Law Council
OF AUSTRALIA

Navigating trade in legal services with Southeast Asia: Challenges and market access priorities for Australian lawyers and firms

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Introduction



1 About the Law Council of Australia

The Law Council of Australia (**Law Council**) represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society;
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au

2 Executive Summary

2.1 Objectives of this report

This Report:

- assesses the current barriers for trade in legal services and transnational practice faced by Australian lawyers and firms in Southeast Asia; and

- sets out a strategy to address identified market access barriers and influence further legal services market liberalisation to improve conditions for legal business.

Legal services play a vital role in supporting and facilitating business and form a critical part of the infrastructure that underpins transactions in the commercial world. Australia has consistently argued within the World Trade Organization (**WTO**) the importance of liberalising trade in legal services.

The value of the legal services economy is not simply represented by services that are directly purchased by clients, such as assistance in drawing up a business contract or being represented in court. Legal services have a role to play across the whole supply chain, and their value is embodied in the sale of goods, in investment agreements, in intellectual property protection and the value of property.

Australian businesses which seek to expand into or operate in Southeast Asia rely on Australian and foreign lawyers to navigate a web of challenging and evolving business, legal and regulatory obligations. At the same time, Southeast Asia remains one of the world's most restrictive regions for trade in legal services. The Law Council has generally sought legal market liberalisation in Southeast Asia and has participated in many initiatives to promote the interests of Australian lawyers and firms in Southeast Asia over the years.

This Report has arisen in the context of the:

- current Government's intention to implement Australia's Southeast Asian economic strategy (**SEA Economic Strategy**); and

- corresponding desire of the Australian Department of Foreign Affairs and Trade (**DFAT**) to modernise Australia's free trade agreements (**FTAs**).

In relation to professional and financial services, Australia's SEA Economic Strategy recommended reviewing the scope of existing FTAs to determine which FTAs to prioritise upgrading through negotiations. To progress this recommendation, DFAT announced the Terms of Reference for its Southeast Asian FTA modernisation review in February 2025.

In conjunction with DFAT's review, the Australian Government has committed funds towards a grant program to support peak industry bodies and representative organisations to feed insights and sectoral priorities to Government. The Law Council has been the recipient of a grant, which has funded this Report. Remaining funding has been provided on a *pro bono* basis by Norton Rose Fulbright and other lawyers and law firms that have contributed their time and expertise. Their collective contribution is much appreciated.

2.2 Conceptualisation of legal services – 'Modes of Supply'

The standard conceptualisation of trade in legal services in international trade agreements occurs within the framework of the four Modes of Supply (**Modes**) of the General Agreement on Trade in Services (**GATS**).

In the context of market access into Southeast Asia, the key focus of this Report is on:

- **Mode 1 – Cross-border supply:** Mode 1 involves Australian-based lawyers advising clients in any Southeast Asian jurisdiction on 'foreign law' from Australia using electronic communications. This Report uses the term 'foreign law' to refer to legal services that do not relate to advice on domestic/local law in the relevant Southeast Asian jurisdiction. 'Foreign law' may be Australian law, or the law of another jurisdiction in which a lawyer is qualified and entitled to practise. 'International law' means both public and private international law and includes international arbitration, mediation and dispute resolution services. For the purposes of this Report, a reference to foreign law can be taken to include a reference to international law.

- **Mode 3 – Commercial presence by law firm:** Mode 3 involves Australian law firms setting up offices (or similar operations) in the relevant Southeast Asian jurisdiction. To date, Singapore and Indonesia have been the key jurisdictions of focus of Australian law firms.

- **Mode 4 – Presence of natural persons / temporary entry by individual lawyers:** Mode 4 involves Australian lawyers flying to the relevant Southeast Asian jurisdiction on a temporary basis, often referred to colloquially as 'fly-in, fly-out' (**FIFO**), to provide services in foreign and/or international law. Mode 4 services often complement Mode 1. While 'in country', the lawyer would normally work from a local hotel room, the client's premises, or the local offices of another law firm.

One insight from this Report is that the digitalisation and online consumption of legal services has rendered Mode 1 increasingly important to law firms operating in the region, particularly since the COVID-19 pandemic.

2.3 Summary of analysis of key jurisdictions in Southeast Asia

The key jurisdictions are ranked below in order of importance from an Australian legal services perspective, reflecting consultations conducted as part of this grant-funded activity and feedback from lawyers working in Southeast Asian jurisdictions:

Jurisdiction	Mode 1 – Cross-border supply	Mode 3 – Commercial presence	Mode 4 – Presence of persons / FIFO
Indonesia	Indonesia has committed under IA-CEPA to allow the supply of cross-border legal advisory services, such as advice provided via email, covering Australian law, third country law and international law on business and arbitration. Indonesian regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Indonesian local law, particularly domestic litigation, from outside Indonesia. The historic experience is that complaints by local lawyers could trigger investigations	Indonesia's legal services market is one of the least liberalised of the Southeast Asian jurisdictions, however, Indonesia has been more willing to agree to trade commitments to lock in any future market liberalisation. The establishment of a commercial presence in Indonesia under Mode 3 is heavily regulated, even though the local market is regarded as 'under-lawyered' by global standards. Indonesia has commitments under FTAs allowing foreign	Under IA-CEPA, entry and temporary stay is permitted for an 'Independent Professional For Legal Services' for a period of one year, which may be extended for a period of not more than one year for each extension. This applies only for advisory services on foreign and international law. FIFO could constitute a technical breach of business visa requirements if care is not taken by the relevant lawyer regarding the scope of work.

Jurisdiction	Mode 1 – Cross-border supply	Mode 3 – Commercial presence	Mode 4 – Presence of persons / FIFO
	and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.	lawyers to provide advisory services and form joint ventures with local firms. The requirements for foreign lawyers to be licensed in Indonesia are onerous and partly subject to the discretion of Indonesian regulatory authorities, which is subject to change. Australian firms have generally used work-arounds, via affiliated local law firms, to operate in Indonesia. However, arrangements must be carefully structured and the various practising requirements can act as a significant impediment to market access.	Work-arounds can generally be adopted for transactional services involving foreign and/or international law, hence the risk of regulatory action may be practically low. However, Indonesian regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Indonesian local law, particularly Indonesian litigation, on a FIFO basis. Even expert witnesses in litigation have sometimes been challenged. Only Indonesian citizens can obtain a full licence to practise Indonesian local law, particularly litigation.
Singapore	The provision of international legal services via Mode 1 into Singapore is widespread among law firms and is currently tolerated in practice for transactional services, even though it may technically be in a legal grey area. The definition of 'cross-border trade in services' or 'cross-border supply of services' in SAFTA does include the supply of a service from the territory of a party into the territory of the other party. Singaporean regulatory authorities would be unlikely to look favourably upon foreign lawyers advising on domestic litigation (other than Singapore arbitration) on matters involving Singapore local law from outside Singapore, given this would directly impinge on the role of local Singaporean legal counsel. Complaints by local lawyers could trigger investigations.	Singapore's legal services market is the most liberalised of the Southeast Asian jurisdictions. The establishment of a commercial presence in Singapore under Mode 3 is regulated, however, in a generally more permissive way than other jurisdictions. Singapore has intentionally sought to establish itself as a hub for regional legal services and has adopted a flexible model, allowing for different corporate forms for foreign law firms based on the scope of legal practice. The different models provide varying degrees of ability to practise Singapore and international law, but do involve some administrative and practical restrictions. As at October 2025, Singapore is in the process of updating some of its models to address practical concerns that have arisen. Although these changes are framed as market-liberalising, some market participants suggest they may in fact restrict market access to protect the local Singapore legal profession.	There are no rules allowing temporary practice by foreign lawyers of international law, hence any FIFO by Australian lawyers is at their own risk. FIFO could constitute a technical breach of visa requirements if care is not taken by the relevant lawyer regarding the scope of work. Work-arounds can generally be adopted for transactional services involving foreign and/or international law, hence the risk of regulatory action may be low. However, Singaporean regulatory authorities would likely object to foreign lawyers advising on Singapore local law, particularly Singapore litigation, on a FIFO basis. While Australian citizens could obtain a full licence to practise Singapore local law, the requirements to do so are onerous and not all Australian qualifications are fully recognised. That being said, Australia itself adopts a similar approach in relation to requalification requirements.

Jurisdiction	Mode 1 – Cross-border supply	Mode 3 – Commercial presence	Mode 4 – Presence of persons / FIFO
Malaysia	The definition of 'trade in services' in MAFTA includes the supply of a service from the territory of one party into the territory of the other party. The provision of international legal services via Mode 1 into Malaysia is widespread among law firms and is currently tolerated in practice for transactional services, even though it may be in a legal grey area. Malaysian regulatory authorities would be concerned by any evidence of foreign lawyers advising on Malaysian domestic litigation on matters involving Malaysian local law from outside Malaysia, given this would directly impinge on the role of local Malaysian legal counsel. Complaints by local lawyers could trigger investigations.	Malaysia's legal services market is one of the more liberalised of the Southeast Asian jurisdictions, behind Singapore. The establishment of a commercial presence in Malaysia under Mode 3 is regulated, however, it is not well used by foreign law firms given Malaysia's greater tolerance of Mode 4 supply. Market feedback also suggests that Malaysian clients prefer using locally branded Malaysian law firms for advice on Malaysian local law, hence market practice is not conducive to entry by foreign law firms. There are two models that have been expressly endorsed by the Malaysian Government. Both models involve some administrative complexity and the ability to practise Malaysian local law is constrained.	Malaysia expressly permits the temporary practice by foreign lawyers of foreign and/or international law on a FIFO basis, provided the stay in Malaysia does not exceed 60 days. Longer stays are permitted for lawyers involved in arbitral proceedings. However, Malaysian regulatory authorities would be concerned by any evidence of foreign lawyers advising on Malaysian litigation involving local Malaysian law on a FIFO basis. For any stays longer than 60 days, foreign lawyers are required to register as foreign lawyers, which involves significant administrative complexity. While Australian citizens could obtain a full licence to practise Malaysian local law, the requirements to do so are onerous.
Thailand	The definition of 'trade in services' in TAFTA includes the supply of a service from the territory of a party into the territory of the other party. The provision of international legal services via Mode 1 into Thailand is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Thai regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Thai local law, particularly domestic litigation, from outside Thailand. Complaints by local lawyers could trigger investigations.	Thailand's legal services market is one of the least liberalised of the Southeast Asian jurisdictions. The establishment of a commercial presence in Thailand under Mode 3 is regulated and difficult, although several law firms have identified practical work-arounds. That being said, if legal services are re-characterised as general transaction consultancy services, any services can potentially be structured in such a way that risks are reduced. However, care would be required. Thailand has a closed market for the provision of legal services that only enables the registration of lawyers with Thai nationality. The market is effectively closed to foreign lawyers in relation to domestic litigation.	Thailand expressly prohibits the temporary practice by foreign lawyers of foreign law on a FIFO basis. While foreign lawyers can operate as non-licensed workers who act as legal or business consultants or advisors, this may also raise visa issues and hence may also be a legal grey area. Work-arounds can generally be adopted for transactional services involving foreign and/or international law, hence the risk of regulatory action may be low. However, Thai regulatory authorities would be concerned by foreign lawyers advising on Thai local law, particularly domestic litigation, on a FIFO basis.

Jurisdiction	Mode 1 – Cross-border supply	Mode 3 – Commercial presence	Mode 4 – Presence of persons / FIFO
Vietnam	The provision of international legal services via Mode 1 into Vietnam is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Vietnamese regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Vietnamese local law, particularly domestic litigation, from outside Vietnam. Complaints by local lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.	Vietnam's legal services market is more liberalised than that of Thailand, Indonesia and Philippines, but less liberalised than Singapore and Malaysia. The establishment of a commercial presence in Vietnam under Mode 3 is regulated and onerous. To date, only a small number of law firms have attempted this, partly because significant effort is required and some regulatory discretion is involved. That being said, Vietnam is continuing to liberalise its legal market and Vietnam's approach is materially driven by its trade commitments. Australian citizens could potentially be admitted in Vietnam to provide full local law services, however, would effectively be required to live in Vietnam to do so.	Vietnam has requirements for practice by foreign lawyers of foreign and/or international law that likely preclude FIFO, so foreign lawyers operating on a FIFO basis do so at their own risk. FIFO may also raise concerns under visas and hence this may also be a legal grey area. Work-arounds can generally be adopted for transactional services involving foreign and/or international law, hence the risk of regulatory action may be relatively low. However, Vietnamese regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Vietnamese local law, particularly domestic litigation, on a FIFO basis. Beyond this, foreign lawyers are required to register as foreign lawyers at significant administrative complexity.
Philippines	The provision of international legal services via Mode 1 into the Philippines is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Philippine regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Philippine local law, particularly domestic litigation, from outside the Philippines. Complaints by local lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.	The Philippines' legal services market is the least liberalised of the Southeast Asian jurisdictions, and this is currently reinforced in the Philippines Constitution. The Philippines market is effectively closed to foreign law firms under Mode 3, except on a limited basis. We are aware of some work-arounds used by some global firms, but generally all control of local firms rests in the Philippines. While some global law firms may claim to have a 'Philippines desk', this often misrepresents Mode 1 services as Mode 3. While the Philippines has considered legal market liberalisation from time to time, we are not aware of any definitive plans to do so.	The Philippines has requirements for practice by foreign lawyers of foreign and/or international law that likely preclude FIFO, so foreign lawyers operating on a FIFO basis do so at their own risk. FIFO may also raise visa issues and hence this may also be a legal grey area. Work-arounds can generally be adopted for transactional services involving foreign and/or international law, hence the risk of regulatory action may be relatively low. For example, while foreign nationals cannot obtain a full licence to practise law in the Philippines, there may be opportunities for them to engage in legal work in a more limited capacity. For example, foreign lawyers may be able to provide advisory services in foreign and/or international law, although they cannot obtain

Jurisdiction	Mode 1 – Cross-border supply	Mode 3 – Commercial presence	Mode 4 – Presence of persons / FIFO
			a limited licence to do so. However, Philippine regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Philippine domestic litigation on a FIFO basis.

2.4 Other jurisdictions in Southeast Asia

The jurisdictions of Brunei Darussalam, Cambodia, Lao PDR and Timor-Leste, are currently viewed as less important to Australian lawyers and law firms. As such, this Report only briefly summarises the rules relating to Mode 1, Mode 3 and Mode 4 for those jurisdictions. Myanmar has not been included since it was not explored in *Invested: Australia's Southeast Asia Economic Strategy to 2040* (discussed below) and has been excluded from the scope of the Southeast Asian FTA modernisation review.

2.5 Findings on domestic barriers to entry

Mode 1 and Mode 4 services are generally tolerated by local regulatory authorities where they involve foreign law advice provided in relation to transactional activity. Mode 1 and Mode 4 services are unlikely to be tolerated where they involve local law advice, particularly for domestic litigation.

Mode 4 is generally riskier than Mode 1, given Australian lawyers would be 'in country' and hence more clearly within the jurisdiction of local regulatory authorities in the relevant Southeast Asian jurisdiction. Any in-country presence must be structured in a manner that complies with visa requirements. The risk of regulatory action may be higher in some jurisdictions than others. Malaysia is the only Southeast Asian jurisdiction that expressly permits FIFO.

Most of the barriers to entry arise in relation to Mode 3. The key Southeast Asian jurisdictions fall along a continuum from most liberalised to least liberalised, as set out below:



The table below provides a traffic light indication of the degree of practical market liberalisation by mode in the Southeast Asian jurisdictions that are the focus of this Report.

- Singapore and Malaysia are coded 'Green' across Mode 1, Mode 3 and Mode 4 because they are the most liberalised and, although there are still barriers as detailed in this Report, Australian lawyers and law firms can work and operate in these countries.

- Vietnam is coded 'Orange' across Mode 1, Mode 3 and 4 in comparison to Indonesia, which is only coded 'Orange' across Mode 1 and Mode 4, and coded 'Red' against Mode 3, because the establishment of a commercial presence in Indonesia under Mode 3 is more heavily regulated than in Vietnam.

- Thailand and the Philippines are the least liberalised, coded 'Orange' against Mode 1 but 'Red' against both Mode 3 and Mode 4 due to foreigners not being permitted to provide legal advice in Thailand (whether with respect to Thai or foreign law), even on a temporary basis as legal practice is considered a prohibited profession that is closed to foreigners in Thailand, and the constitutional impediments described in this Report in the Philippines.

Jurisdiction	Mode 1 – Cross-border supply	Mode 3 – Commercial presence	Mode 4 – Presence of persons / FIFO
INDONESIA	Orange	Red	Orange
SINGAPORE	Green	Green	Green
MALAYSIA	Orange	Orange	Orange
VIETNAM	Orange	Red	Green
THAILAND	Orange	Red	Red
PHILIPPINES	Orange	Red	Red

2.6 Importance of trade agreements to the liberalisation of legal services

The Southeast Asian jurisdictions are each party to various FTAs with Australia. This Report summarises the FTAs for each Southeast Asian jurisdiction in relation to trade in legal services, and highlights the ways in which trade agreements encourage and facilitate the liberalisation of trade in legal services.

FTAs can include a range of commitments to support market access and the liberalisation of trade in legal services. However, these commitments are ultimately constrained by the domestic regulatory framework and legal professional bodies within each party's jurisdiction. Accordingly, it is essential that FTAs be complemented by soft-law measures and targeted strategies.

2.7 Strategies to improve market access

This Report identifies the following 10 strategies for consideration by the Law Council:

- Deepen commitments and upgrade existing FTAs to the 'gold standard';
- Strengthen rules on digital trade to adapt to the digital shift;
- Promote Best Practice Principles to address domestic regulatory frameworks;
- Adopt Best Practice Principles in FTAs, including as a 'Regulatory Reference Paper';
- Refine generic legal services market access request for Southeast Asia;
- Seek greater regional alignment of professional standards;
- Build trust and cooperation via multiple paths for regional stakeholder engagement;
- Promote non-governmental regulatory dialogue via obligations in FTAs;
- Integrate capacity building as a key element, but without a colonial mentality; and
- Adopt innovative approaches – a 'whole of value chain' or 'projects based' approach.

Liberalisation of the legal services markets in Southeast Asia will require a long-term view with a high degree of ambition. The legal services sector is one of the least liberalised of the various services sectors globally, and Southeast Asia contains some jurisdictions that are at the least liberalised end of the continuum and without any current appetite to change this. As such, any reforms are likely to be incremental over a significant period.

2.8 Recommendations for the Australian Government

This Report notes seven matters for the Australian Government to bear in mind when seeking to upgrade the existing FTAs with Southeast Asia, noting many of these points are self-evident and build upon the strategies proposed for consideration by the Law Council:

- Focus efforts where economic activity (and barriers to it) matter most;
- Engage with those stakeholders who are most willing to engage;
- Build on existing arrangements and initiatives;
- Build on progress over time;
- Deepen bilateral and regional cooperation;
- Build understanding and trust with stakeholders; and
- Undertake capacity building.

This Report suggests that the upgrading of plurilateral agreements be prioritised in comparison to Australia's bilateral FTAs with Southeast Asian jurisdictions. Doing so is advantageous as ASEAN often operates and undertakes negotiations as a unified bloc, rather than bilaterally. Plurilateral upgrades therefore better stimulate regulatory cooperation, transparency, common commitments across the region and address regulatory barriers to trade in legal services.

However, this strategy is contingent on all parties to the plurilateral agreement agreeing to implement the relevant terms. In practice, any commitments remain subject to, and constrained by, domestic regulatory frameworks and the oversight of legal professional bodies within each party's jurisdiction.

The upgrading of bilateral FTAs with our key trading partners including Indonesia, Singapore, Malaysia and Vietnam is still critical. These jurisdictions maintain highly idiosyncratic legal licensing rules that require country-specific negotiation. Such negotiations also provide Australia with an opportunity to capacity-build, and strategically invest resources into FTA upgrades with valuable economic partners.

Further, this Report makes the following recommendations for the Australian Government in the context of each of the three Modes discussed in this Report:

Mode 1 (Cross-border supply)
(a) Seek to build upon any Mode 1 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.
(b) Seek to promote the benefits of Mode 1 supply by building understanding and trust, including via soft law initiatives at the Law Council level.
(c) Seek full Mode 1 commitments for legal services for foreign law services in a transactional or project context.
(d) Do not seek Mode 1 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations.
(e) Indirectly address Mode 1 commitments through the current focus on electronic commerce in FTAs and greater 'soft law' initiatives. As part of this seek to strengthen rules on digital trade to adapt to the digital shift.
Mode 4 (Presence of persons / FIFO)
(a) Seek to build upon any Mode 4 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.
(b) Seek to promote the benefits of Mode 4 supply by building understanding and trust, including via soft law initiatives at the Law Council level and by building on existing initiatives.
(c) Seek full Mode 4 commitments for legal services for foreign law services in a transactional or project context, potentially supported by an express statutory permission and/or project-specific exemptions.
(d) Do not seek Mode 4 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations.
(e) Seek to ensure that Mode 4 commitments are reflected into business visas, potentially via modifications to visa conditions or the use of project-specific exemptions.
Mode 3 (Commercial presence)
(a) Seek to build upon any Mode 3 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.

(b) Seek to promote the benefits of Mode 3 supply by building understanding and trust, including via soft law initiatives at the Law Council level and by building on existing initiatives. As part of this, build trust and cooperation via multiple paths for regional stakeholder engagement.
(c) Generally seek to incrementally deepen commitments and upgrade any existing FTAs to the 'gold standard', with a focus on Indonesia and Singapore, and to a lesser extent Malaysia and Vietnam.
(d) Seek Mode 3 commitments for legal services for foreign law services in a transactional or project context, potentially supported by project-specific exemptions and with an emphasis on capacity building.
(e) Do not seek Mode 3 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations and except to address specific regulatory issues.
(f) Promote non-governmental regulatory dialogue via obligations in FTAs. As part of this, seek greater regional alignment of professional standards.
(g) Promote Best Practice Principles to address domestic regulatory frameworks. Ultimately look to move such Best Practice Principles into FTAs, including as a 'Regulatory Reference Paper'.

3 Importance of the Southeast Asian legal market

The Law Council has participated in many initiatives to promote the interests of Australian lawyers and firms in Southeast Asia over the years.

This Report arises in the context of the current Government's intention to implement Australia's SEA Economic Strategy and the corresponding desire of DFAT to modernise Australia's FTAs. Further details of these initiatives are set out below and form the context to this Report.

3.1 Invested: Australia's Southeast Asia Economic Strategy to 2040

On 6 September 2023, the Australian Prime Minister Anthony Albanese launched *Invested: Australia's Southeast Asia Economic Strategy to 2040* (i.e. Australia's SEA Economic Strategy) at the ASEAN Indo-Pacific Forum in Jakarta, Indonesia.

Australia's SEA Economic Strategy was driven and developed by Mr Nicholas Moore AO, Special Envoy to Southeast Asia. The corresponding report sets out a practical pathway to increase Australia's two-way trade and investment with the region and deepen economic integration.

