Chapter 4. Global markets for Australian services

Chapter 4 looks at the various factors that particularly influence the ability of Australian firms to compete internationally in key services markets. In Australia's main destination markets, various obstacles may inhibit the entry of new firms or restrict the expansion of Australian exporters already engaged there. This chapter presents the main trade barriers found in some of Australia's major trading partners for services exports emerging from an analysis of the OCED STRI database.

Evidence from a recent survey of Australian business drew attention to the numerous challenges faced in their most important overseas markets, including interpreting and adapting to local regulation, discriminatory practices favouring local firms, and heterogeneity of licensing requirements and national standards.[1] This chapter examines the major obstacles influencing the ability of Australian firms to compete internationally in key services sectors.

The importance of financial services and professional services

Financial services and *Other business services* are among the largest contributors to Australia's total services exports after *Travel* and *Transport*, accounting for about 20% of Australia's total services exports in 2016.[2] The total value of Australian *Financial services* exports was AUD 3.5 billion in 2016 (5% of total services exports), a three-fold increase since 2000. The United States has replaced the United Kingdom as Australia's main destination market for financial services exports (Figure 4.1, left panel). Today, these two countries alone account for nearly 40% of Australia's total exports of financial services. In the Asia-Pacific region, the People's Republic of China's (hereafter "China") share increased in importance from a little over 2% in 2000 to nearly 9% in 2016. Other markets in the region have also seen an increase in their importing shares, some of which, most notably Singapore, have become almost as important as traditional destination markets like New Zealand.

The value of *Other business services* export in 2016 was AUD 9.8 billion (14% of total services exports), consisting mostly of exports of professional services like legal, accounting and auditing, architecture and engineering services. The total export of these professional services in 2016 was about AUD 5.7 billion, about 8% of Australia's total services exports. The top three destination markets for *Other business services* in 2016 were the United States, Singapore and the United Kingdom, absorbing more than half of Australia's total exports of such services (Figure 4.1, right panel). A geographical breakdown of professional services exports is not available for Australia.

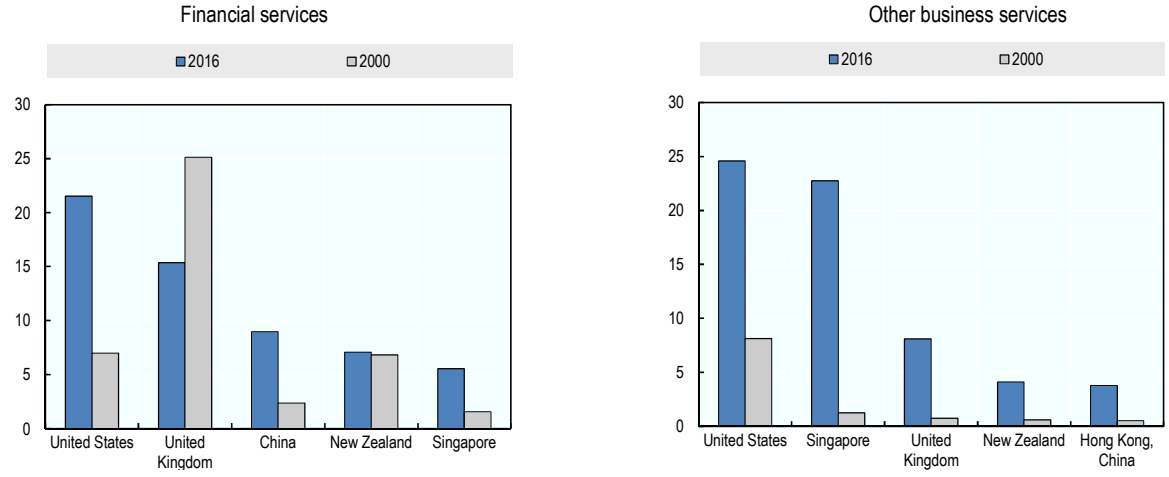
These estimates however do not reflect the full picture as they cover services provided by Modes 1, 2, and 4, but do not capture services delivered by Mode 3 (Australian branches or affiliates overseas). Information on Australia's Mode 3 services exports, typically found in Outward Foreign Affiliates Trade Statistics (FATS), is only available in the form of *ad hoc* surveys and specific studies. A one-off survey from the ABS in 2002-03 found that Mode 3 services exports were about twice the value of services exports through other Modes of supply.[3] Most of Australian affiliates' services sales were realised in the United States, the United Kingdom and New Zealand, which jointly accounted for 74% of total affiliates' sales in the services sector. The same survey also estimated that the value of exports of professional services via commercial presence abroad was similar to the total value of exports through all other Modes.[4]

A more recent ABS survey of 1 245 Australian finance and insurance affiliates abroad found that commercial presence abroad was the main supply Mode for Australian financial and insurance services in 2009-10.[5] This activity was valued at AUD 38.9 billion (covering both explicit and implicit financial services). Sales via commercial presence abroad accounted for nearly 96% of Australia's global export of financial and insurance services in 2009-10 (cross-border exports earned just AUD 1.4 billion). Nearly all sales of financial and insurance services by Australian affiliates were made to local residents in the host country, indicating that these affiliates were established primarily to serve the markets

where they were domiciled. Over half of overseas affiliates' sales occurred in New Zealand, the United States and the United Kingdom.

Figure 4.1. Australia's top five destination markets for selected services

Share of Australia's total services exports, 2000 and 2016



Source: Own calculations on OECD ITSS EBOPS 2010.

