific concerns regarding the recognition of grandparented workers, they should discuss the matter with their labour mobility coordinator ([www.ait-aci.ca](http://www.ait-aci.ca)).

## **Allowable additional certification requirements**

Under paragraph 3 of Article 706, provinces and territories agree that regulatory authorities may impose, as a condition of certification, additional requirements, other than requirements for material additional training, experience, examinations or assessments, including requirements to:

a) Pay application or processing fees

This refers to administrative requirements related to the treatment of an application received by a regulatory body. Except for actual cost differentials, out-of-province/territory workers shall not have to pay more than that which a province or territory’s own workers are required to pay.

b) Obtain insurance, malpractice coverage or similar protection

For example, many regulatory bodies require that their members obtain liability insurance to cover the risks of jeopardizing a client’s health or safety as a result of a professional act. Out-of-province/territory workers shall not have to obtain more insurance, malpractice coverage or similar protection than a province or territory’s own workers are required to obtain.

c) Post a bond

Members of certain regulatory bodies may be required to provide some financial guarantee against the risk of a monetary loss as a result of a professional act. Out-of-province/territory workers shall not have to post a higher bond than that which a province or territory’s own workers are required to post.

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d) Undergo a criminal background check

Out-of-province/territory workers shall not have to undergo a more onerous criminal background check than that which a province or territory's own workers are required to undergo. Examples may include, but are not limited to, local police or RCMP checks.

e) Provide evidence of good character

Evidence of good character could be provided through mechanisms including criminal record checks, child abuse registry checks, appearance before a committee and reference checks. Out-of-province/territory workers shall not have to provide more onerous evidence of good character than that which a province or territory's own workers are required to provide.

f) Demonstrate the knowledge of measures maintained by a province or territory applicable to the practice of the occupation in that province or territory

Demonstrating knowledge of measures such as legislation and regulations governing the practice of an occupation in the destination province or territory may be requested as a condition of certification. Such additional knowledge demonstration requirements can only be requested of out-of-province certified workers if they do not involve material additional training, experience, examinations or assessments and if they are not more onerous requirements than those imposed on a province or territory's own workers (see: *What may constitute a material requirement?*).

g) Produce a certificate, letter or other evidence of good standing

Provinces and territories have agreed that a regulatory authority could request that a worker produce confirmation of good standing from the regulators for all provinces and territories in which they are currently certified. This means, for example, that, where a worker is currently certified in three provinces or territories, a regulatory authority may request letters from each of those provinces or territories. This does not preclude requests for evidence of good standing from any jurisdiction outside of Canada.

Applicants from another province or territory may be denied certification or conditions may be imposed on a certificate if the above permitted additional certification requirements are not satisfied.

### **Allowable certification limitations, restrictions, conditions or refusals**

Pursuant to Article 706 (4), a regulatory authority may deny, totally or partially, certification to a worker from another province or territory in four specific circumstances. This ability does not require that the measure be justified on the basis of a legitimate objective as set out under Article 708 (*Legitimate Objectives*). The circumstances referenced under Article 706 (4) are:

a) Complaints, disciplinary or criminal proceedings

A regulatory authority may refuse to certify or may impose terms, conditions or restrictions on the practice of an incoming applicant if the applicant has been subject to complaints or disciplinary or criminal proceedings relating to his or her competency, conduct or character in a previous jurisdiction and the regulatory authority is of the opinion that such action is considered necessary to protect the public interest. Information regarding complaints or disciplinary or criminal proceedings can be requested from any jurisdiction, including those outside of Canada.

b) Non-practice

A regulatory authority may impose additional training, experience, examinations or assessments as a condition of certification where an applicant has not practiced the occupation within a specified period of time; such as an applicant who has not practiced the occupation at all within the last ten years. The extent

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of the additional requirement shall be no more burdensome than obligations imposed by the regulatory authority on its own workers. Where a difference exists between provinces/territories in the maximum time period specified, a province or territory can require out-of-province applicants to satisfy its own non-practice requirement as long as the time period is not longer than that which is imposed on its own workers.

Paragraph 706 (4)(b) is not intended to apply to continuing education/professional development requirements, nor is it intended to apply to differences in minimum post-certification practice hour requirements.

