

**Annex<sup>1</sup> on Professional Services**

*[as at 14 September 2016]*

**Part I – Commitments on Professional Services**

**1. Scope [and Definition]**

This Annex applies to measures by parties affecting trade in professional services. For the purposes of this Annex, “professional services” means the following services [AU propose: as defined] in each Party’s Schedule:

- (i) legal services [AU/JP propose: including for [CH oppose: domestic law (host country law),] foreign law and international law][CPC861];
- (ii) accounting, auditing and bookkeeping services [CPC862];
- (iii) taxation services [CPC863];
- (iv) architectural services [CPC8671];
- (v) engineering services [CPC8672];
- (vi) integrated engineering services [CPC8673];
- (vii) urban planning and landscape architecture services [CPC8674];
- (viii) [CH/CO/NO propose: engineering related scientific and consulting services [CPC8675];
- (ix) technical testing and analysis services [CPC8676];
- (x) [AU/CO/NO propose; JP/MX/US/ oppose: veterinary services [CPC932]]; and

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<sup>1</sup> AU: For purposes of this text, we refer to “Annex”. As the architecture of the TiSA text takes shape, it is possible that it could be a “Chapter” or “Section”.

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- (xi) **[AU/CO/NZ/NO propose; CH/JP/KR/MX/TW oppose:** private education services [*CPC921-4\*\**, *CPC929\*\**]
- (xii) **[CH propose:** construction related engineering services [*CPC51\*\**]

*AU: Given concerns raised with an “all or nothing” approach, Article 1(b) was deleted and parties will consider what, of any, flexibility is required for each Article in Part I.*

*New text for this box to be developed to reflect discussions on flexibilities.*

### **[AU propose; CH/EU/KR oppose: 2. Securing existing market access**

In sectors where commitments are undertaken in accordance with Article 1-3 (Market Access), any terms, limitations and conditions on market access affecting trade in professional services shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.]

### **[AU propose; MX considering: 3. Cross-border supply of Professional Services**

**[IL/JP/KR oppose:** Notwithstanding Paragraph 2, each Party shall undertake commitments without limitations to permit the cross-border supply of professional services as described in Art I-1:2(a and (b)).]

**[CH/LI/KR propose; AU oppose:** Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on the cross-border supply of professional services as described in Art I-1:2(a).]

### **[AU/CO propose: 4. Local presence**

- (a) No Party may require a service supplier of any other Party to establish or maintain a representative office or any form of commercial presence, or to be resident [**KR**

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**oppose:** or domiciled] in its territory as a condition for [**KR propose:** the cross-border supply of][**AU/CO propose:** trade in] professional services [**AU/CO propose:** as described in Article 1-1:2 (a), (b) and (d) (*Mode 1, 2 and 4*)].

(b) Subparagraph (a) shall be subject to conditions and qualifications scheduled in accordance with Article II-2 paragraphs 2 and 3.]

*AU: Local Presence will need to be reviewed subject to outcomes in the Localisation Annex.*

### **[AU/CO/IS/NO/US propose; IL considering: 5. Foreign Capital Limitations**

No Party may, with respect to entities supplying professional services through a commercial presence limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment [**US propose:**<sup>2</sup>].

**[AU propose; IS considering alt:** With respect to measures affecting trade in services as defined in Article I-1:2(c) [*Mode 3*], any sector specific limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment for entities supplying professional services shall be set out in Section B of Part I and in Part II of each Party's schedule in accordance with Article II-I and Article II-2 paragraphs 2 and 3.]]

### **[IS/NO/US propose: 6. Foreign Partnership or Management Participation Limitations**

No Party may, with respect to entities supplying professional services through a commercial presence restrict the nationality of partners or of senior managerial or

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<sup>2</sup> [**US propose:** Nothing in the paragraph shall be construed to prevent a Party taking non-discriminatory measures that limit participation in the capital of firms supplying professional services to natural persons licensed to supply such services.]

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other essential personnel<sup>3</sup>.]

*AU: Foreign Partnership or Management Participation Limitations will need to be reviewed, subject to outcomes in the Localisation Annex.*

### **[AU/CO/IL/IS/NO/US propose; HK considering: 7. Joint venture requirements**

No Party may require a joint venture **[CH/KR oppose: or joint operation [AU propose:<sup>4</sup>]]** as a condition for the supply of a professional service **[US propose:<sup>5</sup>]**.

**[AU propose; IS considering; alt:** With respect to measures affecting trade in services as defined in Article I-1:2(c) *[Mode 3]*, any sector specific restrictions or requirements for specific types of legal entity, joint venture or joint operation<sup>5</sup> through which a service supplier may supply a professional service shall be set out in Section B of Part I and in Part II of each Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3.])

### **[AU/CO propose; NO/US considering: 8. Economic Needs Tests**

No Party may adopt or maintain discriminatory economic needs tests, including labour market tests, as a requirement for the supply of a professional service<sup>6</sup> for categories described in a party's schedule of specific commitments.