Nonetheless, the ability of Australian services providers to establish a presence in foreign markets is influenced by various factors, including policy-induced entry barriers and behind-the-border obstacles. Australia has tried to address barriers at the border by pursuing services trade liberalisation through multilateral, regional and bilateral trade agreements. The Australian Government has concluded free trade agreements to facilitate Australian services providers' access to some of the most important markets around the world.[6] These agreements include commitments on the four Modes of supply of services covered by FTAs. Box 4.1 describes key commitments on foreign direct investment and the movement of people included in these agreements. FTAs also address aspects related to behind-the-border barriers by including specific chapters on investment and services (including financial services and telecommunications), competition policy, intellectual property rights and e-commerce. However, despite all past and ongoing efforts, barriers to services export and foreign investment in foreign markets are hard to weed out.

These barriers may prevent Australian firms, and especially smaller and newer businesses, from expanding via exporting, or they may raise operating costs for those firms that have already entered a foreign market but due to discriminatory practices or higher compliance costs, cannot trade as much as they would in more open and competitive markets. The OECD STRI regulatory database allows the assessment of barriers faced by Australian services exporters. The database records restrictions applying on a multilateral basis, in accordance with the most-favoured nation principle, although the discussion in this chapter also takes into account cases where preferential access is granted to Australian services suppliers through one of Australia's several FTAs.

Box 4.1. Commercial presence and movement of people in Australia's bilateral FTAs

ChAFTA: China allows a commercial presence to be set up for the delivery of services in certain sectors. These include health, aged care, education services, shipping, architecture and urban planning, legal and mining services, as well as financial services including banking, insurance and funds management. With respect to the movement of people, China guarantees access to Australian citizens and permanent residents as (1) intra-corporate transferees for an initial stay of up to three years (including executives, managers and specialists); (2) contractual service suppliers for an initial stay of up to one year, or longer if stipulated under the relevant contract; (3) installers and maintainers for up to 180 days; and (4) business visitors for up to 180 days.

JAEPA: Japan improves opportunities and protection for Australian investors in Japan with provisions to ensure non-discrimination. Japan provides access for (1) intra-corporate transferees for up to three years (including executives, managers and specialists); (2) investors for up to three years; (3) professional and contractual service providers for up to three years; and (4) business visitors for up to 90 days.

KAFTA: Korea improves protection and access for Australian service suppliers through the reduction of market access barriers in sectors such as telecommunication, legal services, as well as accounting and tax agency services. Moreover, Korea provides access for (1) intra-corporate transferees for an initial stay of up to three years (including executives, managers and specialists); (2) traders and investors for up to two years; (3) contractual service suppliers, in certain sectors, for up to one year; and (4) business visitors for up to 90 days.

MAFTA: It guarantees Australian investors the right to majority ownership in companies in a wide range of sectors, including higher education services (100%), investment banking and direct insurance services (70%), telecommunications (70%), and accounting (100%). MAFTA also extends the scope of commitments on business visitor to include goods sellers and investors, permitting them to stay in Malaysia for a period of 90 days.

ACIFTA: It improves opportunities and protection for Australian investors in Chile, securing market access in many sectors of the economy. Chile commits to provide temporary visas with unlimited opportunities for renewal and with the right to obtain an identity card for business visitors (three months or twelve months for service sellers), contractual service suppliers (initial period of up to one year, with possibility of further stay), and intra-corporate transferees (initial period of up to four years (managers or executives), or two years (specialists), with the possibility of further stay).

AUSFTA: The Agreement contains commitments ensuring a liberal services trade environment beyond those at the WTO in a wide range of sectors, including educational, financial and professional services.

TAFTA: Thailand allows majority Australian ownership in various sectors, including mining operations (60%). distribution services in relation to goods manufacturing (100%), certain construction services (100% with minimum paid-up registered capital of THB 1 000 million), management consulting services provided through regional operating headquarters (100%), major restaurants or hotels (60%), tertiary education institutions outside of Bangkok specialising in science and technology (up to 60%) and supporting services for maritime transport, excluding cargo handling (60%). Moreover, Thailand grants access to (1) intra-corporate transferees for an initial period of one year, extended annually for a total of five years (with a limit of ten foreign persons per firm); (2) contractual services suppliers for an initial period of one year, extended on a yearly basis for a total of three years (with a limit of ten foreign persons per firm); (3) business visitors for up to 15 days and up to 90 days if APEC Travel Card Holders.

SAFTA: Recent updates to SAFTA (from 1 December 2017) strengthen non-discrimination requirements with respect to services supplied through a commercial presence. Moreover, Singapore allows Australian independent executives and contractual service suppliers an initial temporary stay of up to two years; three years (up to 15 years) for Australian intra-corporate transferees and up to three

months for Australian installers and services providers.

ANZCERTA: The Australia-New Zealand Closer Economic Relations Trade Agreement allows most services to be traded free of restriction. Mutual recognition of occupations removed impediments to the movement of skilled personnel between jurisdictions without the need for complete harmonisation of professional qualifications. Investors in each country benefits from lower compliance costs, higher screening thresholds and greater legal certainty.

The rest of the chapter describes the regulation of financial services and professional services in the key markets of China, New Zealand, the United States and the United Kingdom. India is also included given its potential to become an even more important trading partner in the near future, including through a possible India-Australia FTA.[7] This comparative analysis aims to highlight the benefits of a liberal regulatory regime for cross-border trade in services, while also revealing the potential for further liberalisation in the future.

Financial services

Trade in financial services occurs via all four Modes of services trade. An example via Mode 1 is when a client uses a foreign bank account. Withdrawing cash from an ATM in a foreign country is an example of consumption of financial services abroad (Mode 2). Trade via Mode 3 occurs when consumers buy an insurance policy from a foreign-owned insurance company in their country. Finally, Mode 4 of trade in financial services includes insurance intermediators travelling abroad in order to advise their clients.