For example, if province A has mandatory continuing education/professional development requirements and province B has no required continuing education hours, a regulatory authority in province A is expected to recognize the certificate of province B. Once certified, however, a worker is expected to meet the minimum continuing education/professional development requirements.

c) Proficiency in one of Canada's official languages

In order to ensure proper communication between a qualified worker and people involved in the practice of the occupation and, thus, ensure public protection, a regulatory authority may require a worker to demonstrate proficiency in English or French as warranted by the language required in the province or territory. This additional language proficiency requirement would only be applicable in a circumstance where a worker was not required to meet or has not met an equivalent requirement to demonstrate proficiency for the required language in the province or territory where he or she is currently certified. The fact that an applicant has not completed the same exam with the same pass score as normally required within a province or territory would not be an acceptable reason for requiring the additional language proficiency requirement.

Pursuant to Article 702 (2) (b) of the Chapter, a worker applying for certification in Quebec may have to demonstrate proficiency in French to be certified.

d) Limited, restricted or conditional certificates

Where an applicant for certification is subject to a limitation, restriction or condition limiting the worker's practice in the previous certifying province or territory, a regulatory authority will make reasonable effort to certify that worker with an equivalent practice limitation, restriction or condition. Where the regulatory authority has no existing provision that provides the ability to issue an equivalent conditional, limited or restricted certificate, it may refuse to certify the worker or offer a conditional certificate with requirements to upgrade to the standard of the receiving province or territory. In such instances, the regulatory authority is not required to create equivalent certification categories in order to be able to issue a conditional or restricted certificate. However, they may choose to do so.

It is recognized that nomenclature varies across provinces/territories to describe certifications that vary from "full licensure". Regardless of the nomenclature used, where a previously certified applicant is subject to a limitation or restriction limiting his or her practice, a regulatory authority will make reasonable effort to certify that worker with a full certificate, if appropriate, or with an equivalent practice limitation, restriction or condition, if appropriate.

Examples:

1. A worker has a "restricted" or "conditional" certificate in the province or territory where he or she is currently certified because he or she does not meet a specific certification requirement. That certification requirement does not exist in the receiving province or territory (e.g. a health care worker

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is moving with a restricted certificate). The certificate is restricted because the individual does not yet have the training to administer anaesthetic. This is not required as an entry to practice standard in the receiving province or territory). In this case the worker with the restricted certificate shall be granted a full certificate in the receiving province or territory.

2. A worker has a “restricted certificate” in the province or territory where he or she is currently certified, because he or she does not meet a specific requirement for full certification. The province or territory to which he or she is moving can issue certificate restrictions that are substantively the same. In this instance, the worker shall receive an equivalent restricted certificate.
3. A worker has a certificate that is “restricted” in the province or territory where he or she is currently certified. The province to which he or she is applying does not have a provision for issuing such a restricted certificate and does not want to introduce that provision. In that case, at the discretion of the regulatory authority, the receiving province may issue a conditional certificate with requirement to upgrade to the standard of the receiving province or territory or it may deny certification.

## General Chapter 7 principles for certification

Conditions imposed for certification, as described above, are subject to the following Chapter 7 provisions.

- Conditions must be non-discriminatory and no more onerous than those imposed by the regulatory authority on its own workers as part of the normal certification process; (Note: This requirement applies to paragraphs 706 (3), (a) to (f) and to subsection 706 (4).
- Conditions must be published on a website. Conditions of certification are to be published on the regulatory authority’s websites or a centralized website of the province or territory.
- Implementation of conditions must result in expeditious certification. Measures and processes must not result in unnecessary delays in recognizing the occupational certificates of workers from other provinces or territories. This includes processes for reviewing an application and certifying the worker. The objective is to ensure that out-of-province workers already certified in another Canadian province or territory are certified and eligible for work as soon as possible. Where the process does not allow for expeditious certification, these processes shall be changed.
- Implementation of conditions shall not impose unnecessary additional fees. Regulatory authorities and governments may continue to charge fees and other costs for certification measures. For out-of-province workers, they may not impose fees or other costs that are more burdensome than those imposed on workers from within their own province or territory, except for actual cost differentials.
- Conditions must not create a disguised restriction on labour mobility.