Relevantly, Southeast Asia as a bloc is likely to be the world's fourth-largest economy by 2040, closely organised around a regional entity known as the Association of Southeast Asian Nations (**ASEAN**), established in 1967. Specifically, the Strategy highlights the following:

- In recent years, Southeast Asia has been one of the fastest-growing global regions, and all its settings – demographics, economic openness, political stability and ambition – mean that it will drive global economic growth through to 2040 and beyond.

- By 2040, Southeast Asia will be an economic powerhouse fuelled by favourable demographics, industrialisation, urbanisation and technological advances. Southeast Asia (as a bloc) is projected to become the world's fourth-largest economy by 2040, after the United States, China and India, with an expected compound annual growth rate of 4% between 2022 and 2040.

- Indonesia's economy is projected to become the world's fifth-largest by 2040, while Thailand and Vietnam are expected to be the next largest economies in the region. Indonesia, the Philippines and Vietnam are forecast to have compound annual GDP growth rates of around 5% between 2022 and 2040. Singapore is expected to maintain its high-income status, while emerging economies like Cambodia are predicted to experience rapid economic growth.

- Looking ahead, Australia has the capabilities to help the region meet its goods, services, skills and capital needs. Australia will also benefit from further Southeast Asian investment and exports.

- Australia is part of a web of bilateral and regional FTAs with Southeast Asia, including the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area and the Regional Comprehensive Economic Partnership Agreement.

Australia's SEA Economic Strategy identifies that Australia is a favoured investment destination for Southeast Asian countries. However, Australian investment in Southeast Asia is underweight in relation to Australia's competitors. The Strategy highlights that the current level of Australian investment reflects a range of challenges. Some Australian investors continue to view the region's risk–return trade-off as unattractive. Those who have successfully invested in the region however have adopted a long-term orientation, recruited the right local talent, and partnered to understand the local market and its risks. This, in turn, has opened further opportunities for them.

After examining some of the challenges, Australia's SEA Economic Strategy recommends increasing Australian investment in Southeast Asia to deepen and broaden economic engagement between Australia and the region.

Australia's SEA Economic Strategy outlines four categories of action that are necessary to realise the commercial potential between Australia and Southeast Asia:

(a) **Raise awareness** to address a lack of knowledge of markets, sectors and declining regional literacy.

(b) **Remove blockages** to address tariff and non-tariff barriers, including through mutual recognition of qualifications and standards harmonisation, managing risks and enhancing mobility.

(c) **Build capability** to ensure Australia and the region have the skills and capability to pursue opportunities and address economic challenges.

(d) **Deepen investment** to promote economic growth and prosperity.

These required actions frame an examination of 10 key industry sectors, including the professional and financial services sector, which offers the most potential for greater commercial activity between Australia and Southeast Asia.

A total of 75 general and sector-specific recommendations were presented for consideration by the Australian Government and other stakeholders.

In relation to professional and financial services, Australia's SEA Economic Strategy made the following relevant comments:

- Professional and financial services represent significant exports for Australia, and Australia is well placed to become a financial centre for Southeast Asia.

- The professional services sector (including legal, accounting, architecture, engineering and consulting services) is growing strongly in Southeast Asia. This reflects fast economic growth rates, rising trade and investment, the development of a range of industries, and major corporations coming to the region for supply chain reasons, all of which necessitates demand for professional services. Major international professional services firms are increasing their engagement in the region as a result.

- Governments can support greater two-way movement of professional services and professionals through facilitation of mutual recognition agreements (MRAs). However, policies and MRAs to facilitate movement of professionals only work where countries have similar standards. While there are opportunities to support skills development in the region to meet Australian standards, the lack of nationwide equivalence of standards makes it difficult to conclude full MRAs. Some Australian professional bodies deal with this by offering pathways to accreditation, including through micro-credentialing, rather than full recognition.

- Professional services annexes in several of Australia's FTAs with the region also provide platforms that encourage dialogue aimed at streamlining the two-way movement of professionals.

Relevantly, in relation to removing impediments to trade in professional services, the general recommendations included:

- **Recommendation 10:** Australia's Trade 2040 Taskforce, in collaboration with Southeast Asian partners, to review the scope of existing FTAs to determine priorities for agreement upgrade negotiations.

Further, in relation to removing blockages in the professional and financial services sector, the recommendations included:

- **Recommendation 68:** Australian governments to support mutual recognition of professional qualifications, licensing and registration in priority professional services sectors, including through advocacy and grants to professional bodies.

- **Recommendation 69:** Australian governments and Southeast Asian counterparts to work with professional bodies to ensure digitalisation of credentialing and certification of qualifications.

- **Recommendation 70:** Use review mechanisms in Australia's existing FTAs with Southeast Asian countries to remove barriers affecting professional and financial services, such as foreign equity caps and restrictions on the composition of boards and residency of board members.

This Report seeks to identify those barriers to trade in legal services that could be addressed by DFAT in trade agreements to progress Australia's SEA Economic Strategy.

3.2 DFAT's Modernisation Review of Southeast Asia FTAs

Recommendation 10 of the Strategy contemplates that the Australian Government's Trade 2040 Taskforce review the scope of existing FTAs to determine priorities for agreement upgrade negotiations.

To progress this recommendation, DFAT announced the Terms of Reference for its Southeast Asian FTA modernisation review (**DFAT Review**) in February 2025.

The DFAT Review is relevantly considering:

- whether the rules and commitments contained in our Southeast Asian FTAs remain relevant and fit-for-purpose to assist in addressing the economic challenges confronting Australia and the region;

- options for improving trade and investment, including, but not limited to, modernising existing FTAs, supporting accessions to regional FTAs or entering into new agreements;

- identify gaps and overlaps between Australia's bilateral and regional FTAs with Southeast Asian economies, and options to resolve;

- market access commitments to ensure they remain comprehensive and commercially meaningful;

- new and upgraded FTAs concluded by Australia or Southeast Asia with other economies;

- recommendations by the Joint Standing Committee on Trade and Investment Growth inquiry into the understanding and utilisation of benefits under FTAs;

- putting in place trade data exchange arrangements with regional trading partners to better inform utilisation of trade agreements;

- relevant developments in trade and investment policy in international fora, including but not limited to the WTO, and whether our FTAs have kept pace with relevant international developments;

- opportunities for alignment and complementarity with Australia's SEA Economic Strategy; and

- other matters relevant to Australia's FTAs.

Findings from the DFAT Review will be documented in a report with recommendations for prioritisation of new agreements and agreement upgrade and modernisation negotiations.

DFAT called for submissions on the DFAT Review and has published non-confidential submissions on its website. The final written report will be delivered on or before 1 July 2026 and published on the DFAT website.

3.3 Grant to the Law Council of Australia

In conjunction with the DFAT Review, the Australian Government has committed funds towards a grant program to support peak industry bodies and representative organisations feed insights and sectoral priorities to government. The grant program is intended to assist bodies to undertake research and analysis to inform and make recommendations on Australia's network of FTAs in Southeast Asia to 2040.

The Law Council has been the recipient of a grant and is undertaking an analysis of legal services trade between Australia and Southeast Asia to provide a submission to government in response to its review.

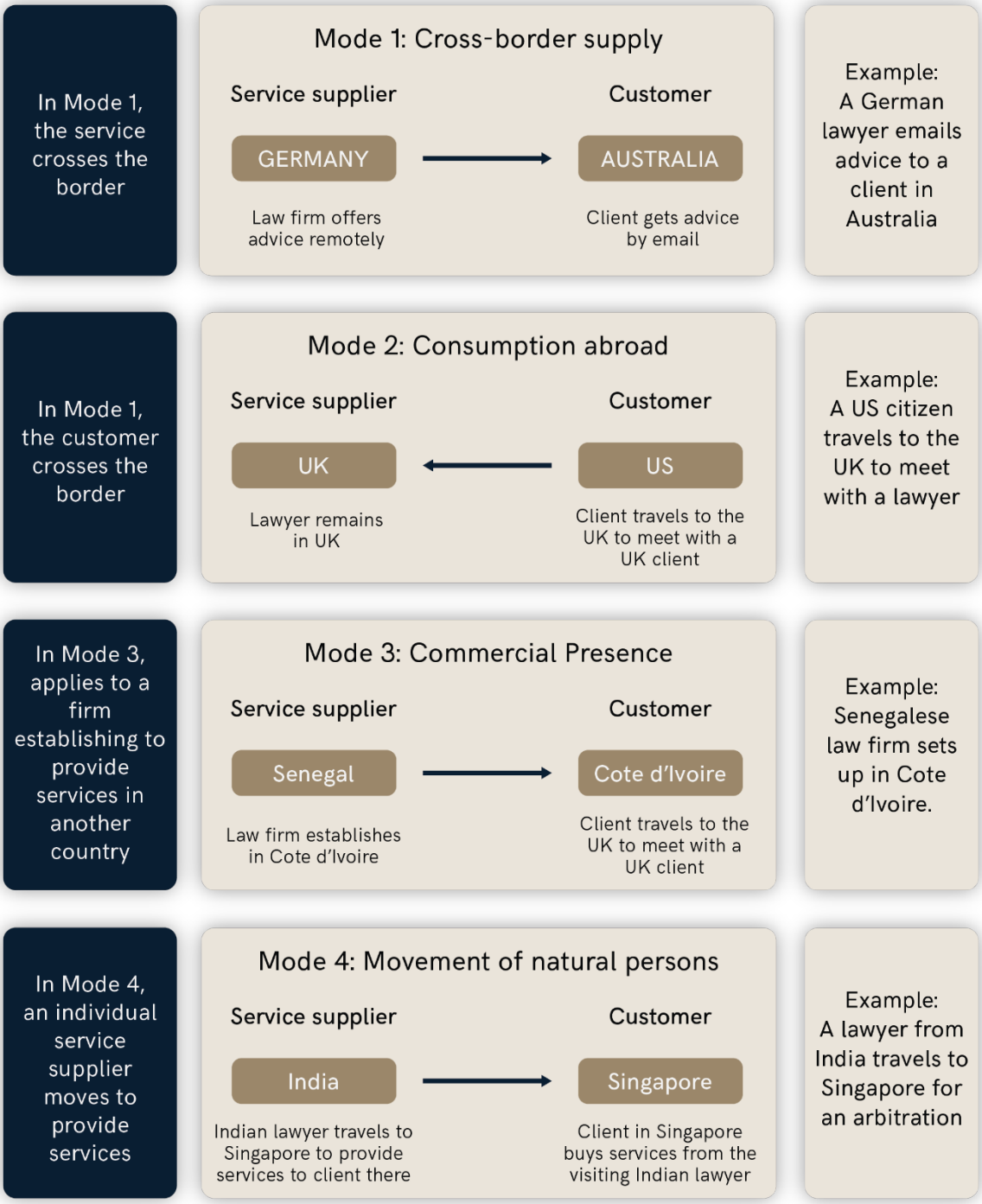
In this context, the Law Council has commissioned Norton Rose Fulbright (Dr Martyn Taylor, Partner) an independent law firm, with expertise in market access and regulatory policy in Southeast Asia, to fund part of this Report.

Remaining funding has been provided on a *pro bono* basis by Norton Rose Fulbright and other lawyers and law firms that have contributed their time and expertise. Their collective contribution is much appreciated.

4 Conceptualisation of legal services – Modes of Supply

The standard conceptualisation of trade in legal services in international trade agreements occurs within the framework of the four Modes of the GATS, as illustrated by the following diagram provided by the International Bar Association (**IBA**) in its GATS Handbook in 2023:[1]

Diagram illustrating the Modes of Supply



[1] International Bar Association, *An IBA Guide to International Trade Agreements for IBA Member Bars,* (Handbook, 2023) 12.

4.1 Increasing importance of Mode 1 to cross-border legal services

The IBA adds several qualifications to the application of the Modes in the legal services sector that potentially complicate the application of trade agreements to the supply of legal services, particularly in the post-COVID world where legal services are often supplied using email and webinar services. For instance:

- One of the features of the current delivery of legal services is that many of its parts can be separated and conducted remotely – even court hearings, a development which became more widespread during the COVID-19 pandemic.

- As a result, Mode 1 (the service itself, or portions of the service, crossing the border) has undoubtedly increased because that is the way in which digital services operate. The rise of e-commerce to deliver legal services has also affected the other Modes.

- The increased use of Mode 1 in the provision of legal services via internet technologies has created challenges. For example, when countries had made their Mode 1 commitments, they may not have anticipated digital trade. The delivery of legal services through Mode 1 creates challenges for regulators since, in general, the historic regulation of lawyers has focused on physical presence. This means there are sometimes 'grey areas' where the regulatory environment is unclear.

Various commentaries also confirm that the use of Mode 1 increased for legal services in the context of the pandemic in 2020 and is now widespread. In an article published in the Law Society of England and Wales Gazette on 9 March 2021, Jonathan Goldsmith commented on the challenges in regulation of Mode 1 supply, noting that many jurisdictions tend to tolerate it even though it may be technically in a grey area of legal services regulation:

> *"Now many countries try to control the entry of legal services into their jurisdiction. Mode 3 is the easiest to control, and all kinds of conditions can be – and are – imposed by some countries on a foreign firm setting up a branch office, including outright prohibition. Mode 4 is more challenging: there can be controls on entry, but it is often extremely difficult to stop a lawyer entering a country, who may appear to be a tourist or someone attending a business conference.*
>
> *But mode 1 is almost impossible to control (that is outside the strictest and most brutal police state). Telephone calls, e-mails and Zoom interviews pass under the radar of nearly every country. It is true that if a country has a ban on mode 1, and if a problem emerges later on in the case which casts light on the mode of provision, it may create problems. And it may also create problems for the lawyer if his or her professional indemnity insurance does not permit the provision of services in a way not permitted in the recipient country. But regarding control by the foreign jurisdiction, certainly at the point of delivery, it is next to impossible."*[2]

Recent papers have also highlighted the importance of Mode 1 in the context of the digital age and have proposed that the WTO framework is modernised to reflect the greater use of Mode 1 as an enabler of commerce. In a policy brief in July 2025, the Centre for WTO Studies in New Delhi commented:

> *"Mode 1 offers a comparatively low-cost path to export services without the need for foreign commercial presence or movement of natural persons. For developing countries, (i) it does not necessitate entry barriers such as visas, capital, or real estate requirements, i.e., service providers from developing countries to access global markets directly via digital channels, without having to establish a physical office or subsidiary abroad (commercial presence—Mode 3) or physically relocate staff internationally (movement of natural persons—Mode 4). As a result, providers bypass significant costs associated with securing foreign visas,*

[2] Covid's challenge on cross-border legal services', The Law Society Gazette (Blog Post, 9 March 2021) <https://www.lawgazette.co.uk/commentary-and-opinion/covids-challenge-on-cross-border-legal-services/5107715.article>.

investing large amounts of capital in foreign infrastructure, or incurring substantial real estate expenses abroad; (ii) it allows micro, small and medium-sized enterprises (MSMEs) to participate in trade."[3]

4.2 Application of Modes to Australia

From an Australian perspective, the Modes can be characterised as follows:

Mode 1 – Cross-border supply

In this scenario, for example, a qualified Australian lawyer located in Australia emails legal advice to a client located in Southeast Asia.

This Report focuses on Mode 1 in the context of so-called 'foreign law', that is, the ability of an Australian lawyer to advise an offshore client located in a Southeast Asian jurisdiction on Australian law, international law or the law of another jurisdiction in which they are qualified.

Generally, countries do not seek to regulate the provision of Mode 1 foreign law services, although the regulatory framework in some countries provides more general prohibitions on the practise of law by foreigners, without exceptions for the practise of foreign law. In such cases, the provision of Mode 1 foreign law services may be in a legal grey area.

Where a client is seeking advice on a matter relating to the local law of a Southeast Asian jurisdiction, the Australian lawyer or firm would generally defer to local counsel located in the Southeast Asian jurisdiction to advise on matters of local law.

It is, however, becoming increasingly common for Australian law firms to provide qualified advice on general or commercial legal issues, but subject to the express caveat that it does not constitute local law advice. Often this is then characterised as 'international advice'. As part of this, an increasing grey area is where the Australian lawyer is providing general legal services that are agnostic as to the relevant law, including attending from Australia via teleconference for the negotiation of a commercial contract while representing the client located in that jurisdiction and in circumstances where the contract may be governed by the local law of that jurisdiction. Again, this may be characterised as 'international advice'.

Mode 2 – Consumption abroad

In this scenario, a qualified Australian lawyer located in Australia receives at their office a client from a Southeast Asian jurisdiction and provides legal advice to that client. Again, that advice could be advice on Australian law, international law or the law of another jurisdiction in which the lawyer is qualified.

From the perspective of Australian legal profession laws, there are no practical concerns where an Australian lawyer is providing advice on Australian law, international law or the law of a third country (assuming they are permitted to do so by that other jurisdiction) to a Southeast Asian national visiting Australia.

As Australia's regulation of Mode 2 legal services does not give rise to market access issues for the purposes of the DFAT Review, this Report does not focus on this mode of supply.

[3] Centre for WTO Studies, 'Realising The Hong Kong Ministerial Vision: Towards Deeper Mode 1 Liberalisation in Trade in Services' (Policy Brief, July 2025) <https://wtocentre.iift.ac.in/PolicyBrief/CWS_CRIT_Policy_Brief_17.pdf > 2.

Mode 3 – Commercial presence by law firm

In this scenario, an Australian law firm seeks to set up operations in the Southeast Asian country through a commercial presence. In a law firm context, this would normally involve opening an office of the law firm in a key city of the Southeast Asian country and staffing it with a combination of local lawyers and Australian lawyers (e.g., a law firm headquartered in Sydney opens offices in Singapore and Jakarta).

Mode 3 is focussed on law firms, not individual lawyers. The IBA explains:

> *"Mode 3 commitments do not address the issue of which individuals will staff that foreign office. For example, a WTO member might allow a foreign law firm to establish a branch office but require that the lawyers who staff that foreign law firm office be licensed by that member state. In other words, it will be Mode 4, not Mode 3, that says whether foreign-licensed lawyers, as opposed to foreign law firms, can practise in the WTO member state".*[4]

A key question arises whether Australian lawyers would be permitted to provide any legal services on the ground in the Southeast Asian country and, if so, whether this could be advising on matters of Australian law, international law and the law of a third country, as well as providing so-called 'international advice'. This Report considers all these matters.

A key question also arises whether an international law firm with an office in Australia would be considered an 'Australian law firm' that could then benefit from Australian trade benefits. This may depend on the circumstances so is not further considered for the purposes of this Report. For example, some international law firms may have Australian partnerships and run some Southeast Asian operations out of Australia.

To date, Australian law firms have focussed on commercial presence in four key Southeast Asian jurisdictions; namely, Indonesia, Singapore, Malaysia and Thailand. As such, this Report focuses primarily on these four Southeast Asian jurisdictions in relation to Mode 3.

To date, whilst offices in Vietnam and the Philippines have been considered from time to time, Australian law firms have generally not considered establishing operations in other Southeast Asian jurisdictions but would rather serve those jurisdictions from an established office in one of the other jurisdictions, typically Singapore or Australia, on a FIFO (and hence Mode 4) basis. The economics of operating an office in a foreign jurisdiction have not worked for Australian law firms in the other Southeast Asian jurisdictions to date.

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

In this scenario, a qualified Australian lawyer travels to the Southeast Asian jurisdiction and, for example, stays in a local hotel in the Southeast Asian jurisdiction on a FIFO basis. Mode 4 is focussed on individual lawyers, not law firms.

As with Mode 1, this Report focuses on Mode 4 in the context of so-called 'foreign law', that is, the ability of an Australian lawyer residing in a Southeast Asian jurisdiction to provide advice on Australian law, international law or the law of another jurisdiction in which they are qualified. As identified above, an Australian lawyer would generally defer to local lawyers to provide local law advice in the Southeast Asian jurisdiction, but may provide 'international advice' or be involved in activities such as concluding an M&A deal or conducting commercial negotiations.

Most Australian law firms and lawyers would conduct work in Southeast Asia on a FIFO basis, unless they already have a Mode 3 commercial presence. As such, Mode 4 is a particular focus of this Report. However, in the post-COVID world, there has been an increased blurring between Mode 4 and Mode 1 given that it has become easier to advise clients via teleconference and avoid physical travel.

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[4] International Bar Association, *An IBA Guide to International Trade Agreements for IBA Member Bars* (Report, 2023) 16.

Mode 4 has several further dimensions given the circumstances of temporary entry may differ widely. For example, as the IBA identifies, these can include:

> *"**Intra-corporate transferees:** These are individuals who already work for their employer and are being transferred from their home location abroad into another country (e.g., a lawyer seconded to an office of the law firm in another country).*
>
> ***Contractual service suppliers:** These are individuals who are working for an organisation that has a contract from a client in the country to which they are travelling (e.g., a lawyer from a law firm that won a mandate from a client in another country).*
>
> ***Individual service suppliers**: These are individual lawyers who have won a contract in their own right, as opposed to their firm, to provide services in another country.*
>
> ***Business visitors:** These are individuals who are visiting temporarily for less than a specified number of days (maximum is usually 90 per visit) to carry out non-remunerative business activities (e.g., participation in business development activities and conferences)."*[5]

4.3 Relevance of Modes to this Report

A summary of the relevance of the Modes to Australian legal services is set out in the table below, reflecting the focus of this Report.

Mode of Supply	Example
Mode 1 – Cross-border supply	Australian-based lawyers advising clients in any Southeast Asian jurisdiction on 'foreign law' from Australia using electronic communications.
Mode 2 – Consumption abroad	Foreign client visits Australian lawyer in Australia. Not relevant to this Report.
Mode 3 – Commercial presence by law firm	Australian law firms setting up offices (or other similar operations) in a Southeast Asian jurisdiction.
Mode 4 - Presence of natural persons/temporary entry by individual lawyers (fly-in, fly-out)	Australian lawyers flying to any Southeast Asian jurisdiction on a temporary basis, usually as FIFO, to provide foreign law advice, often complementing Mode 1.

By way of practical application, the Proposal (i.e., Australia's communication to the WTO Council for Trade in Services on 28 March 2001) identified a range of impediments faced by Australian lawyers and law firms in relation to the further liberalisation of the global legal services sector. These impediments can be matched to the relevant Modes as follows:

Impediment	Mode
Restrictions or prohibitions on the establishment of foreign law firms	3
Restrictions or limitations on joint ventures between local and foreign firms	3
Restrictions on employing local lawyers	3
Restrictions on profit sharing by local and foreign firms	3

[5] International Bar Association, *An IBA Guide to International Trade Agreements for IBA Member Bars* (Report, 2023) 15-16.

Impediment	Mode
Numerical ceilings on foreign lawyers	3
Unreasonable restrictions on licensing	3
Restrictions on the practice of home-country law and third-country law	1, 3, 4
Limited or no recognition of qualifications	1, 3, 4
Lack of transparency in regulatory processes and systems	1, 3, 4
Onerous visa procedures	4

As seen from the table above, most of the complications faced by the Australian legal profession therefore arise in the context of this Report in relation to Australian law firms seeking to set up offices. As such, this is the key focus of this Report in the next chapters.