Cross-border trade in financial services (Mode 1) often is severely restricted, although some countries give preferential treatment. For example, the Protocol on Trade in Services to ANZCERTA allows cross-border trade for all types of services.[8] However, New Zealand, China, India, the United States and the United Kingdom all apply a multilateral policy requiring foreign banks to establish a commercial presence in the country before offering deposit taking and payment services. Of the five, only the United States allows lending services on a cross-border basis without commercial establishment in the country. In the insurance sector, New Zealand has multilaterally liberalised its cross-border regime so that all types of insurance product can be supplied without a commercial presence. In China, this is only possible for reinsurance services, while in the United States reinsurance as well as maritime, aviation and transport (MAT) insurance can be traded without commercial establishment.

The requirement to establish a *commercial presence* (Mode 3) in order to provide cross-border services may severely limit the ability of Australian financial services companies to reach foreign markets. While commercial establishment is possible in all major economies, it often comes with many conditions. In India, there is a foreign equity limit of 74% of the shares of existing local banks. Screening of such investment applies if the share of foreign equity goes above 49%; also the screening does not explicitly consider economic interests. Insurance companies must be Indian majority-owned but no screening is being applied.

In China, a maximum of 50% foreign equity is possible for life insurance companies, while fully owned subsidiaries are allowed in the other segments of the insurance markets.[9] China also allows fully owned foreign banks, while foreign participation in domestically funded banks is capped at 49% according to the ChAFTA of 2015.[10] Moreover, China screens foreign investments to permit only those that promote economic development and confer clear economic benefits to the country. New Zealand, the United States and the

United Kingdom, all allow fully owned foreign subsidiaries in financial services and they apply a screening procedure for which economic interests are not explicitly mentioned.

Licensing procedures may also restrict the commercial presence of foreign financial services companies. Licensing is meant to ensure the financial stability of new banks and insurance companies, and should not be abused to protect incumbents or to discriminate against foreign-owned firms. Nevertheless, in China, India and the United States, quotas or economic needs tests are applied when allocating licences for commercial banks. In the insurance sector, economic needs tests are applied in China and India. While the damage of such regulation depends on each country's characteristics, it can lower efficiency and competition within the banking sector. In addition, in China, India, and (less so) in the United States, licensing criteria are more stringent for foreign banks and insurance companies than for domestic companies. The same is true for reinsurance companies in India, precluding foreign-owned firms from competing on a level playing field with domestic firms. In the United States, applicants for insurance licences need not be told why a licence has been denied. Moreover, only China and the United Kingdom have a time limit for application decisions.

Once having entered a country, banks may struggle with regulations that inhibit their geographical expansion and growth of business activities. For example, in India a bank must open at least 25% of its branches in unbanked rural centres with a population of less than 10 000 inhabitants.[11] In China and India, growth of foreign-owned banks is complicated by restrictions on raising capital domestically in the host economy. In both countries, issuing domestic securities is not possible for foreign-owned banks.

In several countries, financial services firms are not free in their choice of board members. In India, a majority of board members of banks must be Indian nationals. In New Zealand, the Reserve Bank requires some board members of banks and insurance companies to be New Zealand residents (the required number of residents depends on the size of the board, usually less than half). In the United States, all directors of commercial banks regulated by the National Code on Banks and Banking must be US citizens and at least a majority of the directors must reside in the State where the company is located.[12]

Competition policy can be a major obstacle to entry for foreign-owned financial services providers, affecting commercial presence as well as cross-border supply. Weak enforcement of competition rules benefits established suppliers, which are usually domestic companies. Regulation of rates or fees and excessively complicated regulatory procedures may prevent more productive foreign suppliers from competing on price with domestic firms. For example, insurance companies in China and India need prior approval from the supervision authority to adopt new products or services, and to introduce new rates or fees. Approval for new products is also compulsory in the United States. For commercial banking services, prior approval for rates and fees as well as for new products is required only in China.

China and India both heavily regulate the prices of financial services. Premiums and fees of insurance contracts are regulated by the *Insurance Law* of China. The Tariff Advisory Committee of India's Insurance Regulatory and Development Authority (IRDA) may control and regulate the rates offered by insurers in the non-life segment. Commercial banks in India face an interest rate ceiling for deposits by non-residents in foreign currency, while in China there is a lower limit on deposit interest rates. In addition, both countries apply directed credit schemes, obliging commercial banks to allocate a certain share of their total credit volume to sectors or regions of particular priority for the government.

Where banks hold strong bargaining power relative to consumers, regulation must be in place to ensure the fair pricing of services. However, conditions and fees for early repayment of loans are not regulated in China and India. This shortcoming severely affects consumers' ability to restructure their debts. Regulation in the United Kingdom does not explicitly include product tying in the list of unfair contract terms. Nevertheless, the prohibition of unfair commercial practices has been interpreted in some competition cases as covering tying and bundling. The enforcement of fair competition also requires independence of the supervisory authority from direct or indirect interference of the government. Nevertheless, the China Banking Regulatory Commission, China Insurance Regulatory Commission and China Securities Regulatory Commission are under direct authority of the State Council, which can overrule the decisions of the supervisor. In addition, the supervisory agency's funding is under discretionary control by the government in both China and India.