## Post-certification requirements

Once a worker is newly certified for an occupation in a province or territory, his or her right to practice or use a reserved title is subject to the same obligations as the workers already certified for that occupation in that province or territory. The newly certified worker will be subject, for instance, to any post-certification requirements related to continuing education or practice audits/quality assurance reviews.

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## **New certificates vs. recognition of another province or territory's certificate**

Paragraph 6 of Article 706 states that nothing in this Agreement prevents a province or territory from allowing a worker who is certified in another province or territory to come and work in its own province/territory without having to apply for certification in the new province/territory.

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### ***What do governments and regulatory authorities need to do?***

- ✓ Examine their licensing, certification and registration practices to ensure that they are in accordance with the obligations in Chapter 7.
- ✓ Identify any practices that are not in accordance with any of these obligations and implement any changes to their practices that may be required to comply with these obligations.
- ✓ Consult with their labour mobility coordinator with any questions regarding the material nature of a measure (website).

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## Section V

### Occupational Standards (Article 707)

Differences in provincial/territorial occupational standards have the potential to create barriers to labour mobility. While Parties acknowledge individual jurisdiction in this area, they also agree that commonality in occupational standards and collaboration in their development and maintenance can help to achieve labour mobility objectives.

In Article 707, the Parties have agreed:

- to take steps to reconcile differences in occupational standards, where possible and practical;
- to adopt occupational standards based on common interprovincial standards, to the extent possible and where practical; and
- to establish transparent notification practices (changed/new standards) among regulatory authorities in order to avoid the creation of new barriers to labour mobility.

#### Adoption of occupational standards based on common interprovincial or international standards

Article 707 (2) reinforces the inherent value in adopting common occupational standards and states that governments and their regulatory authorities may also wish to consider international standards when considering how to reconcile occupational standards within Canada.

Governments acknowledge that the Interprovincial Standards Red Seal Program is a well-established example of how collaboration in the development of common interprovincial standards facilitates recognition of qualified tradespersons. Under the Interprovincial Standards Red Seal Program, authorities develop common occupational standards and assessment methods.

#### Notification when developing new occupational standards or changing existing standards

Under Sections (3), (4) and (5) of Article 707, provinces and territories agree to introduce new occupational standards or changes to existing occupational standards “in a manner that is conducive to labour mobility”. Each province or territory also agrees to “notify the other Parties of its intent to introduce new standards or changes to existing standards and afford them an opportunity to comment on the development of those standards”.

Three different scenarios are identified as subject to these rules of transparency and notification:

- 707 (3) Where a province or territory wishes to introduce occupational standards for an occupation and where occupational standards for that occupation already exist in another province or territory;
- 707 (4) Where a province or territory wishes to introduce occupational standards for an occupation and where occupational standards for that occupation do not exist in any other province or territory; and
- 707 (5) Where a province or territory wishes to make changes to the occupational standards for an occupation.

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These commitments reinforce governments' agreement to avoid the creation of any new barriers that might result from the introduction or modification of standards. Notifying other governments and regulatory authorities of any new standards that are planned and of any planned changes to existing standards will contribute to greater transparency, reconciliation of standards and development of collaborative approaches.

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*What do regulatory authorities and governments need to do?*

- ✓ The FLMM will establish a notification process to facilitate this obligation of Chapter 7. Regulatory authorities who are considering changes to their occupational standards should contact their provincial labour mobility coordinators for further information.
- ✓ Governments will identify the full range of occupations that are regulated within their jurisdictions, which will help to determine if any occupation they regulate is also regulated in any other province or territory.
- ✓ Government and their regulatory authorities should continue or initiate inter-provincial/territorial dialogue to explore, where appropriate, the adoption of common interprovincial standards.
- ✓ Governments and their regulatory authorities should consider mechanisms to support reconciliation of differences in occupational standards and other best practices pertaining to the regulation of occupations.

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## Section VI

### Exceptions to Labour Mobility (Article 708: Legitimate Objectives)

Governments have agreed to full labour mobility for regulated workers in Canada; however, where a significant variation in occupational standards exists between provinces and territories for a given occupation, a government may feel it is necessary to maintain additional certification conditions even if a worker is certified in another province or territory.