A secondary set of complications arises in relation to restrictions on individual lawyers practising local law or foreign law on an e-commerce (Mode 1) or FIFO (Mode 4) basis. A third set of complications arises in relation to the obtaining of visas and work permits for lawyers to advise on a FIFO (Mode 4) basis in certain circumstances.

5 Importance of trade agreements to the liberalisation of legal services

5.1 Market access under the World Trade Organization

The WTO is an international organisation that was created in 1995. Its origins can be traced back to the Bretton Woods Conference in 1944 at the end of World War II where the idea of an International Trade Organisation was first discussed. However, due to insufficient United States support at the time, the General Agreement on Tariffs and Trade (**GATT**) was established in 1948 as a provisional agreement. The GATT was incorporated into the WTO in 1995.

The WTO now comprises the core set of institutions and treaties that regulate world trade. The WTO, in effect, constrains the manner in which governments regulate trade between nations, including negotiating trade agreements and settling trade disputes.

Trade agreements facilitate market access and stronger trade and commercial ties between nations. They contribute to reducing trade barriers across participating nations by, for example:

- reducing tariffs;
- harmonising standards; and
- addressing non-tariff barriers.

The expanded trade resulting from FTAs is beneficial to service providers in facilitating trade and investment flows that create demand for more services activity. They can also positively alter the regulatory landscape and improve business-to-business links, as all agreements include provisions to support transparency in regulation and decision-making.

FTAs can specifically improve market access in various ways:

- improving outcomes for business over time;
- establishing a platform to address and reduce barriers;
- spreading the benefits of liberalisation;
- creating new rights to establish FTA markets;
- expanding investments in FTA markets and foreign investment in Australia;
- positively altering the regulatory landscape; and
- easing movement of people and skills across borders.

FTAs can therefore directly facilitate commercial opportunities to establish law firms and deliver legal services in captured markets. The commitments established in FTAs widen the scope of practice and, at a minimum, 'guarantee' existing levels of access through binding treaty commitments. FTAs also foster indirect benefits from expanded trade and investment flows by creating a demand for more services activity. Specifically, there are new opportunities for the cross-border provision of legal services through FTAs and easing of movement of people and skills across borders.

FTAs should be considered 'living agreements' that have built-in mechanisms to facilitate improvements in market access over time. For instance, amendments to the Singapore-Australia Free Trade Agreement (**SAFTA**) in 2017 eased establishment controls on legal firms and improved

recognition of Australian law degrees. FTAs also establish various regulatory committees and areas for future cooperation, such as the inclusion of side letters following an agreement's initial signing.

5.2 The General Agreement on Trade in Services (GATS)

The GATS came into effect as part of the WTO framework on 1 January 1995 and now forms one of the core components of the WTO. The principles regulating trade in legal services are contained in the GATS. The GATS also outlines the four Modes discussed above.

The core regulatory principles applied by the GATS are:

- ***Market access*** – this principle is provided for under Article XVI of the GATS and regulates the conditions under which foreign services and service suppliers are allowed to enter a country's market. Limitations on market access can take various forms, such as quotas, limitations on the type of legal entity or economic needs tests.

- ***Most-favoured-nation treatment*** – provided for under Article II of the GATS, this principle ensures that each signatory country must treat services and service suppliers of any member country indiscriminately, no less favourably than those of another member country, under the conditions and limits mentioned in the SSCs.[6]

- ***National treatment principle*** – this is provided for under Article XVIII of the GATS, and states that each member country must treat the services of another member country no less favourably than the services of its own nationals, under the conditions and limits mentioned in the SSCs.[7]

All WTO Members have agreed to be bound by the GATS, which applies comprehensively to all services, including trade in legal services. However, different nations have agreed to be bound by the GATS regulatory principles in different ways, pursuant to their respective offers to all WTO Members over the years. The distinct application of the GATS to different WTO Members is set out in the SSC for each WTO Members, which is annexed to the GATS and updated over time as further commitments are made.

All WTO Members are expected to have an SSC under the GATS. In essence, the SSCs list all market access commitments for every selected service sector currently brought within the remit of the WTO. The focus of ongoing negotiations is to 'improve' (i.e. increase the degree of liberalisation) of these commitments over time. WTO Members can make commitments in each service sector or sub-sector they wish to make commitments and in any, some, or all of the four Modes.

5.3 Interpretation of the GATS commitments on legal services

The SSC of each GATS signatory country contains the 'specific commitments' of each GATS signatory country to be bound by the GATS regulatory principles in relation to each relevant service sector. Legal services is a sub-sector of professional services and is therefore subject to specific commitments under the GATS by each GATS signatory country that have evolved over time.

The Southeast Asian jurisdictions outlined below are each WTO Members and have made SSCs in respect of legal services under GATS:

- Vietnam;

- Thailand;

- Timor-Leste;

[6] Except under certain conditions, two countries cannot make preferential arrangements that are discriminatory to others.
[7] Countries cannot operate discriminatory measures benefiting domestic services or service suppliers.

- Lao PDR;
- Cambodia; and
- Malaysia.

Most FTAs also adopt the same approach, so this commentary is also relevant to the interpretation of FTA commitments pertaining to legal services.

In this context, the 'specific commitment' in the SSC is an undertaking to provide market access and national treatment for the service (or specific service activity) in question, subject to any conditions specified in the SSC. When making a commitment, a government of a GATS signatory country binds the relevant GATS signatory country by way of international treaty obligation to the level of market access and national treatment specified in the SSC in accordance with the obligations set out in the GATS. The government also undertakes under the GATS not to impose any new measures that would restrict entry into the market or the operation of the service by other GATS signatory countries under the relevant Modes.

Specific commitments under an SSC therefore have an effect similar to a tariff binding – they are a guarantee to economic operators in other GATS signatory countries that the conditions of entry and operation in the market will not be changed to their disadvantage. The SSC sets out the conditions on which the GATS signatory country will allow foreign services and foreign service suppliers to participate in that country's domestic market. These commitments are binding under international law and enforceable through WTO dispute resolution. However, for countries operating a double ratification system, they still require incorporation into domestic law to be binding in the domestic law of the relevant country.

For each service sector or sub-sector that is listed, the SSC for each GATS signatory country must indicate, with respect to any commitment they make for each of the four Modes, any limitations or conditions that will be retained in the form of:

- '**Market Access (MA) Limitations**', which are restrictions on the entry of foreign services or service suppliers into the domestic market. The types of limitations that can be included by WTO Members in their commitments are listed in the GATS Article XVI; and
- '**National Treatment (NT) Limitations**', which are laws, rules or regulations that effectively discriminate against foreign services or suppliers in favour of domestic services and suppliers, or otherwise create market competitive conditions that favour domestic over foreign services and suppliers. The circumstances under which WTO Members can impose GATS-consistent national treatment limitations or conditions are specified in the GATS Article XVII.

In making commitments, the GATS signatory countries can therefore specify the MA and NT Limitations or conditions under which they will allow foreign services and service providers access into their domestic market under the four Modes to compete with domestic services and suppliers.

The GATS signatory countries, in listing the MA or NT Limitations or conditions that they wish to include in their SSC, may specify any limitation or condition, even if such limitation or condition is not currently provided for by their national legislation or rulemaking. By doing so, they provide themselves with more regulatory flexibility that could allow them to impose such limitations or conditions in the future if needed. As such, the SSC provides a useful guide as to the degree of market liberalisation that has been tolerated by the particular GATS signatory country to date for the relevant service sector.

A commitment in the SSC consists of eight entries which indicate the presence or absence of MA or NT Limitations with respect to each Mode. The first column in the standard format contains the sector or sub-sector which is the subject of the commitment; the second column contains MA Limitations and the third column contains NT Limitations.

The commitments and limitations are in every case entered with respect to each of the four Modes (as indicated by numbers in brackets) which constitute the definition of trade in services in Article I of the GATS, these being:

1) Cross-border supply (Mode 1)

2) Consumption abroad (Mode 2)

3) Commercial presence (Mode 3)

4) Movement of natural persons (Mode 4)

As such, '1)' is a reference to a specific commitment made in relation to cross-border supply, that being Mode 1.

To determine the level of market access provided by a given schedule it is therefore necessary to examine the range of services covered in each SSC and the limitations on MA and NT pertaining to the different Modes.

Also relevantly:

- If the SSC is silent about a particular service, sub-sector or activity, it is not subject to the GATS commitments by the GATS signatory country, and hence is not regulated by the GATS. As such, the GATS signatory state is free to introduce domestic regulatory measures that discriminate against foreign service providers of other WTO Members.

- Where the words 'Unbound' are included for any Mode, the GATS signatory country has declined to be regulated by the GATS in relation to that Mode for NT or MA, as applicable. Again, the GATS signatory state is free to introduce domestic regulatory measures that discriminate against foreign providers under the WTO.

- Where the SSC includes a particular service, sub-sector or activity, it is subject to the GATS commitments by the GATS signatory country, and hence is regulated by the GATS and therefore the WTO. However, it is then necessary to consider the extent to which the GATS signatory country has agreed to be bound by the GATS.

- Where the words 'None' are included for any Mode of Supply, the GATS signatory country is not putting any conditions on its willingness to be regulated by the GATS and hence is fully subject to the GATS regulatory obligations in relation to that Mode for NT or MA, as applicable. As such, the GATS signatory state is constrained by the GATS regulatory obligations in its ability to introduce domestic regulatory measures that discriminate against foreign providers under the WTO.

- Where the SSC indicates a condition for any Mode, the GATS signatory country is placing conditions on its willingness to be regulated by the GATS, hence has agreed to be subject the GATS regulatory obligations in respect of that Mode for NT or MA, as applicable, subject to the particular conditions specified. As such, the GATS signatory state may have some scope to introduce domestic regulatory measures that discriminate against foreign providers under the WTO, consistent with those conditions.

- A nation can also make 'Horizontal Commitments' that apply across-the-board to all the services sectors listed in the SSC. These commitments are usually written at the beginning of the SSC and can refer to economic considerations that may be applicable to all the services sectors and sub-sectors listed in the SSC.

A summary of the GATS SSC for each Southeast Asian jurisdiction the subject of this Report in relation to trade in legal services is set out in 0.

By way of summary, the Southeast Asian jurisdictions who have SSCs under the GATS each carve out legal services as a regulated sector that is subject to GATS commitments. There are some exceptions to this carve out, such as only foreign legal consultancy in the case of Cambodia or the exclusion of representation in litigious proceedings in the case of Vietnam and Lao PDR.

Most of the jurisdictions also note 'None' for limitations to Modes 1 and 2 under MA and NT, meaning that they are fully subject to the GATS regulatory obligations. Some jurisdictions provide for specific conditions on Modes 3 under MA and NT, such as the forms in which foreign law firms can be established and limitations to foreign equity participation. Mode 4 under MA and NT were largely 'unbound, except as indicated in the horizontal section', which typically related to measures concerning the entry and temporary stay of certain natural persons such as business visitors or intra-corporate transferees.

5.4 Market access under FTAs

FTAs can include a range of commitments to support market access and the liberalisation of trade in legal services. However, these commitments are ultimately constrained by the domestic regulatory framework and legal professional bodies within each party's jurisdiction. Accordingly, it is essential that FTAs be complemented by soft-law measures and targeted strategies, which are discussed later in this Report.

Australia currently has 19 active FTAs with over 30 countries and is continually seeking to negotiate and implement additional agreements.[8]

Relevantly, Australia's FTAs with Southeast Asian jurisdictions currently include the following:

Australia's bilateral FTAs with Southeast Asian countries:

- Indonesia-Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**);
- Singapore-Australia (**SAFTA**);
- Malysia-Australia (**MAFTA**); and
- Thailand-Australia (**TAFTA**).

Australia's plurilateral FTAs relevant to Southeast Asian countries:

- ASEAN-Australia-New Zealand (**AANZFTA**);
- Regional Comprehensive Economic Partnership (**RCEP**); and
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**).

Australia is currently negotiating an FTA with the European Union and a further FTA with India (the Australia-India Comprehensive Economic Cooperation Agreement). Feedback from lawyers working in Southeast Asian jurisdictions has indicated that the liberalisation of the Indian legal services market should also be prioritised by the Law Council and Australian Government. However, India is not the subject of this Report.

Significantly, the unsigned Trade in Services Agreement (**TiSA**) was a proposed trade agreement that would have set new international standards in services liberalisation and promoted the expansion of Australia's services exports. TiSA built on the WTO's GATS and incorporated elements from other FTAs that further reduced barriers to international services trade. TiSA however was never signed

[8] 'Free Trade Agreements', *Australian Government Business* (Web Page) <https://business.gov.au/products-and-services/exporting/free-trade-agreements>.

and none of the Southeast Asian countries the subject of this Report were intended initial signatories. The most recent TiSA negotiation round was held in December 2016.

5.5 Commentary on coverage of legal services under FTAs

The coverage of trade in legal services under each of these FTAs is summarised in sections 0 to 20 of this Report, including an analysis of each of the relevant FTAs.

Legal services are one of the most sensitive sectors covered by FTAs because the nature of a profession means that it has an inherently closed membership to preserve exacting standards of knowledge and behaviour. Generally, a 'profession' has developed for professionals to provide specialised knowledge, to act as fiduciaries to clients and to act as guardians of social institutions.

The Australian Council of Professions, for example, defines a 'profession' as:

> *"…a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.*
>
> *It is inherent in the definition of a Profession that a code of ethics governs the activities of each Profession. Such codes require behaviour and practice beyond the personal moral obligations of an individual. They define and demand high standards of behaviour in respect to the services provided to the public and in dealing with professional colleagues. Often these codes are enforced by the Profession and are acknowledged and accepted by the community."*[9]

For this reason, trade in legal services must inherently overcome the views of those within the profession in each country as to the competence of professionals from other jurisdictions. The legal services profession is particularly conservative given the very high standards required of legal professionals, including their duty to the courts.

Against this background, the FTAs apply conventional trade commitments to trade in legal services, namely market access, national treatment and most-favoured-nation treatment commitments.

5.6 Role of non-governmental organisations and the Law Council

Non-governmental organisations (**NGOs**) play a pivotal role in trade, influencing policies, practices and ethical standards within the international trade landscape. Their involvement extends beyond mere advocacy, positioning them as essential stakeholders in shaping the conscience of global commerce.

Given the need for FTAs to be supported by soft-law policies and targeted strategies, NGOs in the legal sector play a significant role in liberalising market access and trade in legal services.

The Law Council of Australia maintains bilateral relationships with counterpart legal professional bodies overseas, including in Southeast Asia. The Law Council has signed MOUs with legal professional bodies in Indonesia, Singapore, Malaysia, Vietnam and Thailand which recognise the growing importance of trade and other ties between jurisdictions.[10] These bilateral MOUs, whilst not legally binding, can provide a basis for engagement on the issue of addressing barriers to market access.

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[9] 'What is a Profession?', *Australian Council of Professions* (Web Page, 2003) <https://professions.org.au/what-is-a-professional/ >.

[10] These documents are generally not publicly available.

In addition to bilateral engagement, the Law Council is an active participant in regional fora such as LAWASIA and the annual Presidents of Law Associations of Asia (**POLA**) Summit.

POLA is an annual meeting involving representatives of bar associations across the Asia-Pacific region. It was originally established in 1990 by legal professional bodies from Japan and Korea. Prior to meeting, each legal professional body is asked to provide a paper which includes a summary of the legal system (including the regulation of foreign lawyers) and domestic legal developments over the past 12 months. Over time these papers have helped contribute to shared understandings of respective legal professions, particularly with respect to transnational practice rights.

LAWASIA is a regional association of lawyers, judges, jurists and legal organisations which advocates for the interests and concerns of the Asia-Pacific legal profession. The Law Council has hosted LAWASIA since 1 July 2023 and provides corporate administration support to LAWASIA's Secretariat.

As part of the Law Council's engagement in these fora, it seeks to put trade in legal services on the agenda for discussion, promote the benefits of legal market liberalisation, and improve mutual understanding of legal and regulatory systems. It also raises jurisdiction-specific issues in bilateral meetings with counterpart legal professional associations.

The IBA has created a database of information based on its Global Cross Border Legal Services Report about the regulation of trade in legal services. The database is intended to provide individual lawyers and law firms with information to assist them in representing their clients internationally and developing their businesses, as well as to assist bar associations, governments and other institutions that are looking to change the way they regulate practice by foreign lawyers.

The IBA has also issued a number of resolutions of relevance to the international trade of legal services.[11] Of these, one of the most significant is the *Resolution of the IBA Council on Transfer of Skills and Liberalization of Trade in Legal Services*. This resolution, adopted by the IBA in 2008, draws attention to the fact that few WTO members have made commitments respecting trade in legal services under the GATS. Accordingly, the Resolution recommends:

> *Countries that so far have not been willing to open their legal services market to Foreign Lawyers, or that have done so to a limited extent only as regards the scope of practice rights or rights of association with Local Lawyers, may wish to grant Foreign Lawyers access to their legal services market, or to reduce or remove any existing restrictions on such access*.[12]

In addition to these, the IBA has also adopted several resolutions that are informed by and relevant to cross border legal practice.[13] These resolutions include the *1998 Statement of General Principles for the Establishment and Regulation of Foreign Lawyers*,[14] and the *2001 Standards and Criteria for Recognition of the Professional Qualifications of Lawyers*.[15]

The IBA's International Trade in Legal Services Committee has led and contributed to much of this work. The Committee's mandate is to monitor the work of the WTO globally, to provide information and guidance to bar associations and law societies and to answer questions potentially raised by trade negotiators.

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[11] See for example, International Bar Association, *Resolution in support of a system of terminology for legal services for the purposes of international trade negotiations* (2003); International Bar Association, *Communication to The World Trade Organization on the Suitability of Applying to the Legal Profession the WTO Disciplines for The Accountancy Sector* (2003).

[12] International Bar Association, Resolution of the IBA Council on transfer of skills and liberalization of trade in legal services (16 October 2008).

[13] Laurel Terry, *The Revised Handbook about the General Agreement on Trade in Services for International Bar Association Member Bars* 40.

[14] International Bar Association 'IBA Statement of General Principles for the Establishment and Regulation of Foreign Lawyers' adopted at the IBA Council Meeting in Vienna, June 1998.

[15] International Bar Association 'Standards and Criteria for Recognition of the Professional Qualifications of Lawyers' adopted at the IBA Council Meeting in Istanbul, June 2001.

6 How does Australia fare against Southeast Asian jurisdictions?

A key issue facing the Australian Government in negotiating market access to Southeast Asian jurisdictions is whether Australia itself has barriers to foreign lawyers practising in Australia.

In this regard, Australia has an open legal services market by international standards. As such, Australia does have the ability to push for reciprocal market access. Further details are set out below.

6.1 Access to the Australian legal services market by foreign lawyers

In June 2015, the Law Council provided a submission to the Productivity Commission in response to an Issues Paper on Barriers to Export Services. The Law Council identified that Australia provides liberal terms of market access for foreign suppliers of legal services in the Australian market by international standards.

Specifically, Australia provides access on terms under which:

(a) a distinction is made between:

  (i) the supply of legal services relating to Australian (host) country law for which foreigners must meet the same requirements as nationals to obtain a full practising certificate; and

  (ii) the supply of legal services relating to foreign country law for which foreigners are not required to obtain a full practising certificate and are subject to a less onerous registration requirement.

(b) there are no quantitative limitations, either in numerical form or in any form of economic needs test, on the number of suppliers or the number of foreign suppliers that may supply any kind of legal service on host country law or on the number of suppliers that may supply any kind of legal service on foreign country law. Nor are there any quantitative restrictions on the value of legal service transactions or assets, legal service operations or service output, or the total number of employees or the number of employees any supplier may employ;

(c) foreign suppliers of foreign country law do not have to satisfy residency requirements to supply legal services relating to home country or third country law:

  (i) on a FIFO basis; or

  (ii) through a commercial presence in Australia.

(d) foreign suppliers of foreign country law can supply legal services relating to home country or third country law on a FIFO basis for up to 90 days per year without:

  (i) having to obtain an Australian practising certificate; or

  (ii) having to register as a registered foreign lawyer in Australia;

(e) foreign suppliers of foreign country law can supply legal services relating to foreign country law by establishing a commercial presence in Australia if they are registered as a registered foreign lawyer in Australia; and

(f) suppliers of legal services relating to foreign country law may operate in partnership or other profit-sharing arrangement with local lawyers if those qualified in foreign country law or a particular foreign country supply legal services relating to foreign country law of that country and only those holding Australian practising certificates supply legal services related to Australian (host) country law.

Foreign lawyers may only provide the following legal services in Australia:

- Doing work concerning the law of a foreign country where the lawyer is registered or authorised by the foreign registration authority;
- Legal services concerning proceedings before bodies (other than courts) that are not required to apply the rules of evidence and where knowledge of foreign law is deemed essential;
- Legal services concerning consensual dispute resolution; and
- Legal services of a kind specified in the Uniform Rules.

Foreign lawyers are not entitled to practise Australian law in Australia or appear in any court save on the lawyer's own behalf or as permitted by the Uniform Rules. A foreign lawyer may, however, advise on the effect of an Australian law if it is necessarily incidental to the practice of foreign law and the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

6.2 Australia's efforts to advocate for reciprocal market access

The Law Council submitted to the Productivity Commission that Australia should seek commitments from other countries that would require them to provide terms of access that equal or reflect most of the major characteristics of the market access terms that Australia provides to non-nationals.

The Law Council has historically advocated for liberalisation of the following aspects of regulation of legal practice. These comments remain correct today and are summarised below.

Ability to practise foreign law on a FIFO basis (Mode 4)

Globally, lawyers frequently travel to another country to provide legal services without establishing a long-term commercial presence in that country. Typically, such travel arises when a client from outside the host country requests the foreign lawyer to travel with the client to attend negotiations or business meetings in the other country. Occasionally, such travel could arise where the foreign lawyer is invited by a client in the host country to visit the host country to provide advice about foreign law to the client in the host country.

There has been a longstanding tolerance of such visits by almost every country in the world. Such visits are regularly accomplished by persons on tourist visas or short-term business visitor visas.

Australia has taken the approach of modifying the regulations of the legal profession so that a foreign lawyer visiting Australia to provide legal services limited to foreign country law or international law is permitted to provide that legal service:

- without having to qualify as an Australian legal practitioner; and
- without having to register as a foreign lawyer or to establish any form of longer-term commercial presence in Australia, if they do not spend more than 90 days in Australia in any 365-day period.

The ability to provide legal services on a FIFO basis should be widely available with Australia's key trading partners, but this is not always the case.

In the Law Council's view, the only restrictions on FIFO should be that the lawyer has a current practising certificate in the resident state and that a reasonable time limit is imposed to ensure that the visit is indeed a temporary activity.

Ability to practise foreign law through commercial presence (Mode 3)

The Law Council has asked, in respect of the situation where lawyers wish to practise foreign or international law on a permanent rather than temporary basis, that other countries do not require such practitioners to obtain the ordinary practising certificate that applies to the practise of home country law.