Many countries have adopted the International Financial Reporting Standards (IFRS) for the reporting of large or publicly listed local companies.[13] In China, companies must comply with the Chinese Accounting Standards for Business Enterprises, issued in February 2006. The national standards, however, substantially converge with IFRS. The 2015 Indian Accounting Standards Rules (Ind AS) are also largely in line with IFRS Standards. However, section 5 of the Ind AS Rules explicitly excludes banks and insurance companies from applying these standards. Instead, they must follow standards prescribed by the Reserve Bank of India (RBI). In 2016, the Ministry of Corporate Affairs announced that banks and insurance companies will have to implement Ind AS rules from 1 April 2018 onwards (Government of India, 2016).

The Basel Capital Accords, issued by the Basel Committee on Banking Supervision (BCBS), are important risk-weighting procedures for international harmonisation, and have been adopted by many countries. New Zealand has only adopted the main elements of the Basel Capital Accords, sometimes taking a more conservative approach to bank capital policy (Reserve Bank of New Zealand, 2015).

The movement of natural persons (Mode 4) is impacted by a country's general visa policy but also by sector-specific recognition of qualifications and requirements on professional education. In all five economies, professionals need a licence to offer broking and agency services. In China, India, New Zealand and the United Kingdom, licences are also required by professional actuaries. However, most countries have no law or regulation establishing a process for recognising qualifications gained abroad in these professions, the only exceptions being India and New Zealand with respect to professional actuaries. Moreover, in India, appointed actuaries must be resident and members of the Actuarial Society of India.

This review shows that trade in financial services is still relatively restrictive. A local commercial presence is often required in order to offer services. Fully owned foreign subsidiaries are not always allowed. Regulation of prices and burdensome approval procedures still operate in some developing countries. Several countries have no established process for recognising foreign qualifications as insurance brokers or actuaries.

Digitalisation of the financial services sector offers tremendous opportunities for Australian banks and insurance companies, provided it is supported by adequate broadband connectivity. Many services businesses rely on access to high-speed internet, not least services exporters.[14] On the one hand, digitalisation allows exporting firms to move away from physical distribution through foreign branches to online distribution, which can substantially facilitate foreign market entry. However, it requires that regulatory barriers

with respect to cross-border trade in financial services, such as requirements to establish a commercial presence in order to offer deposit-taking, lending, or insurance services, are abolished. On the other hand, even though financial services are already among the most digitised sectors in Australia, digitalisation still has enormous cost-saving potential. It is estimated that retail banking will be able to save between 20% and 33% of the operating cost base, while savings on risk costs are likely to be between 10% and 30%. Savings in personal lines insurance can be between 12% and 25% of operating costs and between 2% and 8% of claims costs due to fraud reduction and telematics (McKinsey, 2017).

Professional services

As discussed in chapter 2, the professional services included in the OECD STRI indices are legal, accounting and auditing, architecture and engineering services. All are delivered abroad through various supply modes: an architect sending a project via email trades architectural services across the border (Mode 1), a lawyer representing a foreign client in a national court exports a legal service via consumption abroad by the foreign client (Mode 2), an engineer flying to a foreign construction site to advise on a project exports engineering services via movement of natural persons (Mode 4). The provision of professional services can also be delivered *in situ* by opening a foreign branch or subsidiary of a national firm in a foreign market (Mode 3).

All professional services are subject to economy-wide limitations on the movement of natural persons wanting to provide services on a temporary basis. Almost all countries considered in this sample limit in some way market access to foreign professionals, either through quotas (United States and United Kingdom, except for intra-corporate transferees), or by limiting the duration of stay to less than three years (India and New Zealand, for certain categories of services suppliers), and all of them through labour market tests. The sector-specific restrictions found for each professional service covered by the STRI are described below.

Legal services

Barriers to the *commercial presence* of Australian law firms' affiliates in Australia's main trading partners come in different forms. Although foreign equity limits are rarely used for legal services, most countries restrict the ownership of law firms to locally-qualified lawyers, particularly in the area of domestic law. This occurs in China, New Zealand and the United States, where the shareholders of law firms practicing domestic law must all hold local licenses and/or practising certificates. The situation in India is more extreme: foreign law firms wanting to practice either type of law (domestic or foreign/international) are simply not permitted to establish in the country. In fact, following the *Advocates Act 1961,* legal practice is reserved for locally licensed Indian advocates, who are the only lawyers that can form and own law firms.

Corporations are not permitted in China and India, and lawyers may not enter into partnerships or otherwise associate with other professionals or foreign lawyers. An exception in China is the Shanghai Free Trade Zone (SFTZ), where a provision in the China-Australia Free Trade Agreement (ChAFTA) allows Australian law firms to establish commercial associations with Chinese law firms in order to offer Australian, Chinese and international legal services. Legal practices involving local lawyers and other professionals are also banned in New Zealand. Moreover, most countries prohibit foreign firms from hiring locally licensed lawyers. For instance, in China, India and New Zealand, local

lawyers cannot be employed by foreign firms to practice in areas of law reserved for domestic law firms.

Ownership restrictions are often coupled with other conditions requiring the majority of the board (or equity partners in the case of partnerships) and the manager of law firms to be locally licensed. This applies in China, India, New Zealand and the United States. China and India impose additional nationality and residency requirements on board members and managers. Finally, some countries require a commercial presence to be able to provide legal services, thereby inhibiting *cross-border trade*. For example, US law calls for non-resident attorneys to have a representative office in the state of New York in order to provide legal services. Equally, a licensed body must at all times hold a practicing address in England and Wales.