A government may choose to maintain a measure falling within the scope and coverage of this Chapter which is inconsistent with Article 401, Article 402, Article 403 or Article 705, or paragraphs 1, 2 or 5 of Article 706 of the AIT, when that measure is deemed necessary in order to achieve some broader legitimate objective. The Parties have agreed that, in order to maintain such a measure, a government must provide written justification of why the measure is necessary to meet a legitimate objective. Article 711 (*Definitions*) defines a legitimate objective as meaning one or more of the following objectives pursued within a province or territory:

- public security and safety;
- public order;
- protection of human, animal or plant life or health;
- protection of the environment;
- consumer protection;
- protection of the health, safety and well-being of workers;
- provision of adequate social and health services to all its geographic regions;
- programs for disadvantaged workers.

#### General tests for maintaining an exception to labour mobility

Provinces /territories can maintain a certification condition for workers already certified in another Canadian jurisdiction where it can be clearly demonstrated that:

1. the purpose of the additional certification requirement is to achieve a legitimate objective;
2. the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective;
3. the measure does not create a disguised restriction to labour mobility.

#### Justification

Article 708.2 provides that, in order to impose an additional certification requirement due to a difference in academic credentials, education, training, experience, examination of assessment methods, provinces must demonstrate that the difference being addressed by the measure results in a significant deficiency in skill, area of knowledge or ability.

For example, additional education, training or experience requirements may be justified where:

1. There is a clear and significant difference between the scope of practice in one province/territory and the scope in another; and
2. As a result of the difference, the worker lacks a critical skill, area of knowledge or ability required to perform the new scope of practice.

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To justify an additional material requirement, it is not sufficient to note that a difference in requirements exists between two jurisdictions. Rather, the difference must be supported with a rationale. For example, it is not sufficient to note that province A requires a baccalaureate while province B requires a diploma. Province A must clearly explain and justify the difference between the baccalaureate and the diploma as it relates to a significant deficiency in skill, area of knowledge or ability to practice the occupation in province A.

### **Process for maintaining an exception to labour mobility**

It is the responsibility of each provincial/territorial government to determine whether it is necessary to maintain an additional measure in order to achieve a legitimate objective.

Regulatory authorities themselves cannot approve such a measure, as all provinces and territories have agreed that exceptions must be approved by their respective government. It is important to note that the process to approve the maintenance of an additional measure will vary from government to government. Each province/territory is responsible for determining the specific role that regulatory authorities and government departments/ministries will play in its process for reviewing the maintenance of measures that create barriers to labour mobility.

If a regulatory authority and/or government department/ministry feels that an exception to labour mobility is necessary, the provincial/territorial labour mobility coordinator ([www.ait-aci.ca](http://www.ait-aci.ca)) should be contacted as soon as possible to discuss its government's approval process.

### **Notification of a government approved exception to full labour mobility**

When a government is satisfied that there is justification for maintaining an additional measure, the province/territory that has approved the measure must give written notice to the Forum of Labour Market Ministers (FLMM). To ensure consistency, a standard form will be used for the notification (See appendix II).

If an additional measure is not approved by the government, the additional certification requirement must be removed.

Additional measures which have been forwarded to the FLMM will be posted on the Agreement on Internal Trade website and in a manner that is easily accessible to the public.

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*What do regulatory authorities and governments need to do?*

- ✓ Identify any additional measures required to achieve a legitimate objective. This may require a comparison of standards with those of other provinces and territories.
- ✓ Contact their labour mobility coordinator (website) to review their province/territory's approval process for approving such measures.
- ✓ When a government approves an additional measure, ensure that the FLMM is notified using the standardized form.
- ✓ When a government does not approve an additional measure, ensure that the additional certification requirement is removed.
- ✓ Review annually the applicability of the additional measures posted.

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## Appendix I

<b>NOTICE OF MEASURE TO ACHIEVE A LEGITIMATE OBJECTIVE UNDER CHAPTER 7 OF THE AGREEMENT ON INTERNAL TRADE  APPROVED BY THE GOVERNMENT OF.....</b>	
<b>Occupation:</b>	
<b>Province(s)/Territory(ies) whose workers are affected:</b>	
<b>Under which legitimate objective(s) is the measure being filed:</b>	
<b>Rationale/Justification:</b>	
<b>Additional Requirement(s):</b>	
<b>Duration of the additional requirement(s):</b>	
<b>Date:</b>	_____/_____/_____ YY MM DD