One way to achieve that result is for trading partners to commit to providing for a separate system of licensing of those practitioners whose business would be limited to the practise of foreign or international law. The Law Council's historic submissions on this issue have been in line with IBA positions which acknowledge that any limited licensing system still needs to provide for regulation of appropriate ethical conduct.

Unnecessarily restrictive conditions on licences for foreign lawyers (Mode 3)

In multilateral, plurilateral and bilateral negotiations, the Law Council has supported the Australian Government seeking that trading partners do not attach unnecessarily restrictive conditions to granting limited licences for foreign lawyers establishing or maintaining a commercial presence for the practise of foreign or international law.

The Law Council has also supported the Australian Government in asking that foreign lawyers:

- are not required to meet minimum residence requirements;
- are not required to satisfy requirements about having practised in the home country for a minimum duration; and
- are not required to limit their practice to a particular location or office in the host country.

In some trading partner countries, limits are also placed on the number of foreign lawyers that can work in a firm and on the role that the lawyers can assume in the firm, including limits on equity.

Other licensing limits imposed by some trading partner countries include that the foreign lawyer:

- must be employed by a national law firm (i.e. a partnership);
- may not employ local lawyers;
- may not provide services in some other form of commercial association with local lawyers; and
- may not establish a commercial presence to offer advisory services in foreign and international law.

Commercial association arrangements (Mode 3)

In several trading partner countries, there are restrictions on Australian law practices forming commercial associations with local lawyers.

In Australia, a registered foreign lawyer may form a partnership or incorporated legal practice with an Australian lawyer or law practice. Under that arrangement, Australian lawyers and foreign lawyers are each allowed to provide legal services only in relation to the laws of the jurisdictions in which they are entitled to practise.

In its negotiations with trading partners, the Law Council supports the Australian Government seeking rights for Australian law practices to freely enter commercial associations with overseas law practices in all relevant jurisdictions. This remains an important feature for the liberalisation of the legal services sector.

Right to qualify and practise local law (Modes 1, 3 and 4)

The Law Council has expressed concern regarding foreign laws which prohibit foreign nationals from sitting for legal qualification exams and which prohibit foreign nationals from becoming legal practitioners in foreign jurisdictions.

In Australia, any person regardless of nationality may be admitted as a local practitioner if they meet the qualification requirements. There is no citizenship requirement and no residency requirement.

Admission as an Australian legal practitioner does not convey a right to a visa to enter or work in Australia, but such persons are eligible to apply for a range of visas, including short-term business visitors' visas, sponsored employment visas and permanent residency visas.

The Law Council has a long-standing policy that the right to practise local law should be based on knowledge, ability and professional fitness only, and this is to be determined objectively and fairly through transparent processes.

Jurisdiction profiles and legal services market access



7 Republic of Indonesia

7.1 Importance of Indonesia to Australia

Indonesia, the world's third largest democracy with the world's largest Muslim population, is one of Australia's most important bilateral relationships. Australia enjoys extensive cooperation with Indonesia, including on strategic, economic, security, development and education matters. In 2024, Australia and Indonesia celebrated 75 years of diplomatic relations. Australia's diplomatic network in Indonesia includes Australia's embassy in Jakarta and consulates-general in Bali, Surabaya and Makassar.

Indonesia is on track to become one of the world's largest economies by 2040. Real GDP is forecast to grow at over 5% until 2027 and then remain steady at or above 4% until 2040. Indonesia could attain top 10 economy status in the next decade and may reach top five by 2040, from its current position of 14th.

Australia already has a bilateral trade agreement in the form of IA-CEPA. This will be discussed later in this Report.

Australia and Indonesia also signed a Comprehensive Strategic Partnership (**CSP**) in 2018. The CSP coalesces bilateral cooperation around five broad pillars:

(a) enhanced economic and development partnership;

(b) connecting people;

(c) securing our and the region's shared interests;

(d) maritime cooperation; and

(e) contributing to Indo-Pacific security and prosperity.

The relationship between Australia and Indonesia is underpinned by regular high-level meetings. These include the Annual Leaders' Meeting; 2+2 Foreign and Defence Ministers' Meeting; Ministerial Council on Law and Security; Economic, Trade and Investment Ministers' Meeting; the Economic Policy Dialogue; and the Ministerial Energy Dialogue.

Opportunities for Australia in Indonesia include education and training, energy investment (including the green energy transition), transport infrastructure, supply chain infrastructure, agriculture and food supply, as well as opportunities in healthcare:

- Australia enjoys strong trade with Indonesia. Australia is a major supplier of agricultural products (wheat, live cattle, beef, cotton), minerals (gold, iron ore, aluminium oxide and concentrates) and energy (coal, crude petroleum), which support Indonesia's food security, energy security and economic growth.

- Indonesia's growing consumer market is also looking to Australia for food and beverages, healthcare, education, tourism and other quality Australian exports. In 2024 over 24,000 Indonesians were studying in Australia on a student visa. Opportunities for other sectors are emerging as the Indonesian economy continues to grow, transform and become more open.

- In 2024-25, Indonesia was Australia's nineth-largest two-way trading partner by value ($34.83 billion) and our tenth-largest export market ($16.42 billion). Indonesia was Australia's largest market for live cattle and wheat. Indonesia is a popular destination for Australian visitors, accounting for 14.2% of all overseas trips in 2024-25.

- Attracting foreign investment is a priority for the Indonesian government and Indonesia's favourable macroeconomic trends, demographic fundamentals and economic policy settings

contribute to an investment environment that may present opportunities to Australian investors. In 2024, the total stock of Australian investment in Indonesia was valued at $1.36 billion and the total stock of Indonesian investment in Australia was valued at $1.42 billion.

7.2 Importance of Indonesia to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that Indonesia is viewed by Australian lawyers and firms as the most important country in Southeast Asia from a legal services perspective.

There are several Indonesian firms which are leading in cross-border commercial work and many of these firms have close links to overseas firms.

Several Australian law firms (or global law firms with Australian offices) have close and long-standing relationships with Indonesian law firms, including through the secondment of senior lawyers to local law firms in Indonesia.

Examples include:

- TNB & Partners, in association with Norton Rose Fulbright;
- Oentoeng Suria & Partners, in association with Ashurst;
- Hiswara Bunjamin & Tandjung, in association with Herbert Smith Freehills Kramer;
- HHP Law Firm, a member firm of Baker & McKenzie Swiss Verein; and
- Ginting & Reksodiputro, in association with A&O Shearman.

Several Australian lawyers work in Indonesia. A range of Australian lawyers already advise clients located in Indonesia on an electronic and/or FIFO basis. Precise statistics are unknown, but the level of legal services would match the level of cross-border investment and trade between Australia and Indonesia, as identified above.

7.3 Nature of the Indonesian legal system

The Indonesian legal system is regarded as ‘difficult’ from an Australian perspective. This is partly due to significant differences in legal culture and tradition. Indonesia is also notorious for the complexity of regulation and the residual discretion held by government in interpreting regulation, as well as changes in regulatory policy that can be difficult to predict.

The Law Council has identified the following challenges which have inhibited engagement between the Australian and Indonesian legal professions on issues relating to trade in legal services:

- shortage of English-speaking Indonesian lawyers and Bahasa Indonesian-speaking Australian lawyers;
- lack of understanding by Australian and Indonesian lawyers of each other’s legal systems; and
- Indonesia's relative lack of development in legal infrastructure and lack of certainty in recent years over the regulation of the legal profession.[16]

Relevantly, the Indonesian legal system is rooted in the civil law tradition, heavily influenced by Dutch colonial law, which was established over three centuries of Dutch rule. It features an extensive and codified set of statutes, which serve as the primary source of legal authority, in line with principles

[16] Law Council of Australia, *Development of country strategies for Japan, China, Indonesia, India and South Korea* (Submission to the Department of Foreign Affairs and Trade, 7 June 2013).

common to civil law jurisdictions. The judicial process follows an inquisitorial model. This system coexists with *adat* (customary law) and Islamic law, reflecting the diverse cultural and religious landscape of Indonesia.

As such, the Indonesian legal system operates based on a combination of written laws, regulations, and customary practices. Indonesia's court system operates under a hierarchical structure, organised to address various areas of law through several types of courts, each with distinct jurisdictions and functions. Nonetheless, the judiciary functions as a unified national system, reflecting Indonesia's unitary state framework without any division between federal and provincial courts.

Specialised courts exist to adjudicate specific issues, including commercial courts that deal with bankruptcy and trade disputes. These courts are designed to expedite cases and utilise judges with specialised knowledge in their respective areas, promoting efficiency and expertise in legal proceedings.

Religious courts have a unique role in the Indonesian legal landscape, particularly in matters pertaining to personal status, family law, and inheritance, specifically for Muslims. These courts operate under Islamic law principles and are critical to resolving disputes that require adherence to religious statutes. The existence of religious courts underscores the significance of religion within Indonesian society and its intertwining with the legal framework.

In relation to the challenges facing the Indonesian legal system, Generis Global, one of the firms providing legal services in Indonesia, comments as follows:

> *"The Indonesian legal system confronts a multitude of challenges that impede its effectiveness and credibility. One of the most pressing issues is corruption, which remains pervasive at various levels of governance. Corruption within the judicial system undermines public trust, distorts legal processes, and leads to unequal access to justice. Reports of bribery and favoritism complicate legal proceedings, making it difficult for citizens to seek fair resolutions to disputes. The persistence of corrupt practices raises serious concerns regarding the integrity of legal institutions, which diminishes their role in upholding the rule of law.*
>
> *Access to justice is another critical challenge that hinders the overall functionality of the Indonesian legal framework. Many individuals, particularly those in rural or economically disadvantaged areas, encounter significant barriers when seeking legal assistance. These barriers include high fees for legal representation, language difficulties, and inadequate legal education. As a result, a considerable portion of the population remains unaware of their rights or excluded from the legal process. This lack of awareness and understanding further perpetuates inequalities within the system, ultimately limiting the effectiveness of legal recourse for many citizens.*
>
> *The call for legal reform has gained momentum as a response to these challenges. Various stakeholders, including civil society organizations, academic institutions, and legal professionals, are actively advocating for comprehensive reforms aimed at enhancing transparency and accountability within the legal system. These efforts encompass measures to strengthen anti-corruption initiatives, improve legal education, and foster greater public participation in legal processes. Moreover, legal reforms aim to ensure that the justice system serves as a mechanism for social equity rather than a tool of discrimination."* [17]

7.4 Nature of legal practice in Indonesia

Legal practitioners in Indonesia play a crucial role in upholding the integrity and functionality of the country's legal system. Lawyers, judges, and notaries each fulfill distinct responsibilities that contribute to the administration of justice and the public's trust in legal processes. These practitioners are tasked with representing clients and ensuring that the rule of law is maintained in society.

[17] Generis Global Legal Services, *A Comprehensive Overview of the Indonesian Legal System* (Web Page, 19 November 2024) <https://generisonline.com/a-comprehensive-overview-of-the-indonesian-legal-system/>.

Most Indonesian law firms are small, generalist firms with practices spanning a wide area of non-commercial work. Lawyers (known as *pengacara*) may be advocates or legal consultants. Legal consultants (known as *penasehat hukum*) are pengacara who specialise in commercial law. Penasehat hukum usually operate in large law firms based on international models and undertake work in all areas of corporate law. The only exception to this seems to be the area of dispute resolution which is dominated by several high-end and boutique Indonesian firms who specialise only in this area.

In an article in the Jakarta Post on 11 April 2013, titled "*The future of Indonesia's legal profession: A lawyer's perspective*", the following comments were made:

> "*Generally, the legal profession in Indonesia remains underdeveloped. The number of lawyers in Indonesia, a country with a population of more than 240 million, is very low.*
>
> *The members of the Indonesian Advocates Association (PERADI) throughout Indonesia are "only" about 22,000. In Indonesia one lawyer serves about 11,000 people, while in the US the ratio of lawyers to the population stands at one lawyer for 265 Americans.*
>
> *Pursuant to the Indonesian Advocates Law, these two roles are fused under one title: "advocate". Therefore, from the perspective of the Advocates Law, when someone has attained the status of an advocate, he or she is deemed competent to perform in both representing clients in the court proceedings and giving specialist legal advice to clients on various matters affecting their legal rights, including transactional work.*
>
> *While specialization is becoming more and more important to the workings of the lawyers, it seems that many Indonesian lawyers are still attempting to be generalists.*
>
> *Most Indonesian law firms are family owned and, thus, fall behind in terms of the management and professional approach compared to modern law firms in developed countries.*
>
> *While Indonesia has many talented individuals who could be developed to compete with foreign lawyers, there are too many out-of-date and unnecessary restrictions that Indonesian lawyers are subjected to, which restrict their ability to compete with foreign lawyers. For instance, Indonesian lawyers are discouraged from entering into a multi-interdisciplinary partnership or having an outside investor.*
>
> *Furthermore, Indonesian lawyers are precluded from advertising and marketing their services.*
>
> *In Indonesia, only lawyers may have an ownership interest in a law firm and a legal service provider cannot be incorporated as a company. Only a "natural person" or "civil partnership" can provide legal services."* [18]

7.5 Impediments to Australian lawyers practising foreign law in Indonesia

Foreign lawyers seeking to practise foreign law in Indonesia are required to meet the requirements of the Advocate Law as set out in the next section below.

Mode 1 – Cross-border supply

In practice, there are no rules allowing Australian-based lawyers to advise clients in Indonesia on foreign law from Australia using electronic communications. The provision of international legal services via Mode 1 into Indonesia is currently tolerated in practice for transactional services but could potentially be in a legal grey area.

[18] Tony Budidjaja, 'The future of Indonesia's legal profession: A lawyer's perspective', *The Jakarta Post* (Jakarta, 11 April 2013).

However, under IA-CEPA, Indonesia has committed to allow the supply of cross-border legal advisory services from Australia, such as advice provided via email, covering Australian law, third country law and international law on business and arbitration.

As such, any enforcement actions by Indonesian authorities to prevent the Australian lawyers from providing foreign law services via Mode 1 could well contravene IA-CEPA, depending on the circumstances.

Indonesian regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Indonesian local law, particularly domestic litigation, from outside Indonesia. The historic experience is that complaints by local Indonesian lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

It is likely that the domestic profession is reluctant to allow foreign lawyers to practise local law, largely to retain this work for Indonesian lawyers and to safeguard the domestic market.

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

Under IA-CEPA, entry and temporary stay is permitted for an 'Independent Professional For Legal Services' for a period of one year, which may be extended for a period of not more than one year for each extension. This applies only for advisory services on foreign and international law.

However, there are no rules allowing temporary practice by foreign lawyers of foreign law, hence any FIFO practising of foreign law by Australian lawyers is at the lawyer's own risk and could be contrary to the terms of the relevant visa.

The use of business visas is the most common way that Australian lawyers are currently providing Mode 4 legal services in Indonesia. Work-arounds can generally be adopted for transactional services involving international law to mitigate visa risks, hence the risk may be practically low.

Relevantly:

- Tourist visas on arrival for Australian citizens do not permit work in Indonesia. Foreign citizens have been detained by immigration authorities for conducting business that is out of the scope of their visa type.

- Australian citizens can obtain single-entry (60 days) and multiple-entry business visas (6 months to 2 years). Business visas do not permit formal employment or receiving a salary from an Indonesian entity. They are strictly for business-related activities such as meetings, conferences, and networking. As such, they are not work permits.

- A single-entry (60 days) C2 Business Visa, for example, does enable an Australian citizen to 'discuss, negotiate and/or sign business contracts.' However, the visa holder is 'prohibited from selling goods or services.' The visa holder is also 'prohibited from receiving rewards, wages, or any similar from individuals or corporations in Indonesia.'

- Australian citizens intending to work in Indonesia must obtain a formal work permit (**IMTA**) and a stay permit (**KITAS**) to work legally in Indonesia. A variety of steps must be followed to obtain an IMTA and KITAS, including sponsorship by an Indonesian company.

Indonesia has been progressively streamlining its visa requirements, most recently in August 2025.

Practical challenges

The legal uncertainty for Australian lawyers advising on foreign law in relation to Indonesia using Mode 1 and Mode 4 is clearly a concern. Arguably, such services are currently being provided by Australian law firms in a manner of questionable legality (i.e., in a legal grey area) and in potential contravention of business visa requirements.

IA-CEPA does de-risk the use of Mode 1 and Mode 4 by Australian lawyers and law firms by:

- in relation to Mode 1, allowing the supply of cross-border legal advisory services from Australia, such as advice provided via email, covering Australian law, third country law and international law on business and arbitration; and

- in relation to Mode 4, permitting entry and temporary stay for an 'Independent Professional For Legal Services' for a period of one year, which may be extended for a period of not more than one year for each extension. This applies only for advisory services on foreign and international law.

Moreover, under AANZFTA, Indonesia has committed to allow Australian lawyers and law firms to supply advisory legal services in Australian law and international law.

However, concerns do exist within the Indonesian legal services market regarding the use of Mode 1 and Mode 4 by foreign lawyers, as well as a need for greater clarity on what is permitted. In an article in The Jakarta Post in March 2014 titled "Don't kill foreign lawyers", the following comment was made:

> *"Although the Advocates Law restricts foreign lawyers from establishing offices in Indonesia, some law firms have found a loophole by incorporating their firms with business consulting companies and openly offer services to businesses in Indonesia. Besides, many international law firms are affiliated with Indonesian firms to enable them to do business here. In the past few years, such arrangements have increased. They seem to have ignored the policy that restricts foreign lawyers from engaging in legal services in Indonesia.*
>
> *A number of overseas law firms have deliberately employed Indonesians as a means to tap into the market. They must be aware that under the Advocates Law, unless a person has been admitted to the Indonesian Advocates Organization, it will be illegal for him/her to practice law in Indonesia.*
>
> *Many foreign lawyers simply provide services to their Indonesian clients, when needed. They work by flying into Indonesia to cater to the needs of their client. They must be reminded that business visas may not be sufficient to continuously fly-in and fly-out of Indonesia for the purpose of practicing law in Indonesia.*
>
> *The massive influx of foreign lawyers and the growing influence of foreign lawyers in the Indonesia's legal services market have raised concerns among Indonesian lawyers. Therefore, it is no surprise that when interviewed by The Financial Times recently, Otto Hasibuan (Chairman of PERADI (one of the largest advocates associations in Indonesia) said: 'We want to protect our lawyers, we must not allow foreign lawyers to practice here.'*
>
> *After remaining silent on the issue since its inception in 2005, PERADI recently made an unusual policy by requiring foreign lawyers who want to work or continue to work in Indonesia to take a legal course and an exam on the Code of Ethics of Indonesian Advocates. Simultaneously, PERADI has warned that failure to comply with these requirements can lead to difficulties for foreign lawyer applying for a work permit in Indonesia to obtain a PERADI recommendation.*
>
> *This policy clearly suggests that PERADI has taken a firm stance toward foreign lawyers. This cannot be perceived as a move to pave the way for the foreign lawyers to practice Indonesian law, which may have been misunderstood by some. The present Advocates Act only allows Indonesian citizens to practice Indonesian law.*
>
> *The dubious and uncontrolled practice of foreign lawyers, combined with the absence of a good regulatory system, will potentially trigger chaos in the legal services sector. To facilitate fair play in the legal services market, the dos and don'ts relating to the practice of foreign lawyers in the country is urgently needed."* [19]

[19] Tony Budidjaja, '(Don't) Kill Foreign Lawyers, *The Jakarta Post* (Jakarta, 12 March 2014).

However, given the relatively small number of Indonesian law firms, there is a constant need for additional transnational legal services expertise in Indonesia. Such demand is often met by Australian and other foreign law firms operating out of regional hubs such as Singapore as well as by law firms directly from Australia. These firms tend to rely on Mode 1 and Mode 4 to a high degree.

7.6 Impediments to Australian lawyers practising Indonesian local law

Indonesia is among the more restrictive Southeast Asian economies for legal services. Only lawyers with a degree from an Indonesian law school and Indonesian citizenship are eligible to obtain a right to practise Indonesian local law or establish law offices. Foreign lawyers may operate as legal consultants employed by an Indonesian law practice, however, they are not permitted to advise on Indonesian local law.

Lawyers (advocates) are regulated under the Advocate Law. This law distinguishes between advocates, consultant advocates and foreign advocates. However, the term 'advocate' is widely used to refer only to those Indonesian lawyers who practise as litigators (barristers) (**advocate**).

Other practitioners are usually referred to as lawyers or consultants or *Konsultan Hukum Asing* (**foreign legal consultants**).

Practising as a foreign legal consultant

Foreign lawyers can work in Indonesia under specific conditions, which include being hired by an Indonesian law firm and meeting government licensing requirements. They must have a work permit from the Ministry of Manpower and cannot establish their own firm or appear in Indonesian courts. Their practice is limited to working as employees for Indonesian firms, with a specific ratio of Indonesian to foreign advocates required.

Legislation relevant to foreign legal consultants beyond the Advocate Law includes:

- Decree No M11-HT.04.02 of 2004 (17 December 2004) concerning the requirements and procedures of employing foreign lawyers and the obligations of contributing free legal service to legal education and research;
- Law No 9 of 1992 concerning immigration; and
- the Ministry of Manpower and Trans Migration Ministerial Regulation PER.02/MEN/III/2008 concerning procedures for employing foreign employees.

Indonesia allows foreign lawyers to provide legal services through sponsorship of local law firms. Nonetheless, they are limited to work as an expert in foreign or international law. Specifically:

- Foreign lawyers may not practise as litigators (barristers), and may be foreign legal consultants only. As a consultant, they are permitted to practise in the field of foreign law, being '*the law of the lawyer's country of origin'* or international law in the fields of business and arbitration which encompasses the settlement of disputes outside the courts. As such, they are not permitted to advise on Indonesian local law;
- Foreign advocates are regulated under Article 23 paragraph (1) of the Advocate Law and Article 19 paragraph (1) of Regulation (*Permenkumham*) Number 26 of 2017. These laws explicitly prohibit foreign lawyers from conducting litigation, presenting in court, practising, and/or opening legal services offices or representative offices in Indonesia;
- Foreign legal consultants are therefore permitted to practise foreign law in Indonesia, particularly in international or cross-border matters, but they cannot conduct court cases, engage in any direct advocacy or advise on Indonesian local law;
- Foreign lawyers are qualified to practise as foreign legal consultants based on a foreign practising certificate which must be current; and

- Foreign legal consultants are required to work in cooperation with local law firms and are subject to regulations imposed by the Ministry of Law and the Indonesian bar association, PERADI (*Perhimpunan Advokat Indonesia*, which translates to Indonesian Advocates Association), as explained below.