In some countries, the *movement of natural persons* is significantly affected by licensing and related issues, including nationality and residency requirements to practice, as well as lack of recognition of foreign qualifications. For instance, in China and India citizenship is essential to obtain a license to practice domestic law. In India, qualifications held abroad may be recognised to practice international or foreign law, but only if obtained from a country that mutually recognises Indian legal studies degrees.[15] However, New Zealand, the United States and the United Kingdom have clear rules on the recognition of qualifications obtained abroad. In the case of the United States, only those qualifications from countries whose jurisprudence is based on the principles of English Common Law are recognised. Moreover, local examinations might be required to be able to practice locally. For instance, foreign lawyers wanting to practice domestic law in the state of New York need to sit the bar exam.[16] In the United Kingdom, international lawyers must pass the Qualified Lawyers Transfer Scheme assessments. In New Zealand, Australian lawyers benefit from mutual recognition under the Australia New Zealand Closer Economic Relations Trade Agreement (see below for more on mutual recognition agreements).

Licensing requirements and limiting activities to licensed professionals largely define market access for foreign suppliers. In China and India, where only nationals can obtain a license (needed to practice and to hold shares in law firms), market access for Australian lawyers is very limited. Business can only be done through fly-in-fly-out visits to provide legal advice to clients (and in areas of the law that are not reserved to domestically licensed professional). This is also possible in the United Kingdom, where qualified foreign lawyers having to appear in court to represent their client on a specific case may apply for a 'temporary call'.

International and commercial arbitration has been growing rapidly in recent years, for several reasons.[17,18] A major advantage is that arbitration awards are enforceable in more than 150 economies, parties to the New York Arbitration Convention.[19] Data on arbitration cases in Australia are not available, since most arbitration cases are organised on an ad-hoc basis by the participating parties. That said, large law firms in Australia are very active in the arbitration field. Business consultations reveal that arbitration is seen as a chance to grow into the export business, since arbitration procedures are not subject to national licensing requirements. Purely Australian law firms and multinational law firms established in Australia have to use different strategies in order to promote their services in this field. While multinational law firms based can have business referred to through their network of offices abroad, purely Australian law firms often work with foreign firms through informal arrangements, involving mutual referral of clients.

While Australian law firms seem to receive their fair share of the arbitration business, Australia has failed to establish itself as a major centre for international arbitration. The

Asia-Pacific region, with its high growth rates, is attracting a larger share of international arbitration cases than ever before, mostly due to the strong position of Singapore and Hong Kong. Singapore offers very liberal conditions for international arbitration cases: for example, parties in arbitration proceedings can freely choose counsel regardless of nationality, there is no restriction on foreign law firms engaging in and advising on arbitration, and non–residents do not require work permits to carry out arbitration services.[20]

Other countries have managed to establish themselves as arbitration centres with the help of innovative rules. For example, in Stockholm, judges from the commercial court system are allowed to sit as arbitrators, facilitating synergies between the court system and the arbitration systems, and the best use of talent. By contrast, regulation in Australia often restricts the ability of law firms to engage internationally: firms report that they can be forced to travel to Singapore for meetings with foreign clients, because a visa requirement makes meetings in Australia more cumbersome (in the case of clients for whom the Visitor visa (subclass 600) is the only visa option). Additional costs like these can deter foreign clients, who may opt instead for representation by a law firm in Singapore.

Accounting and auditing services

Australia faces similar restrictions to those observed for legal services when it comes to *commercial presence abroad*. There are no foreign equity limits for Australian firms or Australian accountants/auditors in the economies under analysis, except in India, which does not allow any foreign investment in accounting and auditing services. Yet most countries restrict firm ownership to locally qualified professionals, and particularly so in auditing services. New Zealand and the United Kingdom require the majority of voting rights of an auditing company to be held by locally certified and registered professionals. There are also restrictions on the legal form permitted for firms in these sectors in China, India and New Zealand, where corporations are not allowed. In addition, India prohibits commercial associations with professionals other than locally licensed accountants.

Foreign ownership can also be limited by requiring that the majority or at least one of the members of the board of directors and/or managers be locally licensed. This is the case for auditing companies in all economies considered, except in the United States. In addition, in China and New Zealand, a representative office is required for Australian auditors to be able to provide auditing services across the borders (Mode 1).

Several conditions attached to licenses and qualifications limit the temporary *movement of natural persons* offering accounting and auditing services. While most countries have set up transparent procedures for recognising foreign professional education, training and experience in this field, some only recognise foreign qualifications on the basis of reciprocity, i.e. from countries with which they have signed Mutual Recognition Agreements (MRAs) or similar arrangements among professional bodies (e.g. Memorandum of Understanding, MoU, or Memorandum of Cooperation, MoC). In addition, some countries impose nationality or residency requirements to obtain a license to practice.

In China, for instance, only Certified Public Accountants (CPA) can provide accounting and auditing services, a title that is obtained by passing a national examination. Foreigners may be considered eligible for a CPA exam only when their qualifications are recognised on a reciprocity basis.[21] In India, only Chartered Accountants that are members of the Institute of Chartered Accountants of India (ICAI), and hold a certificate of practice, can provide accounting and auditing services.[22] Only foreign professionals whose qualifications

are recognised by the ICAI, and that have been residing in India for almost six months prior to the application, may apply for a certificate to practice in India.[23] In New Zealand, accountancy is not a regulated profession. However, individuals who conduct auditing according to the *Financial Markets Conduct Act 2013* must hold a licence under the *Auditor Regulation Act 2011*. Both Chartered Accountants Australia and New Zealand (CAANZ) and Certified Public Accountants Australia (CPAA), are accredited bodies that issue licences for their members. Members of other foreign professional bodies can directly apply for a licence to the Financial Markets Authority. Australian qualifications will be recognised under the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Foreign auditors from non-recognised bodies need to undergo a revalidation process, local examination and need to exhibit proof of local practice.

