

## **Guidelines for Mutual Recognition Agreements or Arrangements for Professional Services**

### **Introductory Notes**

These Guidelines, adopted pursuant to Article 27.3.1 and Annex 10-A (Professional Services) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('CPTPP'), provide practical guidance for governments, relevant bodies or authorities, or other entities entering into mutual recognition negotiations for regulated professional services. These guidelines are non-binding and are intended to be used by the Parties on a voluntary basis. They do not modify or affect the rights and obligations of the Parties under the CPTPP.

The objective of these guidelines is to facilitate the negotiation of mutual recognition agreements or similar arrangements (MRAs) that streamline and better facilitate the recognition of professionals between the Parties. It is recognised that responsibility for, and decisions on, the extent of the form and content of MRAs resides directly with the entities negotiating the MRAs. Therefore, notwithstanding the form and content identified in Section B of these guidelines, the negotiating entities will decide on what elements they wish to include in an MRA that streamlines the recognition of professionals through the pre-recognition of qualifications, licensing, registration, and/or professional body membership.

The guidelines listed below are provided by way of illustration. The listing of these guidelines is indicative and is intended neither to be exhaustive, nor as an endorsement of the application of such measures by the Parties.

### **Section A: Conduct of Negotiations and Relevant Obligations**

#### *Opening of Negotiations*

1. Entities intending to enter into negotiations towards an MRA are encouraged to inform the Professional Services Working Group established under Annex 10-A. The following information may be supplied:
  - (a) the entities involved in negotiations (for example, governments, organisations in professional services or institutes which have authority, statutory or otherwise, to enter into such negotiations);

- (b) a contact point to obtain further information;
- (c) the subject of the negotiations (specific activity covered); and
- (d) the expected time of the start and end of negotiations.

#### *Focal Points for Negotiations*

2. Entities entering into negotiations towards an MRA are encouraged to establish a single focal point for negotiations.

#### *Results*

3. Upon the conclusion of an MRA, the parties to the MRA are encouraged to inform the Professional Services Working Group, and may supply the following information in its notification:
  - (a) the content of a new MRA; or
  - (b) the significant modifications to an existing MRA.

#### *Follow-up Actions*

4. As a follow-up action to a conclusion of an MRA, parties to the MRA are encouraged to inform the Professional Services Working Group of the following:
  - (a) that the MRA complies with the provisions of Chapter 10;
  - (b) measures and actions taken regarding the implementation and monitoring of the MRA;  
and
  - (c) that the text of the MRA is publicly available.

### **Section B: Form and Content of MRAs**

#### *Introductory Note*

This Section sets out various issues that may be addressed in MRA negotiations and, if so decided during the negotiations, included in the MRA. It includes some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.

### *Participants*

5. The MRA should identify clearly:

- (a) the parties to the MRA (for example, governments, organisations in professional services, or institutes);
- (b) competent authorities or organisations other than the parties to the MRA, if any, and their position in relation to the MRA; and
- (c) the status and area of competence of each party to the MRA.

### *Purpose of the MRA*

6. The purpose of the MRA should be clearly stated.

### *Scope of the MRA*

7. The MRA should set out clearly:

- (a) its definitions;
- (b) its scope in terms of the specific profession or titles and professional activities it covers in the territories of the parties to the MRA;
- (c) who is entitled to use the professional titles concerned;
- (d) whether the recognition mechanism is based on qualifications, on the license obtained in the jurisdiction of the party of origin or on some other requirement; and
- (e) whether it covers temporary access (including a range of possible duration and conditions for renewal, if applicable), permanent access, or both, to the profession concerned.

### *MRA Provisions*

8. The MRA should clearly specify the qualifications or registration conditions, and their equivalences, to be met for recognition between the parties to the MRA. If the requirements of the various sub-national jurisdictions under an MRA are not identical, the difference and the modalities for the recognition of qualifications between sub-national jurisdictions should be clearly presented.

9. The MRA should seek to ensure that recognition does not require citizenship or any form of residency, or education, experience, or training in the jurisdiction of the host party as a condition for recognition by that host party.
10. The requirements and procedures under the MRA should not discriminate based on age, gender, and race.