A foreign lawyer can obtain a licence to offer international legal services as a consultant, but they must be sponsored and employed by a local law firm (i.e., an Indonesian law firm partnership). To gain employment, the foreign lawyer must:

- be employed by an Indonesian law firm (with the Indonesian law firm submitting a proposal of request for approval from the Minister of Law). It should also be noted that because foreign lawyers do not have standalone rights to practise foreign law in Indonesia (i.e. because their work permit is tied to employment as a foreign legal consultant with a particular Indonesian firm), foreign lawyers working in Indonesia encounter difficulties moving between employers. When a foreign lawyer wishes to move to a different firm, they must obtain a waiver. Failure to obtain a waiver, which allows the existing work permit to be used in relation to work for a different employer, can result in the foreign lawyer's right to practise being revoked;

- submit copies of foreign legal qualifications and current practising certificate and law society membership to PERADI and the Ministry of Law;

- pass a foreign advocate examination held by PERADI to gain a recommendation letter from PERADI under Article 23 of the Advocate Law;

- if the lawyer is recommended by PERADI and approved by the Ministry of Law, the employer must obtain a work permit from the Ministry of Manpower (the work permit is akin to a visa permitting the foreign lawyer to work in Indonesia for a set period);

- follow the established ratio of legal workers, namely that the number of foreign lawyers allowed in an Indonesian law firm is determined based on the total number of Indonesian lawyers working in the office with a ratio of 4 Indonesian lawyers to 1 foreign advocate, with a maximum of 5 foreign lawyers for each law firm. (However, if there are only 3 Indonesian lawyers in a law firm, then the office can be given the opportunity to employ 1 foreign advocate);

- provide free (pro bono) legal services of some 120 hours per year in the areas of education institution, legal research activities and government agencies, noting if these obligations are not carried out, the Minister has the right not to extend the approval to employ the foreign lawyer. One example of this service could be tutoring or assisting academics at the local law school;

- make an annual contribution of USD 1200 to a government Skill Development Fund; and

- obtain a temporary stay visa from the Ministry of Immigration and Corrections (for one year at a time), after which the lawyer may need to exit Indonesia briefly (say for 24-72 hours) to reset the visa (i.e., a so-called 'visa run' or 'border run').

In addition, the foreign lawyer is subject to the Indonesian Advocate's code of ethics and statutory regulations.

Practising Indonesian law as an advocate

Legal representatives must meet specific requirements to appear and conduct cases in Indonesian courts as advocates. These requirements are intended to ensure that only qualified and competent professionals represent clients in judicial proceedings.

A foreign lawyer cannot obtain a full licence to practise law in Indonesia. As provided under the Advocate Law:

- an advocate must be an Indonesian citizen, Indonesian resident, have law degree education, joined special education and passed an examination carried out by PERADI and joined on-the-job training for a minimum of two years at a law firm;

- the foreign lawyer may only join a local firm as an employee subject to a government licence based on a recommendation by PERADI and may not enter partnership with or employ other lawyers.

Specifically:

- Indonesian lawyers are qualified to practise if they have an undergraduate law degree, have attended a professional advocate training program run by PERADI, passed a bar examination administered by PERADI, have worked for at least two years in a law office, and are not employed by the Government, and be sworn in by the high court.

- Only those officially registered with PERADI are authorised to practise law and represent clients in court. Duly licensed lawyers have the right of audience in all courts across the country and may represent clients in both civil and criminal cases.

- A foreign lawyer cannot obtain a full licence to practise law in Indonesia. Lawyers must be Indonesian citizens and reside in Indonesia.

Practical challenges

The requirements for an Australian lawyer to practise law in Indonesia are particularly onerous by international standards, requiring that this can only occur in conjunction with a commercial presence. The process for obtaining the requisite approvals is complicated and lengthy.

The requirements for foreign lawyers to be licensed in Indonesia are also subject to the discretion of Indonesian regulatory authorities, which discretion is subject to change. As such, it is important for Australian lawyers to remain in favour with Indonesian regulatory authorities, creating its own potential complications.

Even when the requirements are met, the Australian lawyer can only practise foreign law and not Indonesian local law. Consultations informing the preparation of this report included a comment that a lawyer who had departed Indonesia and was subsequently using Mode 1 and Mode 4 found this less restrictive than when they had been licensed as a foreign advocate in Indonesia and had been subject to direct regulatory oversight and scrutiny by Indonesian regulatory authorities.

A key concern raised by Australian lawyers is the requirement for foreign lawyers in Indonesia to provide significant *pro bono* services as a condition of practising in Indonesia, namely a minimum of 120 hours per year (hence 10 hours per month). Although firms noted that work-arounds exist and discretion can be exercised by Indonesian regulatory authorities, this was still viewed as a significant and unwelcome burden.

A concern raised by one law firm related to the ability of junior lawyers in Australia to spend time in their Indonesian office. The current regulatory approach is not favourable to Australian lawyers spending short periods of time in Indonesian offices, including as part of an ‘international rotation’. That being said, practical work-arounds are being applied.

An Australian lawyer would need to become admitted in Indonesia to provide advocacy services in Indonesia. While this is consistent with international best practice, the ability to become admitted in Indonesia is limited to Indonesian citizens that must reside in Indonesia.

Historically, Indonesia has been known to investigate foreign lawyers where concerns are raised that foreign lawyers may be practising local Indonesian law. An Indonesian article in 2025 commented:

> *“There are several cases where foreign lawyers have been accused of practicing as a lawyer actively advising Indonesian law.*

In 2007, there are [sic] an alleged illegal practice by foreign advocates in Jakarta. A prominent example of the enforcement of these provisions can be traced to 2007, when Otto Hasibuan, then-chairman of the Indonesian Bar Association/Persatuan Advokat Indonesia ("PERADI"), publicly exposed the illegal practice of over 100 foreign lawyers operating in Indonesia. These individuals, largely from the United States, the United Kingdom, and Australia, were found to be working in major law firms in Jakarta without proper permits or recognition from PERADI.

These foreign lawyers often held titles such as "foreign legal consultants" or "advisors," yet they allegedly provided legal opinions and services on matters of Indonesian law – a direct violation of the Advocate Law. Moreover, they were involved in negotiations and contract drafting governed by Indonesian regulations. According to PERADI, this situation led to an economic disadvantage for local lawyers and compromised the enforcement of ethical and professional standards. PERADI, alongside the Ministry of Law and Human Rights, conducted investigations into firms suspected of breaching these rules.

In another case, a concrete example can be found where a foreign lawyer was alleged to have actively advised on Indonesian law, thereby violating the very nature and regulatory framework governing the legal profession in Indonesia. This issue was brought to light in High Court Decision No. 623/PDT/2019/PT.DKI, which involved a dispute between Sumatra Partners LLC (the "Plaintiff") and ABNR Counsellors at Law (the "Defendant"). One of the Plaintiff's key allegations was that the Defendant had appointed a foreign legal consultant, Mr. Oene J. Marseille, to lead a legal team in providing legal services for a project in Indonesia.

This appointment raised significant concerns, as it demonstrated a foreign lawyer engaging in legal advisory activities related to Indonesian law, which constitutes a clear violation of the Advocate Law and its implementing regulations. Under Indonesian law, foreign lawyers are strictly prohibited from advising on or practicing Indonesian law, and their presence in local law firms must be limited to advisory roles on foreign or international law only. Moreover, assigning a foreign lawyer to lead a legal team within an Indonesian jurisdiction—even indirectly—further contravenes the professional and ethical boundaries established under national law.

This case illustrates that delegating responsibilities to foreign lawyers beyond their permitted scope, especially in matters involving Indonesian law, exposes both the foreign lawyer and the firm to legal liability and ethical violations. It underscores the importance of maintaining regulatory compliance and respecting jurisdictional boundaries in cross-border legal practice.

As evidenced by this case, both the foreign lawyer and the affiliated law firm itself may be subject to malpractice claims, which could significantly damage their professional credibility and institutional reputation. While the presence of foreign lawyers in Indonesia [sic] law firms is permitted under certain conditions, their roles must remain strictly supplementary, providing added value through international expertise, without superseding or duplicating the functions of licensed Indonesian advocates. In this context, foreign legal consultants are positioned as a strategic support in matters involving cross-border or foreign legal issues not as the main legal actor." [20]

It is likely that the domestic profession in Indonesia is reluctant to allow foreign lawyers to advise on local law in the interests of retaining this work for local lawyers and safeguarding the domestic market.

7.7 Impediments to Australian law firms setting up a commercial presence in Indonesia

As identified above, foreign lawyers:

- must be employed by an Indonesian law firm (i.e. an Indonesian law firm partnership);

[20] Ryanshah Akbar Putra & Luthfi Nadhif Naufal Manggala, 'Role of Foreign Lawyers in Indonesia', *River Hope Law Firm* (Web Page, 2025) <https://riverhopelawfirm.com/news/detail/role-of-foreign-lawyers-in-indonesia>.

- may not employ local lawyers;
- may not provide services in some other form of commercial association with local lawyers; and
- may not establish a commercial presence to offer advisory services in foreign and international law (i.e., foreign partnerships cannot operate in Indonesia).

As a work-around to these issues, the most common way for foreign law firms to operate in Indonesia is by association with an Indonesian law firm partnership, known as a civil partnership (*maatschap*). Indonesia has commitments under FTAs that allow for foreign lawyers to provide advisory services, establish commercial presences, and form partnerships or joint ventures with local firms.

Under this model, the Indonesian partnership could be set up as a greenfield local Indonesian partnership involving Indonesian lawyers (or an arrangement entered with an existing Indonesian partnership). The resources for the partnership could be provided by the foreign law firm under a licensing or other commercial model. The local Indonesian partnership would then state that it is 'X Partners' that is in association with the foreign law firm.

Practical challenges

Restrictions on the number and ratio of foreign lawyers working in Indonesian local firms can also hamper the capacity to bring together, on a temporary basis, teams of foreign and local lawyers with specialist expertise to undertake complex or major projects.

Australian law firms are currently prohibited from operating in Indonesia. Current arrangements involve creative work-arounds with some resulting risk. The risks may include the inability of the Australian law firm to exercise full control over the local Indonesian partnership, creating material commercial risks.

While Australian firms have generally used work-arounds, via affiliated local law firms, to operate in Indonesia, any such arrangements must be carefully structured and the various practising requirements can act as a significant impediment to market access. Key issues involve such matters as quality control (which can be difficult), use of brand (which is restricted), appropriate ratios of foreign and local lawyers, relationships with regulatory authorities, and general administrative complexity.

Under AANZFTA, Indonesia has not made any commitments with respect to Australian law firms establishing a commercial presence in Indonesia.

However, IA-CEPA already locks in any future liberalisation for the benefit of Australian law firms. Specifically, commercial presence in Indonesia is not permitted, but if Indonesia changes its laws in the future to allow foreign law firms, that new law will automatically become part of Indonesia's IA-CEPA commitments. If or when that may happen is currently unknown.

The prohibition on foreign law firms in Indonesia means Indonesia does not have any commitments on intra-corporate transferees, but Indonesia has created a new category to cover independent professionals supplying legal services.

8 Republic of Singapore

8.1 Importance of Singapore to Australia

Australia and Singapore enjoy a longstanding, multifaceted relationship built on deep strategic trust. Australia was the second country to recognise Singapore when it became an independent nation in 1965, marking the beginning of a close and enduring friendship.

Since 2015, our ties have been underpinned by a CSP, driving substantive collaboration across defence, border security, trade, science and innovation, education, the digital economy, climate and vibrant people-to-people links. 2025 marked a milestone year for Australia and Singapore – celebrating the 60th anniversary of diplomatic relations and 10 years of our CSP.

At the 10th Annual Leaders' Meeting held in Australia on 8 October 2025, Prime Minister Anthony Albanese and Foreign Minister Penny Wong reaffirmed this shared ambition by launching CSP 2.0, an ambitious and forward-looking framework guiding our engagement for 2025-2035. Under five key pillars, CSP 2.0 takes our partnership to new heights – including through deepening defence cooperation, building resilient supply chains, accelerating our transition to net-zero, growing research and technology cooperation, and building on our strong education partnerships.

Further, our strong economic relationship is underpinned by SAFTA, which was originally signed in 2003. SAFTA has undergone six revisions, with the most recent update in December 2020. This revision reflects the entry into force of the Australia-Singapore Digital Economy Agreement, and updated SAFTA's Electronic Commerce chapter into a Digital Economy chapter.

Australia and Singapore are also both parties to the:

- AANZFTA;
- RCEP; and
- CPTPP.

Singapore's economic trajectory to 2040 is anticipated to be steady. It will remain the commercial hub for Southeast Asia for financial services, investment, trading, logistics, shipping, digital economy and connectivity, and green services and technology. Real GDP is projected to reach 2.7% in the next five years, before falling to 1.4% by 2040. Singapore's reputation as one of the easiest places to do business, set up headquarters and resolve investor disputes is unlikely to be challenged.

Singapore is Australia's fifth-largest trading partner and fifth-largest source of foreign investment. Australia's exports to Singapore totalled A$23.3 billion in 2024, including both goods and services.

Beyond its domestic market, Singapore offers significant opportunities for Australian industries to leverage its role as a maritime, aviation, financial and commercial hub to expand into the region. By 2040, the Tuas port is expected to be the world's largest fully automated port, doubling the capacity of Singapore's current port, which already handles 12% of world shipping trade.

8.2 Importance of Singapore to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that Singapore is viewed by Australian lawyers and firms as the second most important country in Southeast Asia from a legal services perspective.

Singapore constitutes a significant legal services market for Australian lawyers. This is because it functions as a strategic platform through which Australian lawyers can deliver legal services to clients in Singapore and across the wider Southeast Asian region. Several law firms also run practices servicing India out of Singapore, given complications in establishing a commercial presence in India.

Of all the Southeast Asian nations, Singapore is regarded as the easiest and safest jurisdiction in which an Australian law firm can establish a commercial presence. Unlike Indonesia, it is also relatively straightforward to establish an office in Singapore, subject to the various issues identified in this Report.

Australian law firms (or international law firms with Australian offices) that currently have a commercial presence in Singapore include (without limitation):

- Allens, through an alliance with Linklaters;
- Ashurst, through a Formal Law Alliance with ADTLaw;
- A&O Shearman, which has a Qualifying Foreign Law Practice (**QFLP**) licence;
- Bird & Bird, including via an associated local law firm ATMD;
- Clifford Chance, which has a QFLP licence;
- Herbert Smith Freehills Kramer, which has a QFLP licence and a Formal Law Alliance with Prolegis LLC;
- Jones Day, which has a QFLP licence;
- King & Wood Mallesons, which has a QFLP licence;
- Norton Rose Fulbright, which has a QFLP licence and a Formal Law Alliance with local Singapore law firm Ascendant Legal; and
- White & Case, which has a QFLP licence.

Australian lawyers presently benefit from an elevated level of access to the Singapore legal services market. Nonetheless, due to Singapore's tightly controlled approach, barriers to entry do exist.

As of October 2025, only 9 foreign legal practices currently have QFLP licences. A QFLP licence permits a Foreign Law Practice (**FLP**) to advise on Singapore law, except in areas classified as domestic-related work. Domestic-related work in Singapore includes litigation and general practice areas such as criminal law, retail conveyancing, family law and administrative law. The QFLPs can practise in permitted areas in Singapore law through Singapore-qualified lawyers with practising certificates or foreign lawyers holding foreign practitioner certificates.

The key objectives of the QFLP scheme include growing the legal sector, supporting the growth of Singapore's key economic sectors, and offering additional opportunities for Singapore-qualified lawyers. The QFLPs have significantly contributed to the growth of Singapore's legal sector. Between 2021 to 2024, the 9 QFLPs generated over $2 billion in revenue from offshore work. At present, the 9 firms employ over 550 lawyers in their Singapore offices, of which more than 40% are Singapore-qualified lawyers.

8.3 Nature of the Singaporean legal system

Singapore's legal system is a parliamentary republic based on the English common law system, characterised by a clear separation of powers among the executive, legislature and judiciary.

From its founding by Sir Thomas Stamford Raffles of the British East India Company in 1819 to its independence in 1965, Singapore´s legal development had been intricately linked with its British colonial past. English legal traditions, practices, case law and legislation were often adopted without much consideration as to whether they suited the local circumstances.

With its independence from 1965, there was an increasing movement towards developing an autochthonous legal system in Singapore. The guiding principle was that the adoption of any legal practice or norm must be compatible with Singapore´s cultural, social and economic requirements.

Today, Singapore's legal system is heavily influenced by English common law, with many areas of law, such as contract law and tort law, being largely judge-made. However, statutory law has become increasingly significant, particularly in areas like criminal law and family law. Courts often refer to English case law and decisions from other Commonwealth jurisdictions when interpreting laws, although there is a growing trend to develop a distinctively Singaporean legal approach.

Singapore consistently ranks highly in international assessments for ease of doing business and the protection of intellectual property. Specifically:

- The Singapore legal system is characterised by its fairness, integrity, and efficiency, making it one of the most business-friendly jurisdictions globally. The legal system is designed to uphold the rule of law and protect the rights of individuals, ensuring that all are treated equally before the law. It is a structured mechanism that fosters public confidence and protects citizens from abuse of power, promoting social harmony and safeguarding individual liberties.

- Singapore's legal framework is also characterised by a structured court system, comprising various levels and types of courts, each defined by its jurisdiction and functions. The judicial procedures in Singapore are designed to uphold the principles of justice and fairness.

- Singapore's legal system is regarded as one of the least corrupt and most independent in the Asian region and Singapore is often selected as a governing law where contracts enable any ASEAN jurisdiction to be selected. The establishment of the Singapore International Arbitration Centre (**SIAC**) in 1991 and the subsequent development of specialised courts and tribunals have also solidified Singapore's position as a regional legal hub.

In relation to an overall summary of the Singapore legal system, Generis Global, one of the firms providing legal services in Singapore, comments as follows:

> *"In summary, Singapore's legal system exemplifies a robust framework characterized by its adherence to the rule of law, the independence of the judiciary, and an effective enforcement mechanism. The dual system of law, comprising legislation and common law principles, provides a conducive environment for business, governance, and social order. Key institutions, such as the Supreme Court and various specialized tribunals, play crucial roles in upholding justice and ensuring that legal rights are protected. Furthermore, the emphasis on alternative dispute resolution mechanisms, including mediation and arbitration, highlights the system's adaptability and commitment to efficiency."* [21]

8.4 Nature of legal practice in Singapore

Legal practitioners, including lawyers and barristers, play a vital role in the Singapore legal system, serving as intermediaries between the law and the public. The primary responsibility of these legal professionals is to represent clients in court, provide legal advice and ensure that individuals have access to justice.

Singapore has substantially liberalised its legal services industry since the 2000s and is the Southeast Asian market that is most accommodating of foreign law firms. The country made legal services commitments under its bilateral FTAs with Japan, Australia and the United States. The liberalisation of Singapore's legal market has transformed the island nation into the hub for international law firms in Southeast Asia, hence further contributing to the growth of Singapore's legal industry. This is largely due to the increasing number of multilateral enterprises that choose Singapore as the operations centre for regional business, and as a dispute resolution forum for transactions involving

[21] Generis Global Legal Services, *A Comprehensive Overview of the Legal System in Singapore* (Web Page, 28 Nov 2024) < https://generisonline.com/a-comprehensive-overview-of-the-legal-system-in-singapore/ >.

India and other Southeast Asian countries. Top foreign law firms consequently prefer Singapore to be their headquarters for Southeast Asian law practices.

In October 2025, the Report of the Committee to Review the Regulatory Framework for Law Practices and Collaborations in Singapore commented (**2025 Committee Report**):

> *"With globalisation driving the cross-border exchange of goods and services, Singapore's legal services sector has experienced significant growth and greater demand to support our banking, financial and other economic sectors. The value of legal services exported from Singapore increased from S$0.64 billion in 2013 to S$1.74 billion in 2024. Furthermore, between 2017 and 2023, the number of Asian FLPs in Singapore has doubled. With Asia projected to be the world's largest economic and trading region responsible for more than half of the world's GDP growth, the need for legal services will only continue to rise, and Singapore's legal services sector must continue to keep pace."* [22]

FLP licence holders can offer foreign law-related legal services in all areas of legal practice that the FLP is competent to offer, and Singapore law-related legal services in the context of international commercial arbitration or in relation to the Singapore International Commercial Court (**SICC**), through certain types of registered lawyers. This has led to a dynamic legal environment where chambers from London have set up in Singapore, and foreign law firms have dispatched their litigation partners to market their services and handle arbitration out of Singapore. The legal system's adaptability and the presence of foreign law firms in Singapore contribute to the region's legal landscape, making Singapore a preferred choice for resolving disputes across borders.

The 2025 Committee Report comments that, according to the Legal Services Regulatory Authority's (**LSRA's**) records, in 2025 there were 150 FLPs, 9 QFLPs, 9 licensed Joint Law Ventures (**JLVs**), and 10 Formal Law Alliance (**FLA**) arrangements (as defined below). Nonetheless, Singapore Law Practices (**SLPs**) are the dominant players in the market, representing 86% of all law firms, with FLPs only accounting for 12% of the market.

The majority of the major US/UK firms operating in Singapore (58%, so 33 out of 57) take the structure of FLPs in Singapore. FLPs are the easiest to set up and provide opportunities for further growth via conversion to more local structures such as QFLP, JLV or FLA. However, the practice area is limited to foreign law which may not meet all law firms' business needs, especially for those whose practice often requires local advice.[23] Further details are set out below.

8.5 Impediments to Australian lawyers practising foreign law in Singapore

Where a foreign lawyer wishes to practise foreign law in Singapore, they are required to meet various regulatory requirements as set out in the next section below.

Mode 1 – Cross-border supply

The definition of 'cross-border trade in services' or 'cross-border supply of services' in SAFTA does include the supply of a service from the territory of a party into the territory of the other party. SAFTA will be discussed later in this Report.

In practice, there are no rules allowing Australian-based lawyers to advise clients in Singapore on foreign law from Australia using electronic communications. The provision of international legal services via Mode 1 into Singapore is widespread among law firms and is currently tolerated in practice for transactional services, even though it may technically be in a legal grey area.

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[22] Ministry of Law Singapore, *A report on the Committee to review the regulatory framework for law practices and collaborations in Singapore* (Report, October 2025) 7.
[23] SSQ Asia, *Major international law firms in Singapore* (2023) <SSQ-Major-International-Law-firms-in-Singapore-May-2023-1.pdf>.

Singaporean regulatory authorities are unlikely to look favourably upon foreign lawyers advising on Singapore domestic litigation (other than Singapore arbitration) from outside Singapore involving Singapore local law, given this would directly impinge on the role of local Singaporean legal counsel. Complaints by local lawyers could trigger investigations.

It is likely that the domestic profession in Singapore is reluctant to allow foreign lawyers to advise on domestic litigation in the interests of retaining this work for locals and safeguarding the domestic litigation market.

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

There are no rules allowing temporary practice by foreign lawyers of foreign law in Singapore. This means that any FIFO services provided by Australia lawyers is at their own risk. FIFO could constitute a technical breach of visa requirements if care is not taken by the relevant lawyer regarding the scope of work.

The use of business visas is the most common way that Australian lawyers are currently providing Mode 4 legal services in Singapore. Work-arounds can generally be adopted for transactional services involving foreign and/or international law, hence the risk of breaching any visa requirements may be low. However, Singaporean regulatory authorities would likely object to foreign lawyers advising on Singapore local law, particularly Singapore litigation, on a FIFO basis.

In addition, foreign arbitrators and mediators have the flexibility to enter Singapore and render arbitration and mediation services for up to 60 days without having to apply for a work pass with the Ministry of Manpower or a licence with the Attorney-General's Chambers.