In the United States, a Certified Public Accountant (CPA) license is required to provide accounting and auditing services. There is an established procedure to assess and revalidate foreign qualifications, although a local examination and local practice of at least a year are key requirements to obtain the license. Accounting is not a regulated profession in the United Kingdom, and there are no licensing requirements. However, direct registration with the HMRC is required in order to act on behalf of a client. Those who use the description ”Chartered Accountant” must be members of recognised professional bodies, such as the Institute of Chartered Accountants in England & Wales (ICAEW). Recognised equivalent bodies in other Commonwealth countries, including Australia, allow Australian Chartered Accountants to practice in the United Kingdom. Auditing, however, is subject to licensing requirements in the United Kingdom. Only chartered accountants holding a practicing certificate may become “Statutory (or Registered) Auditors”, and so be authorised to carry out the audit of annual accounts or consolidated accounts. Foreign qualifications can be recognised but a local practical test on UK tax and UK law is mandatory, as well as proof of required experience. Australian Chartered Accountants have to undergo a less cumbersome process compared to accountants from countries whose professional bodies are not recognised in the United Kingdom.[24]

Architecture services

Architectural services provision is a regulated profession in all the economies in this benchmarking exercise, although it is less strictly regulated than the other professional services described above. Barriers to *commercial presence abroad*, through limitations on foreign equity, do not exist in any of the economies considered except in India, where only locally qualified architects can hold equity in a firm. Moreover, Indian citizenship is required to practice as an architect and all directors of architecture firms have to be locally licenced and Indian nationals. This requirement virtually closes the Indian architecture market to temporary *movement of natural persons*, except for entry of foreign architects via a temporary licensing system. In most countries, services trade via Mode 4 is less restricted. All have adequate laws or regulations that establish a process for recognising qualifications gained abroad. However, the revalidation process needs a local examination and at least one year of local practice in the United States and the United Kingdom.

Engineering services

Engineering services is not a regulated profession in India and in the United Kingdom, although all other economies require a license to practice. Nonetheless, very few barriers to *commercial presence abroad* are found in engineering services, neither foreign equity caps nor thresholds on equity holding by non-licensed individuals. Only China has a requirement that the chief engineer (manager) must be locally licenced, according to the Classification

Standard of the Qualification of Engineering Design. In addition, China imposes conditions on fee setting for engineering services, whereby fees for projects above CNY 10 million must be calculated based on the official Fee Standards of Engineering Design.

Limitations to the temporary *movement of natural persons* in engineering services exist as conditions attached to licensing requirements. China, New Zealand, the United States and the United Kingdom require a licence in order to provide engineering services. In the United States, acquiring a local licence requires permanent residency and domicile in the country, according to the New York Education Law. Moreover, China, New Zealand and the United States require a local examination. A temporary licensing system to allow foreign engineers to offer services exists in China and the United States; no such arrangement is necessary in India or in the United Kingdom, where the profession is largely self-regulated.

Mutual Recognition Agreements (MRAs)

As seen above, most of the obstacles to the free movement of professional services providers come from lack of revalidation of foreign qualifications, encompassing education, training and/or experience, and lack of recognition of foreign licenses or registrations. The objective of MRAs is to reduce barriers to the international mobility of professional services providers by addressing the lack of recognition related to accreditations or licensing and registration requirements.

Accreditation requirements are usually set by professional bodies for practicing professionals and might include completing an accredited higher education degree from a recognised education provider and/or obtaining qualifying professional experience, whereas *licensing or registration requirements* are imposed by regulatory bodies to address asymmetric information between consumers and suppliers and thus ensure quality control and consumer protection. The license is not considered a restriction in itself; it is, however, the lack of recognition of foreign licenses or registrations that limits the mobility of foreign professionals. Acquiring local licenses or registrations in addition to those already held in the country of origin duplicates effort and cost.

MRAs that cover recognition of foreign qualifications or accreditation are typically negotiated between the professional bodies of two or more countries, by reciprocally recognising accredited education institutions meeting quality standards set in both countries. Other MRAs aim to address recognition of licensing requirements and are generally negotiated by regulatory authorities. However, these MRAs are only partial and need to be followed up by professional bodies for their effective implementation.[25]

The most comprehensive MRA adopted by the Australian Federal Government was the TTMRA with New Zealand signed in 1997. TTMRA covers nearly all accreditation, licensing and registration requirements for all regulated professions in the two countries. Together with the TTMRA, ANZCERTA developed a trade environment with characteristics of a single market between the two economies, featuring policy, law and regulatory regime cooperation. It is still the most wide-reaching international agreement signed by Australia.

The TTMRA has also allowed for greater professional mobility by considering occupations as equivalent based on the recognition of each economy's education qualification framework. Typically, lawyers trained in one country are never allowed to practice the law of a foreign country, the only type of law they can practice being either foreign or international law. The TTMRA, however, allows for lawyers admitted to practice

New Zealand law equal chances to practice Australian domestic law after being duly registered with the relevant court.[26] Section 14 of the *Trans-Tasman Mutual Recognition Act 1997* allows for the bilateral movement of registered lawyers so that they will not need to obtain any additional qualification to be admitted to practice in the other country, apart from registration with the relevant court. This makes the TTMRA more comprehensive than any other MRA or other forms of agreement in the sector.