*Eligibility for Recognition – Qualifications*

11. If the MRA is based on recognition of qualifications, then it should, where applicable, state:
  - (a) the minimum level of education required (including entry requirements, length of study, and subjects studied);
  - (b) the minimum level of experience required (including location, length, and conditions of practical training or supervised professional practice prior to licensing, and framework of ethical and disciplinary standards);
  - (c) examinations required, especially examinations of professional competence;
  - (d) the extent to which qualifications obtained in the jurisdiction of the party of origin are recognised in the jurisdiction of the host party; and
  - (e) the qualifications which the parties to the MRA are prepared to recognise, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the jurisdiction of the party of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

*Eligibility for Recognition – Registration*

12. If the MRA is based on recognition of the licensing, membership or registration decision made by regulators in the jurisdiction of the party of origin, it should specify the mechanism by which eligibility for such recognition may be established.

*Eligibility for recognition - Additional Requirements for Recognition in the Jurisdiction of the Host Party ("Compensatory Measures")*

13. If it is considered necessary to provide for additional requirements in order to ensure the quality of the service, the MRA should set out the conditions under which those

requirements may apply, for example, in case of shortcomings in relation to qualification requirements in the jurisdiction of the host party or knowledge of local law, practice, standards, and regulations. This knowledge should be essential for practice in the jurisdiction of the host party or required because there are differences in the scope of licensed practice.

14. If additional requirements are deemed necessary, the MRA should set out in detail what they entail (for example, examination, aptitude test, additional practice in the jurisdiction of the host party or in the jurisdiction of the party of origin, practical training, and language used for examination).

#### *Mechanisms for Implementation*

15. The MRA could state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the MRA;
- (b) the mechanisms for dialogue and administrative cooperation between the parties to the MRA; and
- (c) the means of arbitration for disputes under the MRA.

16. As a guide to the treatment of individual applicants, the MRA could include details on:

- (a) the focal point of contact in each party to the MRA, for information on all issues relevant to the application (such as the name and address, licensing formalities, and information on additional requirements which need to be met in the jurisdiction of the host party);
- (b) the duration of procedures for the processing of applications by the relevant authorities of the jurisdiction of the host party;
- (c) the documentation required of applicants and the form, including by electronic means, in which it should be presented and any time limits for applications;
- (d) acceptance of documents and certificates, including by electronic means where applicable, issued in the jurisdiction of the party of origin in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the relevant authorities in case of the

rejection of an individual application for recognition; and

- (f) the fees that might be reasonably required.

17. The MRA could also include the following commitments:

- (a) that requests about the measures will be promptly dealt with;
- (b) that adequate preparation time will be provided where necessary;
- (c) that any exams or tests will be arranged with reasonable periodicity and accessibility;
- (d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the jurisdiction of the host party or organisation; and
- (e) that information on any assistance programmes in the jurisdiction of the host party for practical training, and any commitments of the jurisdiction of the host party in that context, be supplied.

18. The MRA could require the parties to the MRA to communicate to their counterpart any new requirements or modifications to existing requirements that might have an impact on the recognition of qualifications under the MRA.

*Licensing and Other Provisions in the Jurisdiction of the Host Party*

19. If applicable:

- (a) the MRA could also set out the means by which, and the conditions under which, a license is actually obtained following the establishment of eligibility, and what such license entails (such as a license and its content, membership of a professional body, and use of professional or academic titles);
- (b) a licensing requirement, other than qualifications and experience, may include, for example:
  - (i) proof of payment of any required application fees,
  - (ii) a language proficiency requirement,
  - (iii) proof of good and financial standing,

- (iv) professional indemnity insurance in accordance with the laws of the jurisdiction of the host party,
- (v) demonstrate local knowledge of occupational legislation (i.e. Acts, regulations and codes) in the host jurisdiction,
- (v) compliance with the jurisdiction of the host party's requirements for use of trade or firm names, and
- (vi) compliance with the jurisdiction of the host party's ethics, for instance independence and incompatibility.

*Revision of the MRA*

20. If the MRA includes terms under which it can be reviewed, amended, or revoked, the details of such terms should be clearly stated.