Specifically:

- On arrival in Singapore, Australian citizens will routinely be given a ‘Singapore Visit Pass’ (also known as an ‘electronic visit pass’ or ‘e-pass’) at immigration.

- A Singapore Visit Pass does not permit engagement in any business, professional or paid employment activities, but it does permit short business trips such as attending meetings or conferences. However, certain exemptions exist, including for specific activities like arbitration or mediation services.

- Singapore does not have the equivalent of a ‘business visa’ for Australian citizens as this is subsumed into the Singapore Visit Pass, however, Australian citizens with plans to work, or stay longer in Singapore, would need to apply for an Employment Pass if they meet the relevant criteria.

The practice of Singaporean local law by foreign lawyers is directly regulated and cannot be undertaken on a Mode 4 basis unless the specific requirements set out below are met.

Practical challenges

Some legal uncertainty for Australian lawyers advising on foreign law in relation to Singapore using Mode 1 and Mode 4 does exist. However, this is common practice in the legal services industry, and we are not aware of any concerns being raised.

8.6 Impediments to Australian lawyers practising Singapore local law

Singapore’s legal services market is the most liberalised of the Southeast Asian jurisdictions. There are two primary pathways through which Australia lawyers can practise law in Singapore:

(a) classifying as an ‘eligible person’ and being admitted to the Singapore Bar; or

(a) registering as a foreign lawyer.

The first of these enables an Australian lawyer to practise all Singapore law. The second is more limited (i.e. to practising foreign law) and depends on the form of registration adopted.

Admission as a legal practitioner in Singapore

Specifically, to be admitted as an 'Advocate' or 'Solicitor' in Singapore, Australian lawyers must classify as an eligible person under the Legal Profession Act (**Singapore LPA**). An eligible person is :

(a) a Lawyer (Non-Practitioner) (**Lawyer (NP)**); or

(b) a person who has been approved by the Minister for Law under section 14(1) of the Singapore LPA.

Section 14(1) of the Singapore LPA provides, that upon application made to the Minister by any person who is not a Lawyer (NP), the Minister may, in his or her discretion, approve the person as an eligible person (subject to any conditions that the Minister may think fit to impose), if the Minister is of the opinion that the person possesses such qualification or expertise, and standing or relevant experience, as would contribute to, promote or enhance the quality of legal services in Singapore, or the economic or technological development of Singapore.

Otherwise, candidates may apply to be admitted as a Lawyer (NP) in Singapore if they:

- are qualified persons as defined in the Legal Profession (Qualified Persons) Rules; and
- have completed the Part B Bar course and passed Part B of the Singapore Bar Examinations.

Rule 9 of the Legal Profession (Qualified Persons) Rules provides that a person who is conferred a degree of Bachelor of Laws or Doctor of Jurisprudence by an institution of higher learning in Australia will be a qualified person if:

- that person is a citizen or permanent resident of Singapore;
- that institution of higher learning is an institution of higher learning in Australia specified in the Legal Profession (Qualified Persons) Rules;
- that degree is a degree of Bachelor of Laws or Doctor of Jurisprudence specified for that institution of higher learning in the Legal Profession (Qualified Persons) Rules;
- that person commenced reading on or after a specified date a course of study as a candidate for that degree, if that degree is a degree of Bachelor of Laws, or is conferred that degree on or after a specified date, if that degree is a degree of Bachelor of Laws or Doctor of Jurisprudence;
- that person has been ranked by that institution of higher learning as being amongst the highest 70%, in terms of academic performance, of the total number of graduates in the same batch who have been conferred the degree or degrees of Bachelor of Laws or Doctor of Jurisprudence specified in the Rules in respect of that institution;
- that person has passed Part A of the Singapore Bar Examinations; and
- after that person has passed the final examination for that degree, for a period of not less than 6 months within a continuous period of 8 months, that person has received relevant legal training, has been engaged in relevant legal practice or work, or has received relevant legal training and been engaged in relevant legal practice or work.

The Legal Profession (Qualified Persons) Rules (rr 10(3)-(3A)) also provide that, subject to some exceptions, the person must have read the course leading to that degree as a full-time internal candidate.

Although there are a few exceptions, the Legal Profession (Qualified Persons) Rules further state that course of study that led to that degree must not have been an accelerated course, dual degree course or combined degree course.

If the candidate meets the requirements to be classified as a qualified person, and if they pass the Part B Examination, they can apply to be admitted to the Singapore Bar.

Registration as a foreign lawyer in Singapore

In the absence of admission to the Singapore bar, an Australian lawyer could register as a foreign lawyer.

- **Practising foreign law as a foreign lawyer:** If a foreign lawyer is registered to practise law in an overseas jurisdiction, they can register with the LSRA as a foreign lawyer under section 36C of Singapore LPA to practise foreign law in Singapore. They will not need to take any courses or examinations.

- **Practising in permitted areas of Singaporean law as a foreign practitioner:** Foreign-qualified lawyers who pass the Foreign Practitioner Examinations can register with the LSRA as a foreign practitioner under section 36B of the Singapore LPA to practise in permitted areas of Singapore law.

A foreign lawyer may be employed by a local legal practice as a foreign legal consultant. There are no citizenship restrictions on foreign legal consultants.

Table 1 below, which was prepared by the Singapore Ministry of Law, provides an overview of the key features of each type of individual registration under the relevant sections of the Singapore LPA.[24]

Relevantly:

- A '**foreign lawyer**' is defined under section 2 of the Singapore LPA as an individual who is duly authorised or registered to practise law in a state or territory other than Singapore by a foreign authority having the function conferred by law of authorising or registering persons to practise law in that state or territory; and

- The '**permitted areas of legal practice**' are defined in rule 4 of the Legal Profession (Regulated Individuals) Rules 2015.

Further, a foreign lawyer who is registered under section 36B, 36C or 36D of the Singapore LPA, can, with the approval of the Director of Legal Services, become a director, partner or shareholder in an SLP or share in the profits of an SLP. It is irrelevant whether the foreign lawyer practises in Singapore or elsewhere.

[24] Singapore Ministry of Law, *Types of Individual Registration (*Web Page, May 2018) <https://www.mlaw.gov.sg/files/Types_of_Individual_Registration_May_2018.pdf>.

Table 1: Avenues available for registration as a foreign lawyer in Singapore					
Registration Category	**Section 36B**	**Section 36C**	**Section 36D**	**Section 36E**	**Section 36G**
Description	Registration of a foreign lawyer to practise Singapore law and/or foreign law in Singapore.	Registration of a foreign lawyer to practise foreign law in Singapore.	Registration of a foreign lawyer (who does not practise in Singapore) to be a director, partner, or shareholder in, or shares in profits of a SLP.	Registration of a Singapore solicitor to practise Singapore law (and/or foreign law) in a FLP, JLV, or QFLP in Singapore.	Registration of a regulated non-practitioner.
Law Practice Type	Any licensed law practice in Singapore.	Any licensed law practice in Singapore.	SLP.	FLP, JLV, or QFLP.	Any licensed law practice in Singapore, including a SLP, JLV, QFLP, or FLP.
Minimum Qualifications Required	The Registrant must be a "foreign lawyer".	The Registrant must be a "foreign lawyer". The Registrant can, in addition, be dual qualified as a Singapore solicitor.	The Registrant must be a "foreign lawyer". The Registrant can, in addition, be dual qualified as a Singapore solicitor.	The registrant must be a Singapore solicitor. The registrant can, in addition, be dual qualified as a foreign lawyer.	The registrant must be either: • A non-lawyer; or • A foreign-qualified lawyer who is not registered with the LSRA.
Other Key Criteria	The Registrant: • intends to provide legal services in or from Singapore in a SLP, JLV, QFLP, or licensed FLP; • has passed or been exempted from taking the Foreign Practitioner Examinations; • has been engaged in relevant legal practice or work in Singapore or elsewhere, in one or more of the permitted areas of legal practice in any foreign law, for at least 3 years.	The Registrant intends to provide legal services in or from Singapore.	The Registrant: • will not be practising in Singapore; and • intends to be a director, partner or shareholder in, or to share in profits of, a SLP.	The registrant intends to provide legal services in or from Singapore.	The registrant: • will not be providing legal services in or from Singapore. • is an employee of the law practice. • intends to be a director, partner or shareholder in, or to share in profits of, the law practice; and • fulfils the requirements in rules 17 and 18 of the Legal Profession (Regulated Individuals) Rules 2015.

Table 1: Avenues available for registration as a foreign lawyer in Singapore					
Type of law the registrant is permitted to practise in Singapore	• Foreign law; and/or • Singapore law in the "permitted areas of legal practice" to the extent to which the law practice is permitted to practise under the Singapore LPA.	Foreign law.	N.A.	• Foreign law; and/or • Singapore law in the "permitted areas of legal practice" to the extent to which the law practice is permitted to practise under the Singapore LPA.	N.A.
Singapore Practising Certificate (PC) required to practise?	No.	No.	No.	Yes. If the registration is approved, the Registrant must obtain a PC from the Supreme Court of Singapore before they can commence practising Singapore law and/or foreign law.	No.
Required to apply for Approval to hold interests via LSRA e-Services?	Only if it is intended for the registrant to be a director, partner* or shareholder in, or to share in profits of, an SLP. (*Including associate directors and salaried partners.)	Only if it is intended for the registrant to be a director, partner* or shareholder in, or to share in profits of, an SLP. (*Including associate directors and salaried partners.)	Yes, as it is intended for the registrant to be a director, partner* or shareholder in, or to share in profits of, an SLP. (*Including associate directors and salaried partners.)	No.	Only if it is intended for the registrant to hold any equity interests or exercise any voting rights in, or share in profits of, the law practice.
Length of registration	1 year (1 April to 31 March).	1, 2 or 3 years.	1, 2 or 3 years.	1 year (1 April to 31 March).	1, 2 or 3 years.
Fees	• Application fee: SGD 110 (per year of registration) • Certificate fee: SGD 50 (per year of registration)				
Relevant Legislation	Sections 36B and 176 of the Singapore LPA. Rules 5 and 6 of the Legal Profession (Regulated Individuals) Rules 2015.	• Sections 36C and 176 of the Singapore LPA. Rules 7 and 8 of the Legal Profession (Regulated Individuals) Rules 2015.	Sections 36D and 176 of the Singapore LPA. Rules 9 and 10 of the Legal Profession (Regulated Individuals) Rules 2015.	Sections 36E and 176 of the Singapore LPA. Rules 13 and 14 of the Legal Profession (Regulated Individuals) Rules 2015.	Section 36G of the Singapore LPA. Rules 17 and 18 of the Legal Profession (Regulated Individuals) Rules 2015.

Practical challenges – permanent residency and limited recognition of qualifications

Australian lawyers presently benefit from an elevated level of access to the Singapore legal services market. Nonetheless, practical barriers exist which create a gap between Singapore's legal framework and the actual ability of Australian lawyers to undertake legal work. Two of the most important of these are permanent residency and the limited recognition of qualifications.

Specifically, the criteria to qualify as an eligible person – and consequently be admitted as an 'Advocate' or 'Solicitor' in Singapore – are significant. As outlined above, an eligible person is a Lawyer (NP) or a person who has been approved by the Minister of Law.

The primary barriers Australian lawyers face in terms of being classified as a Lawyer (NP) can be divided into restrictions relating to:

- residency, namely that while an Australian lawyer does not need to be a citizen of Singapore to classify as a qualified person, they do need to be a permanent resident; and

- the individual's attendance at an institution of higher learning in Australia.

The Legal Profession (Qualified Persons) Rules are particularly onerous in relation to the individual's attendance at an institution of higher learning:

- A person who is conferred a degree of Bachelor of Laws or Doctor of Jurisprudence by an institution of higher learning in Australia will only be a qualified person if the institution is specified in the Legal Profession (Qualified Persons) Rules, **and** the person commenced reading on or after a specified date. This means that not all Australian qualifications are recognised by Singapore.

- Further, the person must have been ranked by that institution as being amongst the highest 70%, in terms of academic performance. There are also restrictions relating to that course being an accelerated course, dual degree or combined degree.

- Although the Minister for Law can exempt a person from the above requirements, exemptions are granted sparingly. The threshold for exemption is high – the Minister must believe the person possesses such qualification or expertise, and standing or relevant experience, as would contribute to, promote or enhance the quality of legal services in Singapore, or the economic or technological development of Singapore.

- The Ministry of Law Singapore also notes that it can take at least six to eight weeks for application to be processed as external parties may be consulted.

Singapore appears to be imposing these onerous requirements to ensure that legal practitioners are well-equipped with the necessary knowledge and skills required to navigate the complexities of the law.

Practical challenges – limitations on practice areas

As discussed above, foreign-qualified lawyers who pass the Foreign Practitioner Examinations can register with the LSRA as a foreign practitioner under section 36B of the Singapore LPA to practise in permitted areas of Singapore law.

According to rule 4 of the Legal Profession (Regulated Individuals) Rules, permitted areas of legal practice do not include (and hence the following are prohibited):

- constitutional and administrative law;

- conveyancing;

- criminal law;
- family law;
- succession law, including matters relating to wills, intestate succession and probate and administration;
- trust law, in any case where the settlor is an individual;
- appearing or pleading in any court in Singapore, representing a client in any proceedings instituted in such a court or giving advice, the main purpose of which is to advise the client on the conduct of such proceedings, except where such appearance, pleading, representation or advice is otherwise permitted under the Singapore LPA, the Legal Profession (Regulated Individuals) Rules or any other written law; and
- appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore, except where such appearance is otherwise permitted under the Singapore LPA or any other written law.

Although commercial and corporate law are permitted areas of practice (including banking law, corporate law, intellectual property law and maritime law), foreign practitioners cannot appear or plead in any court in Singapore or appear in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore.

Further, along with other requirements outlined in rule 5 of the Legal Profession (Regulated Individuals) Rules, the foreign lawyer must have been engaged in relevant legal practice or work, in Singapore or elsewhere, in one or more of the permitted areas of legal practice in any foreign law, for at least three years.

For the purposes of determining whether a foreign lawyer has been engaged in relevant legal practice or work for at least 3 years, the following periods will be disregarded according to Legal Profession (Regulated Individuals) Rule 5(2):

- any period spent attending any course of instruction, course of study or postgraduate education not required to satisfy any applicable requirements relating to continuing professional development; and
- any period spent in serving any articles, period of pupillage, practice training period or other period of supervised training in relation to the practise of law (by whatever name called).

Practical barriers to admission, and practical barriers to practise in permitted areas of Singapore law as a foreign practitioner, create a gap between Singapore's legal framework and the actual ability of Australian lawyers to undertake legal work.

Again, it is likely that these impediments exist, particularly in relation to 'permitted areas of practise', to retain this work for the domestic Singaporean legal profession.

8.7 Impediments to Australian law firms setting up an office in Singapore

Singapore has intentionally sought to establish itself as a hub for regional legal services and has adopted a flexible model, allowing for different corporate forms for foreign law firms based on the scope of legal practice.

To minimise the impact on the local legal profession, Singapore has adopted an incremental liberalisation approach by providing a 'menu of options' on corporate forms for foreign law firms. The different models provide varying degrees of ability to practise Singapore and international law, and involve some administrative and practical restrictions.

Australian law firms can establish a commercial presence in Singapore as:

- a licensed FLP;
- a QFLP;
- part of a JLV;
- part of an FLA;
- a foreign group practice, involving permutations of the above; and
- a representative office (**RO**).

Each are considered in turn below. The application for any licence or approval must be made to the Director of Legal Services.

Current public consultation

As of October 2025, Singapore is currently in the process of undertaking public consultation on the regulatory framework for law practices and collaborations in Singapore. This consultation has arisen in the context of a Committee to Review the Regulatory Framework for Law Practices and Collaborations in Singapore publishing its 2025 Committee Report detailing its views, perspectives and recommendations to further enhance Singapore's regulatory framework for law practices and collaborations between them.

The Singapore Ministry of Law is running this consultation from 16 October 2025 to 10 December 2025. In the consultation, the Singapore Ministry of Law relevantly comments:

> *"Since 1999, the Singapore government has introduced various policy initiatives and legislative changes to facilitate the entry of foreign law practices and foreign lawyers into the Singapore market. This has enhanced the diversity of Singapore's legal service offerings and established Singapore as an international legal services hub."*

and

> *"The Committee has made a total of 10 recommendations, which fall into four broad areas:*
>
> - *Criteria to enter collaboration arrangements;*
> - *Requirements for foreign law practice entities and foreign-qualified lawyers to hold interests in Singapore law practices;*
> - *Lawyer composition in foreign law practice entities; and*
> - *Permitted areas of legal practice for licensed foreign law practices."*[25]

Foreign Law Practice

Generally, SLPs are local Singapore law firms that focus primarily on Singapore law matters, whereas FLPs are foreign boutique firms or multilateral firms that specialise in offshore transactions.

A licensed FLP is usually set up in Singapore as a branch of a foreign law firm from another jurisdiction. An FLP licensed to practise foreign law in Singapore may offer the full range of foreign law-related legal services that the firm is competent to offer. The regulatory requirements applicable to an FLP are detailed in the Singapore LPA and the Limited Partnerships Act 2008.

[25] Ministry of Law Singapore, *Public Consultation on the Review of the Regulatory Framework for Law Practices and Collaborations in Singapore* (October 2025) < https://www.mlaw.gov.sg/public-consultation-on-the-review-of-the-regulatory-framework-for-slps/>

The Singapore LPA defines an FLP as a law practice (including a sole proprietorship, a partnership or a body corporate, whether with or without limited liability) providing legal services in any foreign law in Singapore or elsewhere, but does not include a SLP.[26]

An FLP is allowed to provide in or from Singapore:

- foreign law-related legal services in all areas of legal practice that the FLP is competent to offer; and

- Singapore law-related legal services only in the limited context of international commercial arbitration or in relation to the SICC, through certain types of registered lawyers.

As such, an FLP is not allowed to practise Singapore local law, except for arbitration matters through Singapore-qualified or registered lawyers.

An FLP which intends to provide legal services in Singapore must apply for an FLP licence. The Director of Legal Services may, after consulting such authorities as they think fit, grant or refuse an application. The licence may be subject to conditions.

The licensed FLP must have a regulated foreign lawyer or solicitor registered under section 36E of the Singapore LPA, otherwise the Director of Legal Services may revoke the FLP licence.

Qualifying Foreign Law Practice

The concept of the QFLP was created by Singapore in 2008 due to concerns at the failure of some JLVs, extending beyond Singapore's free trade agreement commitments. The QFLP scheme provides an incentive for international law firms to grow their region-based business in Singapore, and were intended to assist to position Singapore as a regional hub for legal services in Southeast Asia. QFLP licences allow foreign firms to more proactively pursue clients on account of their capability as 'one-stop shop' legal service providers.

Unlike foreign law firms in FLAs and JLVs, QFLPs can practise Singapore commercial law without Singapore local partners. The five-year QFLP licences are deemed to hold a prestigious status, as the firms are selected by an evaluation committee and a selection committee composed of various ministers. The awarding of selective QFLPs made relatively new international firms that had previously not been domestically active 'prominent' in the Singapore legal market.

Specifically, a QFLP permits FLPs to practise Singapore law in permitted areas of legal practice through Singapore-admitted partners or employees, or foreign lawyers who hold a Foreign Practitioner Certificate. As such, it provides scope for a foreign law firm to practise in certain areas of Singapore local law, so is more advantageous than obtaining an FLP licence.

QFLP licences are limited and have been awarded only after specific application and selection processes. Only 9 QFLP licences have been awarded to date. The first round of QFLP licences were issued in 2008 and were renewed at the end of 2010 for a period of 5 years. The application period for the second round of QFLP licences took place in 2012. In October 2025, the Ministry of Law indicated that the law firms were being invited to submit applications for two-year renewals until 31 December 2027. In 2027 a more formal renewal exercise will occur.

As noted above, the QFLP scheme was introduced in 2008, and allows FLPs which obtain a QFLP licence to provide in or from Singapore:

- foreign law-related legal services in all areas of legal practice that the QFLP is competent to offer; and

[26] 'Singapore Law Practice' is defined in the Legal Profession Act as (a) a law firm, (b) a limited liability law partnership; or (c) a law corporation.

- Singapore law-related legal services in the 'permitted areas of legal practice' through certain types of registered lawyers.

According to Legal Profession (Law Practice Entities) Rule 50(1),the 'permitted areas of legal practice' do not include (and hence the following areas of Singapore local law are excluded from the QFLP scheme):

- constitutional and administrative law;
- conveyancing;
- criminal law;
- family law;
- succession law, including matters relating to wills, intestate succession and probate and administration;
- trust law, in any case where the settlor is an individual;
- appearing or pleading in any court in Singapore,
- representing a client in any proceedings instituted in such a court or giving advice, the main purpose of which is to advise the client on the conduct of such proceedings, except where such appearance, pleading, representation or advice is otherwise permitted under the Singapore LPA, Legal Profession (Law Practice Entities) Rules or any other written law; and
- appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore, except where such appearance is otherwise permitted under the Singapore LPA or any other written law.

The licensed QFLP must have a regulated foreign lawyer or solicitor registered under section 36E of the Singapore LPA, otherwise the Director of Legal Services may revoke the QFLP licence. There are also restrictions on the number of solicitors registered under section 36E to practise Singapore law in a QFLP.

The QFLP licence may be subject to conditions.

The 2025 Committee Report has made several recommendations relating to QFLPs that are the current subject of public consultation in Singapore as at October 2025, including that:

- a new requirement on QFLPs to meet a minimum percentage of revenue generated from offshore work, to further incentivise Singapore to be positioned as a regional hub; and
- to revise the cap on the proportion of Singapore lawyers in QFLPs to encourage investment in the career progression of Singapore lawyers.

As such, the QFLP regime appears to be intended by Singapore to become more prescriptive.

Joint Law Venture

The JLV model has been the core of Singapore's liberalisation efforts under the Singapore LPA and FTAs. Allens was historically Australia's first JLV under SAFTA.

A JLV is a legal entity formed between a SLP, and either an FLP or a QFLP. It can provide:

- Foreign law-related legal services in all areas of legal practice that the JLV is competent to offer; and

- Singapore law-related legal services in the ‘permitted areas of legal practice’ through certain types of registered lawyers.

JLVs (and FLAs) allow a Singaporean and a foreign law firm to practically function as a ‘single service provider’ by sharing office premises, profits or client information. A JLV is a company set up and jointly owned by Singaporean and foreign law firms, so creates a separate legal entity.

According to Legal Profession (Law Practice Entities) Rule 51(2)(a), the FLP and SLP must have relevant legal expertise and experience which are acceptable to the Director of Legal Services in any of the following areas of legal practice:

- banking law;
- finance law;
- corporate law;
- arbitration;
- intellectual property law;
- maritime law; and
- any other areas of legal practice that facilitate or assist in the growth and development of the Singapore economy.

The licence may be subject to conditions.

The licensed JVL must have a regulated foreign lawyer or solicitor registered under section 36E, otherwise the Director of Legal Services may revoke the JVL licence. There are also restrictions on the number of solicitors registered under section 36E of the Singapore LPA to practise Singapore law in the JLV.