On a multilateral scale, Australia has signed multiple MRAs on professional services. In the case of *engineering*, Engineer Australia (EA), the professional body representing and accrediting engineers, has signed several international agreements under the International Engineering Alliance, covering 26 countries. The first such agreement is the Washington Accord (1989), which enables equivalence and mutual recognition of undergraduate engineering accreditation of qualifications in 18 economies.[27] The Accord has limitations and does not directly address licensing of Professional Engineers or the registration of Chartered Engineers, although it covers recognition of the academic requirements that are part of the licensing processes in member countries. In addition to the Washington Accord, and subsequent ones (Sydney and Dublin) establishing equivalence for other branches of engineering, Australia is part of two other multilateral agreements, the APEC Engineer Register and the International Professional Engineers Agreement, aiming to accredit professional competences in the field of engineering. Nevertheless, these agreements do not solve lack of recognition of registration/licensing requirements.

EA has signed several bilateral MRAs with the corresponding professional bodies of various other countries, including Canada, Hong-Kong China, Ireland, Malaysia, New Zealand, Singapore, Korea, the United Kingdom and United States. Members of the engineering professional bodies that have signed these agreements have automatic membership rights in the other professional body part of the agreement.

As for *accounting*, Australia's three most important professional bodies (Certified Practicing Accountants, CPA; Chartered Accountants Australia and New Zealand, CAANZ; and the Institute of Public Accountants, IPA), have been active in negotiating MRAs with several counterparts in Europe, North America and Asia. Agreements are in place (including with Canada, China, Hong-Kong China, India, Malaysia, Singapore, the United Kingdom and United States) to facilitate accreditation, but they do not grant the right to practice locally, which might be subject to other forms of licensing or registration requirements.[28]

In *architecture*, as in some other professional services, Australian States and Territories regulate the profession within their own jurisdiction; however, professional qualifications and competences are assessed by the Architecture Accreditation Council of Australia (AACA). An MRA has been negotiated with the industry associations of Australia, Canada and New Zealand, streamlining cross-border registration for senior architects with at least seven years of experience. This means employers in the member states are offered the guarantee that a foreign architect from another member state meets the competence and knowledge requirements being vetted by their domestic associations to ensure the right level of education and skills. Similarly, registration requirements have been simplified in Australia, New Zealand and the United States, where citizenship or residency requirements have been waived for foreign architects from member states that intend to register in another member state.

The recently established Mutual Recognition Unit (MRU) within DFAT could assist in reducing the barriers faced by professional services providers. The unit’s remit is to increase the value of Australian services exports by getting the most beneficial outcomes

for Australian firms during negotiations of mutual recognition agreements with the corresponding industry bodies in foreign economies. The unit provides direct assistance to Australian professional associations to help address international recognition of Australian qualifications and licencing and other barriers facing professional services companies.

MRAs are important for foreign professionals but also for the host economy, as facilitating accreditations and recognition of foreign licenses speeds up recruitment of qualified and trusted professionals who may be crucial for companies needing to act at short notice. Consultations with professional services providers from architecture, engineering and legal services revealed that these businesses engage predominantly with countries that have similar regulatory frameworks and business climates. Hence, the value of coordinated efforts by professional associations to align national standards and ensure harmonisation of patchy regulatory environments increases professional mobility and business opportunities. Finally, in a harmonised world with full mutual recognition of qualifications, there are far greater incentives for student mobility. It is in Australia's interest to negotiate deep and substantive MRAs, not just to give Australian professionals greater flexibility and broader working possibilities overseas, but also to ensure broader recognition of the qualifications it accredits and thereby boost Australian education services exports.

Concluding remarks

This chapter describes the regulatory regimes governing financial services and professional services in some of Australia's main trading partners. It highlights the challenges faced by Australian services providers in each of these economies. Emerging markets such as China and India are somewhat more restrictive, but the regulatory environments of developed economies, such as the United States and the United Kingdom, also pose some difficulties to Australian exporters.

In financial services, the reduction of foreign equity limits and promotion of cross-border trade in financial services should be a main priority for the Australian government. Continued efforts in the negotiation of Regional Integration Agreements would enhance the opportunities for financial services firms. In professional services, where possible, the recognition of foreign qualifications but even more so of foreign licensing and registration requirements, achieved through Mutual Recognition Agreements is of crucial importance for the international provision of such services by Australian professionals. Full accreditation of professional qualifications would also ensure greater student mobility, and hence, support education services exports.

Notes

1. Differences in business culture, difficulties with payments and protection of intellectual property rights were also important hurdles for Australian exporters (ECA, 2015). Recent findings show how the lack of clear information on market compliance and risks, external support, and on local customs and border procedures, as well as on the general regulatory environment of a foreign market, militate against Australian businesses entering and thriving in overseas markets (ECA, 2016).
2. Under the Extended Balance of Payment Services (EBOPS 2010) classification, the item *Other business services* includes R&D services, professional, management and consulting services, and other technical, trade-related and other business services. In EBOPS the item *Financial services* refers only to financial intermediary and auxiliary services between residents and non-

residents, but does not include *Insurance services*, counted as a separate item. The statistics reported above do not include the category *Insurance services,* but for the purpose of this assessment, the use of the term *Financial services* hereafter should be interpreted to include both services categories to match the OECD STRI definition of Financial services.

3. *Source*: ABS, *Australian Outward Foreign Affiliates Trade, 2002-03*, catalogue no. 5495.0.

4. A more focused and recent study by the Law Council of Australia found that Australia's provision of legal services from law firms established abroad was valued at AUD 141 million in 2010-11, which is a small fraction (around 18%) of Australia's total exports of legal services, even smaller than the one estimated for all professional services by the ABS survey in 2002-03.

5. *Source*: ABS, *Australian Outward Finance and Insurance Foreign Affiliate Trade, 2009-10*, catalogue no. 5485.0.