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<sup>3</sup> **[US propose:** Nothing in this paragraph shall be construed to prevent a Party taking non-discriminatory measures that limit participation in the partnership or management of firms supplying professional services to natural persons licensed to supply such services.]

<sup>4</sup> **[AU propose; CO considering:** Joint operation refers to a foreign service supplier providing a service with or through a local entity.]

<sup>5</sup> **[US propose:** Nothing in this paragraph shall be construed to prevent authorities of a Party from requiring supervision by a professional licensed by those authorities as a condition on the supply of a service by a professional licensed only by the authorities of another Party, where it permits such persons to supply services.]

<sup>6</sup> **[AU propose:** Nothing in this paragraph shall be construed to prevent a Party applying economic needs tests in a manner which accords national treatment to professional services and service suppliers of any other Party within the meaning of Article I:4.]

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**[AU propose alt:** No Party may adopt or maintain discriminatory economic needs tests as a requirement for the supply of a professional service through the modes of supply identified in Article I-1:2 (a), (b) and (c) *[Mode 1, 2 and 3]*<sup>6</sup>.]

**[AU/CH/CO/EU/HK/IS/LI/MU/MX/NO/PK/TR propose; CA/IL/KR/PE/US**

**considering: 9. *Business names***

Subject to its laws and regulations, each Party shall permit professional service suppliers of any other Party to use the business names **[CH/TR oppose:** under which they ordinarily trade]**[CH/PK/TR propose:** which they are permitted to use] in the territory of the other Party [and]**[JP propose; TR considering:** or] otherwise ensure that the use of business names is not **[CH/TR oppose:** unduly]**[CH/TR propose:** arbitrarily] restricted].]

**[AU/TR/US propose: *Legal Services***

10. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.
11. If a Party regulates or seeks to regulate foreign lawyers and transnational legal practice, the Party shall encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner:
  - (a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;
  - (b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;
  - (c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host-country) lawyers;

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(d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional indemnity insurance or alternatively disclose to clients that they lack that insurance;

**[TR considering:** (e) the following modes of providing transnational legal services are accommodated:

- (i) on a temporary fly-in, fly-out basis<sup>7,8</sup>;
- (ii) through the use of web-based or telecommunications technology;
- (iii) by establishing a commercial presence; and
- (iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii); and

(f) foreign lawyers and domestic (host-country) lawyers may work together in the delivery of fully integrated transnational legal services.]]

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<sup>7</sup> **[AU propose:** Fly-in, fly-out or temporary practice refers to an approach, either through explicit regulation or otherwise, that allows foreign lawyers to enter and provide legal services on foreign law and/or international law on a temporary basis without requiring the service supplier to establish or maintain a commercial presence, or to be resident [or domiciled] in its territory, or to gain admission or otherwise qualify as a local practitioner, or to register in the Party.]

<sup>8</sup> **[AU propose:** Each Party will endeavour to schedule any arrangements for fly-in fly-out or temporary practice in its Schedule of Commitments.]

**Part II - Trade in Professional Services**

**12. Encouraging Recognition**

- a) Each Party shall consult with relevant bodies in its territory (“its relevant bodies”) to seek to identify professional services sectors or sub-sectors where two or more Parties are mutually interested in establishing dialogue on issues related to recognition of professional qualifications, licensing and/or registration.
- b) Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing and/or registration procedures.
- c) Each Party shall encourage its relevant bodies to take into account existing agreements relating to professional services in the development of agreements on recognition of professional qualifications, licensing and registration.
- d) Each Party may encourage its relevant bodies, where feasible, to consider taking steps to implement a temporary or limited licensing regime, such as project specific licensing or registration, based on the foreign supplier’s home license or recognised professional body membership (without the need for further examination). Such a temporary or limited licensing regime should not operate to prevent a foreign supplier from gaining a local license subsequent to satisfying the necessary local licensing requirements.

**13. Working Party on Professional Services**

- a) The Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Working Party on Professional Services, comprising representatives of each Party.
- b) Each Party of the Working Party shall liaise as appropriate to support its relevant professional bodies and regulators in pursuing recognition pursuant to Article I-6 (Recognition) and paragraph 9 (Encouraging Recognition). Such support could include, but is not limited to, providing relevant points of contact, facilitating

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meetings, and providing information regarding the regulation of professional services within each Party's respective territory.

- c) The Working Party shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in Article I-6 Recognition and paragraph 9. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Party.
- d) Decisions of the Working Party shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, unless:
  - i. otherwise agreed by all Parties; or
  - ii. a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

**[PK to indicate its position on paragraph 11 and 12 with respect to the scope.]**

*Paragraph 12 will need to be considered in relation to horizontal discussions on institutional arrangements.*

*TR proposes to work on a language for designation of inquiry points in each TiSA Party that will provide information on request of service suppliers of other Parties on areas including licensing and qualification requirements, the competent authority regarding standard, procedures to obtain or renew any licence or qualification requirements in professional services.*