Further, Legal Profession (Law Practice Entities) Rules 51(2)(b) -(i) provide that:

- the FLP must have 5 or more foreign lawyers’ resident in Singapore, each of whom has at least 5 years of relevant legal expertise and experience in any of the areas of legal practice referred to above;
- at least 2 of the foreign lawyer’s resident in Singapore must be equity partners in the FLP or, in the case of an FLP constituted as a corporation, equity holding directors of the FLP;
- the SLP must have 5 or more solicitors, each of whom has at least 5 years of relevant legal expertise and experience in any of the areas of legal practice referred to above;
- at least 2 of the SLP solicitors with at least 5 years’ experience must be equity partners in the SLP or, in the case of a law corporation, equity holding directors of the law corporation;
- if the JLV is to be constituted as a partnership, and the FLP is not a QFLP, the number of equity partners in the FLP who are resident in Singapore must not at any time be greater than the number of equity partners in the SLP;
- if the JLV is to be constituted as a corporation, and the FLP is not a QFLP, the number of directors nominated by the foreign law practice must not at any time be greater than the number of directors nominated by the SLP;
- the FLP and the SLP have entered into a written agreement to jointly manage the JLV and, if requested, must submit a copy of such agreement to the Director of Legal Services; and

- the FLP and the SLP must submit an agreed written business plan describing the objectives of the JLV and the implementation of the business plan (including plans to transfer legal and other related skills, expertise, know-how or technology of the FLP to the SLP).

Formal Law Alliance

As a less formal structure than a JLV, an FLA is an arrangement between a SLP and an FLP which enables them to collaborate while remaining freestanding law practices. An FLA arrangement allows the member law practices to share office premises, resources and client information as well as co-brand and bill for permitted matters. However, the member law practices remain distinct entities and may only provide legal services that the respective law practices and their lawyers are allowed to provide under the Singapore LPA.

There are two key differences between an FLA and a JLV. First, an FLA permits two freestanding firms to work together without cross-ownership. Second, the co-existence of the two firms does not create a new legal entity.

The FLA scheme was conceived to facilitate cooperation between two or more independent law practice entities that can deal with each other as equal partners. The relevant legal framework for approval of these applications is interpreted and applied by the LSRA in this context.

The licence may be subject to conditions. An FLP or SLP may be a joint applicant for more than one FLA licence.

Each FLP and each SLP must have relevant legal expertise and experience which are acceptable to the Director of Legal Services in any of the same areas of legal practice discussed in relation to a JLV, as well as technology law and telecommunications law.

Also:

- each FLP must have 5 or more foreign lawyers' resident in Singapore, each of whom has at least 5 years of relevant legal expertise and experience in any of the areas of legal practice referred to above;

- at least 2 of the foreign residents in Singapore must be equity partners in the FLP or, in the case of an FLP constituted as a corporation, equity holding directors of the FLP;

- each SLP must have 5 or more solicitors, each of whom has at least 5 years of relevant legal expertise and experience in any of the areas of legal practice referred to above;

- at least 2 of the solicitors with 5 years' experience must be equity partners in the SLP or, in the case of a law corporation, equity holding directors of the law corporation;

- the applicants have entered into a written agreement to form an FLA and, if requested, must submit a copy of such agreement to the Director of Legal Services; and

- the applicants must submit an agreed written business plan describing the objectives of the FLA and the implementation of the business plan (including plans to transfer legal and other related skills, expertise, know-how or technology of any FLP which is a member of the FLA to any SLP which is a member of the FLA).

The Legal Profession (Law Practice Entities) Rules 2015 provides that a foreign lawyer registered under section 36C of the Singapore LPA who practises in a QFLP or licensed FLP which is a member of the FLA may prepare all the documents in a transaction involving the law or regulatory regime of more than one country or territory, except that any legal opinion relating to Singapore law must be given by a:

- solicitor who has in force a practising certificate, or

- foreign lawyer registered under section 36B of the Singapore LPA, who is permitted under the Singapore LPA or any rules made under the Singapore LPA to render such a legal opinion.

Foreign Group Practice

A foreign group practice is an arrangement between FLPs and/or QFLPs with a local Singapore firm.

QFLPs may form a JLV or an FLA with a Singapore local law firm. One incentive for QFLPs to do so is to offer full-scale arbitration services. Although a QFLP by itself can only engage in certain areas, such as international arbitration, the FLA local firm partner is capable of litigating Singaporean-law matters in courts. Moreover, a QFLP can also circumvent the permitted areas of Singaporean law restrictions by launching a small Singapore law firm.

The foreign group practice structure enables two or more law practices to collaborate as freestanding law practices with the benefits of co-branding, and sharing of office premises, resources and client information.

A foreign group practice is a grouping of law practices and cannot offer any legal services as a foreign group practice. The member law practices remain distinct entities and may only provide legal services that the respective law practices and their lawyers are competent to provide.

The sole proprietors, partners and directors of the licensed FLPs which wish to practise as a foreign group practice must apply to the Director of Legal Services for:

- approval to form the foreign group practice; and

- approval of the proposed name of the foreign group practice (including the way that name will be used in conjunction with the names of each licensed FLP in the foreign group practice).

Representative Office

Under the current legal framework, the possibility of foreign law firms to establish a RO in Singapore allows for boutique firms to test the waters in the region in a cost-effective way. The one-year RO licence, which only permits marketing work, can be extended until a foreign law firm decides to set up an FLP. The RO concept under Singaporean law is distinguishable from the ROs in other Asian countries, such as China and Korea. The ROs in these countries are allowed to practise foreign law, whereas the ROs in Singapore are prohibited from engaging in any legal practice

Specifically, a RO may be established for liaison or promotional work only. An RO is not allowed to provide any legal services or conduct any other business activities in Singapore. It is not allowed to provide legal advice, conclude contracts or open or negotiate any letters of credit.

An FLP which establishes a RO in Singapore must give the Director of Legal Services notice in the prescribed manner of the establishment of that RO, within 7 working days after the date of the establishment of that RO.

Instead of setting up an RO, most international law firms enter Singapore's legal market as an FLP, as explained above.

Practical challenges – Scope to practise Singapore law is practically limited

As identified above, Australian law firms can register as FLPs and provide in or from Singapore:

- foreign law-related legal services; and

- Singapore law-related legal services only in the limited context of international commercial arbitration or in the SICC.

Specifically:

- QFLP licences allow FLPs to provide in or from Singapore law-related legal services in the 'permitted areas of legal practice'. However, although the practise of commercial and corporate law is permitted under the QFLP licence, Australian law firms cannot properly compete with SLPs, who can offer both domestic and foreign clients the full suite of legal services.

- While an FLP can enter a JLV with a SLP, this is again limited to Singapore law-related services in the 'permitted areas of legal practice'. The constituent FLP/QFLP can only practise law in or from Singapore through the JLV, and not through the constituent FLP/QFLP. In contrast, the member law practices of FLAs remain distinct entities and may only provide legal services that the respective law practices and their lawyers are allowed to provide under the Singapore LPA.

- One pragmatic obstacle of the 'permitted areas of legal practice' restriction is the cost efficiency involving arbitration matters. In a case where the opposing side challenges the finality of an arbitral award in court, a lawyer in the FLP of the JLV dealing with the bulk of arbitration, even if Singapore-qualified, must transfer the case to a Singaporean lawyer in the SLP of the JLV.

Similarly, a foreign group practice is a grouping of law practices and cannot offer any legal services as a foreign group practice. The member law practices remain distinct entities and may only provide legal services that the respective law practices and their lawyers are competent to provide.

The 2025 Committee Report suggests that Singapore may move to tighten the rules regarding the practising of Singapore law by FLPs due to concerns regarding the practising of Singapore law beyond the permitted scope. Specifically, the interpretation of some of the rules will be clarified via new guidelines. As such, it seems that the prescriptiveness will continue.

There have been concerns that the proposed changes will restrict foreign investment and the trade of legal services. Singapore's Law.com noted the following on October 28 2025:

> "*Two foreign firms that had been in discussions to tie up with local practices will now have to alter their plans, as their domestic counterparts will not meet the proposed requirement of having five lawyers in total, at least three who must hold equity in the firm for a minimum of three years.*
>
> *The proposed rules contradict Singapore's image of being an open financial city that embraces foreign investment, one Singapore-based partner told Law.com International."*
>
> *"It sends the wrong message," another managing partner said. "It's basically boxing foreign firms out and saying, 'stay in your lane.'*
>
> *"The practice of including arbitration clauses that ground disputes in Singapore in deal contracts, for example, often creates an opportunity for foreign firms to inch in and advise on the negotiations, structuring and financing of the deal as well, one lawyer said. Then, foreign firms will "only need to get a signoff from a local firm" and then "charge international fees for what is essentially local law work," the lawyer explained.*
>
> *According to other lawyers in the city-state, capital markets and related financing work have typically been serviced by Singapore's local practices. But foreign firms are increasingly encroaching into that space through their local alliances."*
>
> *"The so-called Singapore Inc. [companies] won't have enough work to feed all the firms," one law firm partner said. "In fact, the new rules might deter foreign parties from using Singapore law if they cannot engage their preferred international adviser for their deals. That will impact growth in the market generally."*
>
> *"But the caps are widely viewed as a measure to stem attrition at major local law firms. Between 2020 and 2023, Singapore Big Four firms—Allen & Gledhill, Wong Partnership,*

Rajah & Tann and Drew & Napier—have collectively lost hundreds of young lawyers to new foreign entrants and international rivals that have decided to grow in Singapore and Southeast Asia, as China's market at that time showed little sign of promise."

"While none of [Big 4 firms in Singapore] have expressed interest in tying up with foreign firms, they would not, with their current makeup, qualify for collaboration if and when the new rules take effect."

"While the new recommendations may be well intentioned, they will not fix the problem domestic firms face in retaining young talent, one Singapore lawyer said.

"They've just made it harder for entrepreneurial lawyers to scale with international firms, and now our strongest young ones will only be forced to seek opportunities abroad in Hong Kong or the Middle East if they can't join a foreign firm and a local firm won't pay them what they deserve."

Leon Yee, a member of the MinLaw committee that pushed forward the report and chairman of Duane Morris & Selvam, one of Singapore's oldest joint law ventures, sees the proposed regulations as having the opposite effect".[27]

Professor Pasha Li-Tian Hsieh also commented in a case study on Singapore legal market liberalisation in 2013 on some of the practical issues for foreign law firms in selecting between the different models for commercial presence permitted in Singapore:

"Instead of setting up an RO, most international law firms enter Singapore's legal market as a Foreign Law Practice. Although FLPs are the most common form of foreign law firms, there are three oft-ignored issues. First of all, Singapore-qualified lawyers are not prohibited from joining FLPs, although the scope of their legal practice is confined to what FLPs can do. Also, FLPs are limited to the practice of non-Singaporean law. In cases of arbitration where Singaporean laws are in dispute, Singaporean lawyers in FLPs may handle such matters. On the surface, being a JLV, FLA, or QFLP provides an incentive to practice Singaporean law. Nonetheless, this incentive has not persuaded many FLPs to transform their status. This is not due to the complexity of the application process, but to the absence of the need to recruit Singaporean lawyers in offshore transactions." [28]

The barriers to establishing foreign law firms in part may be due to concerns among Singaporean parties that foreign lawyers "…were acting similarly to how the colonial rulers of years past behaved. Charges that the foreign firms were exploiting the inexpensive Singaporean legal labour market for self-serving purposes, and that the personal treatment by these Westerners towards the domestic practitioners was shoddy and condescending."[29]

As a result, concerns about the exploitation of cheap labour seems still to resonate in adverse responses of legal professions, and their representative bodies, to proposals to liberalise legal services markets.

Practical challenges – administrative burden

One concern raised in relation to the Singapore model is the length of time it is now taking for foreign law firm licences to be approved. Another relates to the administrative burden involved.

Singapore has adopted a flexible model, allowing for different corporate forms for foreign law firms based on the scope of their practice. This is commendable. However, Australian law firms operating

[27] Jessica Seah, *Singapore's Proposed Rules to Stem Legal System Abuse and Local Firm Talent Attrition May Backfire, City Lawyers Say,* Law.com (28 October 2025).
[28] Pasha Li-Tian Hsieh, 'ASEAN's Liberalization of Legal Services: The Singapore Case' (2013) 8 *Asian Journal of WTO and International Health Law and Policy* 2, 484.
[29] International Legal Services Advisory Council, *Transnational Legal Practice: A Study of Opportunities for Australian Legal Services Providers* (Report, 4 March 2013) 129.

in the Singapore legal services market face some administrative burdens, partly driven by the strict rules for distinct categories of licences.

For example, according to the Legal Profession (Law Practice Entities) Rules Section 52(7), the number of solicitors registered under section 36E of the LPA Singapore to practise Singapore law in a JVL or its constituent FLP must not at any time exceed:

- in any case where the constituent FLP is a QFLP, 4 times the total number of the following (i) foreign lawyers registered under section 36B or 36C of the Singapore LPA who practise in the JLV or its constituent law practices, or (ii) foreign lawyers registered under section 36D of the Singapore LPA in relation to the constituent SLP of the JLV; or

- in any other case, the total number of the following (i) foreign lawyers registered under section 36B or 36C of the Singapore LPA who practise in the JLV or its constituent law practices, or (ii) foreign lawyers registered under section 36D of the Singapore LPA in relation to the constituent SLP of the JLV.

Similarly, the number of solicitors registered under section 36E of the Singapore LPA to practise Singapore law in a QFLP must not at any time exceed 4 times the total number of foreign lawyers registered under section 36B or 36C of the Singapore LPA who practise in the QFLP.

To obtain a JLV licence, the FLP and the SLP must submit an agreed written business plan describing the objectives of the JLV and the implementation of the business plan (including plans to transfer legal and other related skills, expertise, know-how or technology of the FLP to the SLP). The same applies to FLAs.

QFLPs, JLVs and FLAs must submit an annual report of their performance, containing such information as the Director of Legal Services may require, to the Director of Legal Services within 3 months after the end of each period of 12 months commencing from such date as the Director of Legal Services may specify.

As noted above, as at October 2025, Singapore is in the process of updating some of its models to address practical concerns that have arisen. In the 2025 Committee Report, Singapore has already recognised the administrative burden and the current consultation is occurring in the context of a recommendation to streamlining the application framework for SLP-FLP collaborations. The 2025 Committee Report comments:

> *"Members of the Committee shared informal market feedback that the LPA's current overall regulatory framework for collaborations… was too complicated and prescriptive… The different types of licence, registration and/or approval frameworks for different types of collaboration models and arrangements, with separate prescribed sets of conditions and requirements for each, had caused confusion for both the SLPs and the FLPs considering entering the Singapore legal market. The resulting added regulatory burden on the firms potentially disincentivised collaborations that might otherwise benefit Singapore's legal market."* [30]

Professor Pasha Li-Tian Hsieh also commented in a case study on Singapore legal market liberalisation in 2013 that while JLV legal structures were permitted, other practical issues led to the failure of such structures in practice in the early days of market liberalisation. This ultimately leading to the introduction of QFLP licences from 2008:

> *"In fact, most JLVs in Singapore failed. JLVs that involved US firms lasted the shortest amount of time. The profit-sharing issue, which the Singapore legislation seeks to remedy, is only the tip of the iceberg. The alignment of management culture and competing financial interests constitute a more complex dilemma. For instance, an SLP of a JLV usually has a long-standing client relationship with DBS Bank or SingTel. Difficulties arise in cases where*

[30] Ministry of Law Singapore, *A report on the Committee to review the regulatory framework for law practices and collaborations in Singapore* (Report, October 2025) 10.

the JLV's foreign law firm partner wishes to represent foreign banks or telecommunication companies that potentially compete with the Singaporean law firm clients. This conflict of interest often results in a prospective financial loss for either the Singapore law firm or its foreign partner, thus creating tension between the two. This dilemma explains why the number of foreign law firms currently operating through JLVs and FLAs in Singapore remains a single-digit number.

Only two situations provide for long-lasting JLVs. Hogan Lovells Lee & Lee represents the first model, in which the practice strengths and the expertise of the two constituents complement each other. Hogan Lovells specializes in project finance and offshore M&As, whereas Lee & Lee focuses on stock exchanges and employment law. The second model is Baker & McKenzie Wong & Leow. These two constituent firms are not competing because Baker & McKenzie "created" the Singapore entity of Wong & Leow in order to meet the JLV requirement. A similar arrangement can also be found in FLAs. Such a practice contravenes the law's intention to facilitate the cooperation of two established Singaporean and foreign law firms with "relevant legal expertise and experience" at the institutional and individual levels. The law was designed to prevent an "Alibaba arrangement" under which a large international law firm enters the legal market through a small Singapore proxy. The JLV and FLA practice proves the misuse of the current legal framework." [31]

[31] Pasha Li-Tian Hsieh, 'ASEAN's Liberalization of Legal Services: The Singapore Case' (2013) 8 *Asian Journal of WTO and International Health Law and Policy* 2, 487.

9 Federation of Malaysia

9.1 Importance of Malaysia to Australia

Malaysia is a longstanding trade partner and diplomatic friend of Australia. 2025 marks 70 years of Australia's diplomatic presence in Malaysia. Our relationship is based on mutual respect, common interests, shared history and strong community links.

In 2021, in recognition that we are a top 10 partner across most sectors, Australia and Malaysia elevated our bilateral relationship to a CSP. The CSP is underpinned by three streams of cooperation: economic prosperity; society and technology; and defence and regional security. Under the CSP, Australia and Malaysia are expanding and modernising cooperation on trade and investment, education and cyber, as well as in new areas such as the digital economy and climate change.

There are deep connections between our peoples, including at the highest level of government. Our prime ministers have met on several occasions. Most recently, Australia's Prime Minister Anthony Albanese welcomed Malaysia's Prime Minister YAB Dato' Seri Anwar bin Ibrahim to Melbourne in March 2024 for the 2nd Australia-Malaysia Annual Leaders' Meeting. The leaders had earlier met in Jakarta in the margins of the East Asia Summit and the APEC Leaders' meeting in September 2023 and November 2023 respectively.

Australia's economic and trade relationship with Malaysia is mature, comprehensive and complementary. In 2023-24, Malaysia was our second largest two-way goods trading partner in Southeast Asia and seventh-largest partner globally. Total two-way trade in 2023-24 was valued at A$33 billion.

In 2023, the top exports from Australia to Malaysia were petroleum gas, coal briquettes and refined copper. The top exports from Malaysia to Australia were refined petroleum, crude petroleum and computers.

Malaysia is home to some of Australia's major investments in Southeast Asia, including Cochlear, Lynas, NS BlueScope, Lendlease and, more recently, NextDC and AirTrunk. In the other direction, leading Malaysian businesses such as Gamuda, Gentari, OSK, Sime Darby, Petronas, as well as EPF and KWAP, are all significant investors in Australia. There are also several established Australian retail brands in Malaysia including Aesop, Arnott's, Blackmores, Boost Juice, Cotton On, Harvey Norman and King Living.

We share a common interest in a free and open global trading system. 2023 marked the 10-year anniversary of the entry-into-force of MAFTA. Australia and Malaysia are also parties to AANZFTA, RCEP and CPTPP.

9.2 Importance of Malaysia to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that Malaysia is viewed by Australian lawyers and firms as the third most important jurisdiction in Southeast Asia from a legal services perspective, for reasons including:

- the closeness of Australia's relationship with Malaysia;
- the nature of the trading relationship; and
- Malaysia's operation of a common law legal system.

As such, it is the third of the Southeast Asian jurisdictions addressed in this Report.

However, there is a significant gap in importance and relevance between Malaysia and Indonesia and Singapore. This is partly because many Australian law firms (or international law firms with Australian offices) routinely service Malaysia out of their existing offices in Singapore (including many of the law firms identified earlier as having a Singapore office), rather than seeking to establish a specific commercial presence in Malaysia. One reason for this is due to the complications involved in establishing a commercial presence in Malaysia, as identified in this Report below.

One Australian law firm (or international law firm with an Australian office) that currently has a commercial presence in Malaysia is Baker McKenzie, via Wong & Partners (a member of the Baker McKenzie Swiss Verein).

Several Australian law firms have entered formal and informal strategic alliances with existing Malaysian law firms (**MLFs**), but MLFs typically have a web of such alliances and not necessarily exclusive alliance relationships.

9.3 Nature of the Malaysian legal system

The Malaysian legal system is a hybrid framework primarily based on English common law, complemented by Islamic law and customary law, structured to uphold justice and maintain social order.

The foundation of the Malaysian legal system is rooted in English common law, which was introduced during British colonial rule. This body of law is supplemented by statutory laws enacted by the Parliament of Malaysia.

However, Islamic law plays a significant role in personal matters for Muslims, particularly in areas such as family law. It is administered by the Syariah Courts, which operate alongside the civil court system. The Federal Constitution of Malaysia acknowledges Islam as the religion of the Federation while allowing for the application of Islamic law within certain contexts, particularly in personal and familial matters.

Customary laws, which are based on the traditions and practices of various ethnic groups in Malaysia, also influence the legal landscape, particularly in matters related to land and personal status.

The Malaysian legal system operates upon several core principles that form its foundation, ensuring that justice is administered fairly and effectively. One of the most significant of these principles is the rule of law. Another essential principle is the separation of powers, which delineates the distinct functions of the legislative, executive and judicial branches of government. Judicial independence emerges as a vital element of the legal framework. Finally, the supremacy of the Constitution underscores the Malaysian legal system.

Judicial precedent, or the doctrine of stare decisis, is also a fundamental principle in the Malaysian legal system. Courts are bound to follow the legal principles established in previous decisions by higher courts within the same hierarchy. This ensures consistency and predictability in the application of the law.

In relation to the challenges facing the Malaysian legal system, Generis Global, one of the firms providing legal services in relation to Malaysia, comments as follows:

> *"The Malaysian legal system faces numerous challenges that significantly impact its efficacy and accessibility. One primary concern is the issue of access to justice. Many individuals, particularly those from marginalized communities, struggle to obtain legal representation due to high costs and inadequate legal aid services. This disparity creates a situation where justice is often perceived as unattainable for a segment of the population, undermining public confidence in the legal system.*

Another significant challenge is the consistent delays in the judicial process. Court backlogs are prevalent, resulting in prolonged waiting times for cases to be resolved. This inefficiency not only frustrates litigants but also causes a strain on the overall legal framework. While the implementation of case management systems has shown some promise in alleviating these delays, many courts still suffer from insufficient resources and staffing, further complicating the matter.

Additively, the influence of political and social factors cannot be dismissed when discussing the challenges within the Malaysian legal system. Instances of perceived judicial independence being compromised have raised concerns within the legal community and among citizens. Political interference tends to undermine the integrity of the judiciary, leading to a lack of public trust and reliance on legal avenues for conflict resolution." [32]

9.4 Nature of legal practice in Malaysia

Legal practitioners in Malaysia, which encompasses lawyers and judges, serve a pivotal role within the Malaysian legal system. Their responsibilities are multifaceted and include representing clients in legal matters, providing counsel on legal rights and obligations, and ensuring adherence to the rule of law.