6. The Trade in Services Protocol was added to the Australia – New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) in January 1989. In addition, Australia has FTAs in force with ASEAN and New Zealand (AANZFTA), Chile, China, Japan, Korea, Malaysia, Singapore, Thailand and the United States. FTAs concluded, but not yet in force, include with Peru, the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) and the Trans-Pacific Partnership (TPP). Many of Australia's FTAs include commitments to review the chapters on services (e.g. a review of the China-Australia FTA chapter on trade in services commenced in 2017). Australia is also negotiating a number of FTAs including with Indonesia, the Pacific Alliance and parties involved in the Regional Comprehensive Economic Partnership (RCEP).

7. Exports of *financial services* and *other business services* to India were AUD 51 million and AUD 33 million in 2016. Negotiations for the India-Australia Comprehensive Economic Cooperation Agreement (IA-CECA) began in 2011, with the last round held in September 2015. Recently, there has been renewed interest in intensifying economic ties between the two countries. In April 2017, the Australian Government commissioned an independent India Economic Strategy to chart a course for this economic partnership.

8. Other free trade agreements liberalising cross-border trade in financial services for Australian providers include JAEPA with Japan, liberalising wholesale securities transactions, investment advice and portfolio management and KAFTA with Korea, liberalising investment advice and portfolio management services for investment funds, as well as a range of insurance and insurance-related services on a cross-border basis.

9. In November 2017, China announced plans to raise the foreign equity threshold to 51% by 2020 after three years and remove the cap on foreign equity after five years.

10. China's multilateral policy is even more restrictive, currently only allowing joint ventures with a maximum of 25% foreign equity while investment for each single foreign financial firm is limited to 20%. In November 2017, it was announced that these limitations should be dropped, without a timeline for this reform.

11. This requirement can be particularly detrimental to foreign-owned banks with a customer base consisting mostly of multinational companies and foreign nationals.

12. Some commercial banks may be regulated by state laws. In the state of New York (representative state for the STRI database), the *New York Banking Law* requires half the directors to be US citizens. The *New York Insurance Law* stipulates that a majority of directors in insurance companies be citizens and residents of the United States. Requirements on board members may be different in other states.

13. International standards are an important facilitator of trade in financial services and may help to prevent accounting irregularities and to make an economy more resilient to economic turmoil. In turn, deviations from these standards can be used in order to protect domestic firms from foreign competition.

14. Mobile banking is pervasive in many countries; machine learning has been transforming professional services in particular law with digital tools such as eDiscover which assists lawyers in searching for evidence, as well as routine tasks in accounting and other professional services (CEDA, 2017).

15. Australia is not one of those: Indian lawyers have to complete further courses on substantive law subjects, pass the bar exam and get a registered licence to practice in Australia.

16. Other states might be more liberal. For example, promotion of mutual recognition by the Australia United States Free Trade Agreement (AUSFTA) has led to new practicing rights for Australian lawyers in Delaware.

17. In Australia, international arbitration is governed by the *International Arbitration Act 1974*. Domestic commercial arbitration is governed by Uniform Commercial Arbitration legislation implemented by each Australian State and territory in 1984.

18. The numbers of arbitration cases in eleven of the most important international arbitration centres have risen from 4130 cases in 2012 to 5661 cases in 2016. See Table C.10 in Annex C for details.

19. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). See www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html for a list of contracting economies.

20. http://siac.org.sg/2014-11-03-13-33-43/why-siac/arbitration-in-singapore; accessed on 6 October 2017.

21. Australia has signed a MoC with the Chinese Institute of Certified Public Accountants to ensure that Certified Public Accountants (CPAs) from Australia have their qualifications recognised in China.

22. The term 'Chartered Accountant' is an internationally recognised professional designation (in some countries equivalent to 'Certified Public Accountant'), and indicates registered accountants that work in all fields of business and finance, including audit, taxation, financial and general management. Some are engaged in public practice work; others work in the private sector or are employed by government bodies.

23. Only members of the CPA Australia are eligible for the ICAI ensuring that their qualifications are recognised in India. Nevertheless, CPAA members would still need to apply for a certificate of practice requiring prior residency in the country. The other Australian accounting bodies have not signed MRAs with the ICAI.

24. For instance, Chartered Accountant members of the CA ANZ can gain reciprocal membership with the ICAEW, and through the ASIC, demonstrate they have met the practice and experience requirements necessary to obtain the license. Nonetheless, they will still need to prove their understanding of the UK principles of taxation and law by undergoing a local examination.

25. While FTAs do not provide direct recognition of qualifications and licensing, Australia's FTAs encourage professional bodies to explore the possibility of negotiating MRAs and can give rise to frameworks under which MRAs could operate. For example, the Singapore-Australia FTA resulted in a signed MRA on accounting in 2014 and the Korea-Australia FTA was the basis for an MRA on engineering in 2015.

26. For Australian lawyers this involves being admitted and registered with the Law Society of New Zealand (for NZD 170) to receive a practicing certificate. Similarly, lawyers qualified in New Zealand can be admitted to the Australian legal profession. The process varies from state to state. Once admitted in Australia, they must comply with ongoing regulatory requirements. In the state of Victoria and New South Wales they must maintain an Australian practicing certificate as required by the *Legal Profession Uniform Law*.

27. The eight original signatories were Australia, Canada, Hong Kong, China, Ireland, New Zealand, South Africa, United Kingdom and United States. There are currently 18 signatories and six provisional signatories who have appropriate processes and systems in place but are not yet functional.

28. For instance, the MRA between the American Institute of Certified Public Accountants and the National Association of States Boards of Accountants (which includes Australia), allow for a fast-track examination of professional qualifications to be work in the United States as certified public accountant, but the agreement does not exempt foreign accountants from obtaining local licenses where required.

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