A lawyer practising in Peninsular Malaysia (i.e., West Malaysia) is known as an 'Advocate and Solicitor of the High Court'. A lawyer practising in Sabah and Sarawak is known as an 'Advocate'. West Malaysian advocates and solicitors have the right under the Legal Profession Act 1976 (**Malaysia LPA**) to appear in any court in West Malaysia (separate registration is required for them to practise in East Malaysia).

Foreign lawyers and law firms in Malaysia are regulated under the Malaysia LPA and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014. Specifically:

- The legal profession in Peninsular Malaysia is regulated by the Malaysian Bar Council, which is also responsible for overseeing professional standards of the profession in the Peninsular. International Partnerships, Qualified Foreign Law Firms (**QFLFs**) and registered foreign lawyers employed by MLFs are regulated by the Bar Council.

- The Qualifying Board is responsible for determining qualifications for admission to the Bar. The Board is made up of representatives from the Bench, the Bar, deans of law schools and the Attorney-General, who presides. Disciplinary power over the conduct of solicitors is vested in an independent body, the 'Disciplinary Board.'

- A Selection Committee is responsible for considering all applications by foreign lawyers and law firms and making recommendations for approval/non-approval to the Bar Council. The Selection Committee is co-chaired by the Attorney-General and the President of the Malaysian Bar and has five members in total. The Bar Council will serve as the Secretariat for the Selection Committee.

- All International Partnerships, QFLFs and registered foreign lawyers employed by MLFs must comply with the same rules and regulations governing advocates and solicitors in Peninsular Malaysia.

[32] Generis Global Legal Services, *A Comprehensive Overview of the Legal System in Malaysia* (Web Page, 22 November) <https://generisonline.com/a-comprehensive-overview-of-the-legal-system-in-malaysia/>.

9.5 Impediments to Australian lawyers practising foreign law in Malaysia

Foreign lawyers are required to meet various regulatory requirements if they wish to practise foreign law in Malaysia, as set out in the section below.

Mode 1 – Cross-border supply

The definition of 'trade in services' in MAFTA includes the supply of a service from the territory of one party into the territory of the other party. However, in practice, there are no rules allowing temporary practice by foreign lawyers of foreign law in Malaysia. The provision of international legal services via Mode 1 into Malaysia is widespread among law firms and is currently tolerated in practice for transactional services, even though it may be in a legal grey area.

That being said, Malaysian regulatory authorities would be concerned by any evidence of foreign lawyers advising on Malaysian domestic litigation from outside Malaysia involving Malaysian local law, given this would directly impinge on the role of local Malaysian legal counsel. Complaints by local lawyers could trigger investigations.

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

Section 37(2A) of the Malaysia LPA permits FIFO practice of law in Malaysia. This section operates as an exception to various prohibitions on legal practice and provides as follows:

> *"Subsection (2A) shall not apply to a foreign lawyer who — (a) is duly authorized or registered to practise law in a state or territory other than Malaysia; and (b) enters Malaysia to advise or consult with a client on matters pertaining to law not involving any aspect of Malaysian law, provided always that the accumulated period of stay of that foreign lawyer shall not exceed sixty days in total in any one calendar year and that immigration authorization for each period of stay shall have first been obtained."*

Under this legislation, foreign lawyers are permitted to practise their home country and international law in Peninsula Malaysia on a FIFO basis for a period not exceeding 60 days per calendar year. Foreign lawyers operating on a FIFO basis are subject to all the rules and rulings of the Malaysian Bar Council and are subject to the control of the Disciplinary Board.

An exception also applies to any person:

- representing any party in arbitral proceedings and
- giving advice, preparing documents and rendering any other assistance in arbitral proceedings.

Practical challenges

The legal uncertainty for Australian lawyers advising on foreign law in relation to Malaysia using Mode 1 remains a concern. However, the exception for Mode 4 services is unique to Malaysia and removes uncertainty regarding the legality of FIFO by removing the potential complications with visas that arise in relation to other Southeast Asian jurisdictions.

Further, under AANZFTA, Malaysia has committed to allow Australian law firms and lawyers to supply legal advisory and consultancy services relating to Australian law and international law. Malaysia has also replicated its AANZFTA commitments on legal services under MAFTA.

9.6 Impediments to Australian lawyers practising Malaysian local law

Malaysia's legal services market is one of the more liberalised of the Southeast Asian jurisdictions, behind Singapore.

There are two primary pathways by which Australia lawyers can more formally practise law in Malaysia:

(a) qualifying as a legal practitioner in Malaysia; or

(b) registering as a foreign lawyer.

The first of these enables an Australian lawyer to practise all Malaysian law. The second is limited to permitted practice areas and depends on the form of registration adopted.

Admission as a legal practitioner in Malaysia

Foreign law graduates from universities recognised by the Malaysian Qualifying Board may be eligible for admission to practise as local lawyers. Requirements are the same as for the rules applicable to a local application and include citizenship.

Becoming a legal practitioner in Malaysia involves a specific educational pathway and professional training. Prospective lawyers must obtain a law degree, followed by a certificate in legal practice. This academic foundation is complemented by a mandatory period of chambering, or pupillage, under the supervision of an experienced lawyer, which provides practical experience in the legal field.

Upon completion of these requirements and successful admission to the Bar, individuals gain the title of advocate and solicitor, enabling them to practise law in Malaysia.

Registering as a foreign lawyer in Malaysia

A foreign lawyer may make an application to the Bar Council under section 40J of the Malaysia LPA to be registered to practise in the permitted practice areas in the following three entities:

- International Partnership;
- QFLF; or
- MLF.

A MLF is defined in the regulations as a sole proprietorship, a partnership, and as of 9 May 2025, a limited liability law partnership, which carries on the practice of advocates and solicitors under the Malaysia LPA (see Legal Profession (Amendment) Act 2025 s 8, amending s 40A).

The following legal areas are explicitly excluded from the permitted practice areas, meaning that foreign lawyers cannot practise in the following areas of Malaysian local law:

- constitutional and administrative law; conveyancing; criminal law; family law;
- succession law, including wills, intestacy, probate and administration;
- trust law where the settlor is an individual;
- the law relating to charities and foundations, whether the settlor is an individual or a corporation;
- retail banking, including corporate or commercial loans to small and medium enterprises;

- registration of patents and trademarks;

- appearing or pleading in any court of justice in Malaysia, representing a client in any proceedings instituted in such a court or giving advice, whether the main purpose of which is to advise the client on the conduct of such proceedings; and

- appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Malaysia.

These limitations significantly restrict the ability of foreign legal professionals in Malaysia to provide their services and compete with domestic lawyers.

To apply for registration to practise as a foreign lawyer, applicants must fill in the relevant application and attach the necessary evidence. Upon approval of the application and receipt of the prescribed fee, the Bar Council will issue a certificate of registration to the applicant. The certificate of registration is valid for 12 months from the date of its issue unless sooner revoked.

To demonstrate 'relevant legal expertise and experience in the permitted practice areas', applicants may provide the following information:

- A summary of their experience and expertise in the permitted practice areas in the past 5 years, with details of the subject matter;

- A summary of the lawyer's transactions in the permitted practice areas in the past 5 years, with details of financial values and transactional complexities;

- The applicant's record or ranking as a leading lawyer in the permitted practice areas; and

- Articles written by the lawyer on any permitted practice area for any legal publication.

For the purposes of determining whether a foreign lawyer satisfies the requirement of having the relevant legal expertise or experience, any period spent in attending any course or postgraduate education or in serving any articles or period of pupillage or similar training shall be disregarded.

Applications are made to the Bar Council. The Selection Committee makes recommendations to the Bar Council for the granting or refusal of licences and the registration of foreign lawyers. According to the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014, r 6(3)(a)-(g), applicants must meet the following requirements:

- good character;

- admitted to practise law in any recognised jurisdiction;

- not subject to any disciplinary proceedings in any jurisdiction and has not been previously disciplined for any disciplinary offence;

- not a party to any criminal or civil proceedings that may lead to disciplinary proceedings being taken against them in any jurisdiction;

- not prohibited from practising law in any jurisdiction and is not subject to any special conditions in the practice of law because of any criminal or civil proceedings against him in any jurisdiction;

- relevant legal expertise or experience in the permitted practice areas; and

- attended such courses of education or instruction as may be required by the Bar Council.

The Bar Council then refers the application to the Selection Committee for consideration and recommendation. Upon the recommendation of the Selection Committee, the Bar Council will grant or refuse an application made. A granted application is subject to any conditions imposed by the Bar Council, and the payment of a registration fee to the Bar Council. A certificate of registration is issued to the applicant, valid for a period of 12 months. Registration of foreign lawyers is renewed annually and subject to the conditions specified by the Bar Council.

The Selection Committee takes into consideration certain factors in their assessment of an application, including whether:

- there are enough Malaysian lawyers who are proficient in the permitted practice areas at the time of the application; and
- the admission of the foreign lawyer concerned would contribute to the development of such permitted practice areas in Malaysia and would be in the best interests of the legal profession in Malaysia and the public.

A MLF may also apply to the Bar Council for a licence to employ a foreign lawyer in the permitted practice areas in the MLF (see Legal Profession Act 1976, section 40H):

- Applications are to be made using a specific format. The number of foreign lawyers that may be employed by a licensed MLF is determined by the Selection Committee.
- Upon receipt of the prescribed fee, the Bar Council must issue a licence for an initial period of 3 years, unless revoked sooner. The licence may be renewed by the Bar Council on receipt of an application and payment of the prescribed fee.
- The MLF must, within three months after the end of each period of twelve months from the date of the issuance of the licence, submit to the Bar Council an annual report of the performance of the foreign lawyers employed by the MLF.
- The annual report must contain such information as may be required by the Bar Council, including any accounting records of the MLF related to the foreign lawyers, other than the records of their clients' accounts.

Practical challenges

Despite Malaysia's regulatory and legal framework providing for the registration of foreign lawyers, the process in practise is still onerous and administratively burdensome. Registration is only available to lawyers who are admitted in 'recognised jurisdictions', and applicants must demonstrate relevant experience and expertise.

Malaysia also restricts the registration of foreign lawyers by considering whether there are enough Malaysian lawyers in the relevant practice area, and whether the admission of a foreign lawyer would be in the best interests of the Malaysian legal profession and public. Anecdotal evidence indicates that MLFs tend to employ Malaysian lawyers, evidencing a wariness to foreign trade in legal services.

9.7 Impediments to Australian law firms setting up a commercial presence in Malaysia

Malaysia's legal services market is restricted due to the practical barriers to entry, particularly in establishing commercial associations.

In theory, Australian law firms may establish a commercial presence in Malaysia as:

- International Partnerships; or
- QFLF.

Licences for International Partnerships and QFLFs are issued for periods of 3 years. All individual foreign lawyers working in an International Partnership, QFLF or MLF are required to register as foreign lawyers, as identified above. Application and registration fees apply. Foreign lawyers working in QFLFs and International Partnerships must also reside in Malaysia for not less than 182 days in any calendar year, which is for the purpose of transferring expertise.

Annual reporting and accounting requirements in respect of International Partnerships and QFLFs. International Partnerships and QFLFs are subject to prudential requirements in terms of professional indemnity insurance at a level appropriate to the nature and extent of their business.

The permissible equity ownership and voting rights of the International Partnerships and QFLF are as determined by the Selection Committee. This is evaluated by reference to a business plan that must be submitted as part of the application process. The Malaysian Bar has recommended the following guidelines:

- The MLF should not have less than 60%, and the foreign law firm no more than 40%, of the equity and voting rights and of the total number of lawyers in any International Partnership.

- The number of Malaysian lawyers in a QFLF shall not be less than 30% of the total number of lawyers in that firm,

- The number of foreign lawyers employed by a MLF shall not be more than 30% of the total number of lawyers in that firm.

However, International Partnerships and QFLFs are prohibited from providing Malaysian local law services in the following areas of practice (see Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules, r 2(3)):

- constitutional and administrative law;

- conveyancing;

- criminal law;

- family law;

- succession law, including matters relating to wills, intestate succession and probate and administration;

- trust law, in any case where the settlor is an individual, and the law relating to charities and trust foundations, whether established by an individual or a corporation;

- retail banking, including corporate or commercial loans to small and medium enterprises;

- registration of intellectual property;

- appearing or pleading in any court of justice in Malaysia, representing a client in any proceedings instituted in such a court or giving advice, whether or not the main purpose of which is to advise the client on the conduct of such proceedings, except where such appearance, pleading, representation or advice is otherwise permitted under the Act or these Rules or any other written law; and

- appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Malaysia, except where such appearance is otherwise permitted under the Act or these Rules or any other written law.

Under AANZFTA, Australian lawyers and law firms can also establish a commercial presence in the Federal Territory of Labuan to provide legal advisory and consultancy services to offshore

corporations in the Federal Territory of Labuan on Australian law, international law and the offshore corporations laws of Malaysia.

International Partnership licence

An International Partnership is a partnership or any other arrangement between a foreign law firm and a MLF in respect of which a licence has been granted under s 40F of the Malaysia LPA.

A foreign law firm and MLF may apply jointly or by means of a limited liability law partnership formed pursuant to an arrangement between such foreign law firm and MLF to the Bar Council for an International Partnership licence.

Upon the recommendation of the Selection Committee, the Bar Council may grant an application on such conditions it think fit to impose in any case or refuse the application.

According to the Legal Profession Act, section 40F(8), International Partnerships are entitled to:

- practise in the permitted practice areas;
- bill its clients as a single law firm; and
- recover costs and retain payments in respect of such practice.

To be considered by the Section Committee, the foreign and MLF must satisfy the following conditions (see Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules, rr 3(3)(a)-(j)):

- good reputation;
- not subject to any disciplinary proceedings in any jurisdiction and have not been previously disciplined for any disciplinary offence;
- not party to any criminal or civil proceedings that may lead to disciplinary proceedings being taken against them in any jurisdiction;
- not prohibited from conducting their respective business is any jurisdiction and are not subject to any special conditions in the practice of law because of any criminal or civil proceedings against them in any jurisdiction;
- the foreign law firm and the MLF, in the opinion of the Bar Council, has the relevant legal expertise and experience in the permitted practice areas;
- the foreign law firm shall ensure that the number of foreign lawyers in the international partnerships, resident in Malaysia for not less than 182 days in any calendar year shall not be less than the number determined by the Bar Council, in any case;
- the foreign law firm and the MLF have entered into a written agreement to participate in and jointly manage the international partnership and have submitted a copy of such agreement to the Bar Council and have undertaken that no material modification shall be made to the agreement without the prior written approval of the Bar Council;
- the international partnership shall maintain professional indemnity insurance policies; and
- the foreign and MLF have jointly submitted a business plan of the International Partnership which shall include but not be limited to any plan for the transfer of technology and expertise in the appropriate permitted practice areas and their proposed contribution to the growth and development of the Malaysian legal services market, as well as the implementation of the plan and have undertaken that no material modification shall be made to the plan without prior written approval of the Bar Council.

Qualified Foreign Law Firm

According to the Legal Profession Act 1976, section 40A, A QFLF is defined as a foreign law firm licensed under s 40G of the Malaysia LPA.

The QFLF pathway for foreign law firms was created to support the Malaysian Government's Malaysian International Islamic Finance Centre (**MIFC**) initiative, as announced by the Prime Minister in his policy speech on 22 April 2009. As such, QFLF licences are only granted to international law firms that have proven expertise in international Islamic finance and would be able to support and contribute to the MIFC.

To apply, a QFLF is to pay the Bar Council a licence fee as prescribed. As such, a joint venture with a local MLF is not required. A law firm licensed as a QFLF does not require a MLF as a partner.

The Bar Council may issue a licence. To be granted a licence, a QFLF must satisfy the following conditions) (see Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014, rr 4(2)(a)-(i)):

- good reputation;
- not subject to any disciplinary proceedings in any jurisdiction and has not been previously disciplined for any disciplinary offence;
- not a party to any criminal or civil proceedings that may lead to disciplinary proceedings being taken against the firm in any jurisdiction;
- not prohibited from conducting its business in any jurisdiction and is not subject to any special conditions in the practice of law because of any criminal or civil proceedings against it in any jurisdiction;
- the foreign law firm, in the opinion of the Bar Council, has the relevant legal expertise and expertise in the permitted practice areas;
- the foreign law firm shall ensure that the number of foreign lawyers in the QFLF, resident in Malaysia for not less than 182 days in any calendar year shall not be less than the number determined by the Bar Council, in consultation with the Selection Committee, in any case;
- the number of Malaysian lawyers in the QFLF in Malaysia must be as determined by the Selection Committee;
- the QFLF must maintain professional indemnity insurance policies in accordance with section 78A of the Malaysia LPA; and
- the foreign law firm must have submitted a plan satisfactory to the Bar Council describing its business plan of the QFLF which shall include but not be limited to any plan for transfer of technology and expertise in the permitted practice areas and their proposed contribution to the growth and development of the Malaysian legal services market, as well as the implementation of the plan and has undertaken that no material modification shall be made to the plan without the prior written approval of the Bar Council.

For the purposes of demonstrating its expertise in International Islamic Finance, the foreign law firm must also provide the following information to the Bar Council:

- a summary of the foreign law firm's transactions in Islamic finance in the past 5 years, with details of financial values and transactional complexities;
- the foreign law firm's track record or ranking globally as a leading law firm in International Islamic Finance;

- the foreign law firm's number of lawyers with International Islamic Finance expertise that would be based in the Malaysian office, and details of their participation in International Islamic Finance transactions in the past 5 years;

- the areas of International Islamic Finance practice that the foreign law firm would offer in Malaysia, and in particular, those areas not offered by Malaysian law firms and other foreign law firms;

- the extent that the Malaysian office would function as a headquarters for the Asian region; and

- the non-Malaysian clients in International Islamic Finance the foreign law firm will service out of the Malaysian office.

Practical challenges

As far as we can determine, no foreign law firm has yet applied for an International Partnership licence. Under International Partnerships, the Malaysian partner holds at least 60% equity and voting rights which practically removes the incentive for the foreign partner to expand their business.

As we understand it, only 5 QFLF licences have been made available:

- On 4 April 2015, UK-based legal firm Trowers & Hamlins was the first foreign law firm to be granted a QFLF licence in Malaysia, effective from 4 April 2018.

- Herbert Smith Freehills Kramer LLP (**HSFK**) was the second foreign law firm to secure a QFLF from the Bar Council, and established its office in Malaysia in 2017. However, HSFK exited Malaysia in 2024, citing changing client needs and the growth of their other Southeast Asia, China, and Japan offices.

- On 10 November 2018, the Bar Council granted Messrs Azmi & Associates an MLF licence to employ a foreign lawyer.

- On 16 July 2022, the Bar Council granted Messrs Skrine a Malaysian law firm licence to employ a foreign lawyer.

- On 9 September 2023, Bar Council granted Messrs Lim Chee Wee Partnership a Malaysian law firm Licence to employ a foreign lawyer.

As such, while two models for foreign law firm market entry have been expressly endorsed by the Malaysian government, both models involve some administrative complexity and the ability to practise Malaysian local law is constrained.

Given the proximity of Singapore and the express permission of FIFO services in Malaysia, almost all foreign law firms have preferred to operate offices in Singapore and then service clients in Malaysia on a FIFO basis.

Further, we have received anecdotal information that Malaysian citizens and companies prefer to employ the services of MLFs. Specifically, market feedback suggests that Malaysian clients prefer using locally branded Malaysian law firms for advice, hence market practice is not conducive to entry by foreign law firms.

In effect, the various limitations prevent Australian law firms from properly competing with domestic law firms in Malaysia's legal market, who can offer both domestic and foreign clients the full suite of legal services. This includes proving legal representation at court, which is only permitted for domestic lawyers.

10 Kingdom of Thailand

10.1 Importance of Thailand to Australia

Australia and Thailand have longstanding and deep connections. Formal diplomatic relations were established in 1952. On 13 November 2020, leaders signed a Joint Declaration elevating the Australia-Thailand bilateral relationship to a Strategic Partnership. The Strategic Partnership builds on the Agreement on Bilateral Cooperation, which entered into force on 27 July 2005, and demonstrates our commitment to broaden and deepen cooperation across the breadth of the relationship.

The 70th anniversary of diplomatic relations, celebrated in 2022, was marked by a visit to Thailand by Foreign Minister Penny Wong in November 2022. Minister Wong signed the Plan of Action to implement the Strategic Partnership with her counterpart, then Deputy Prime Minister and Minister of Foreign Affairs H.E. Don Pramudwinai.

Australia and Thailand cooperate in a broad range of areas of mutual interest, including trade and investment, defence, law enforcement, counterterrorism, education, agriculture, migration, tourism, energy and climate change. Senior Officials' Talks (**SOTs**) are held on a regular basis, most recently on 31 October 2023, and include 1+1 SOTs between the secretaries of foreign ministries and 2+2 with the secretaries of both foreign and defence ministries. Foreign Ministers' Meetings are held on a biennial basis, most recently on 11 December 2024 in Adelaide. The bilateral relationship is supported by mutual membership of international and regional organisations. Australia and Thailand are also both parties to AANZFTA and RCEP.

Australia and Thailand enjoy a substantial commercial relationship, underpinned by TAFTA. Two-way trade in goods and services was worth approximately $32.9 billion in 2024, making Thailand Australia's third largest trading partner among Southeast Asian countries and tenth-largest overall.

Since TAFTA's entry into force on 1 January 2005, our two-way trade has more than tripled. In 2024, Australia's key goods exports to Thailand included crude petroleum ($1.3 billion), natural gas ($1.2 billion), and coal ($557million). Thailand's key exports to Australia in 2024 were goods vehicles ($7.1 billion), passenger motor vehicles ($3.4 billion) and heating and cooling equipment ($1.2 billion). Over 3,000 Australian companies export to Thailand and around 200 maintain an in-country presence. Thai investment in Australia was valued at $8.9 billion in 2024, concentrated in the renewable energy, agri-business and hospitality sectors. Australian investment in Thailand was valued at approximately $3.8 billion in 2024.

To further promote trade and investment, and as a complement to TAFTA, Australia and Thailand signed a Strategic Economic Cooperation Arrangement (**SECA**) Memorandum of Understanding (**MOU**) in November 2022. Australia and Thailand worked together, in consultation with stakeholders to develop an Implementation Agenda. in September 2024. The then Assistant Trade Minister Tim Ayres co-chaired the inaugural Strategic Economic Dialogue (**SED**), established under SECA, with then Deputy Minister for Commerce, H.E. Mr Suchart Chomklin, in Bangkok.

10.2 Importance of Thailand to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that Thailand is viewed by Australian lawyers and firms as the fourth most important country in Southeast Asia from a legal services perspective, given that Thailand is the third largest trading partner for Australia among the Southeast Asian nations.

However, again, there is a significant gap in importance and relevance between Thailand and the first and second jurisdictions, namely Indonesia and Singapore. This is because many Australian law firms (or international law firms with Australian offices) would routinely service Thailand in their existing offices in Singapore, including many of the law firms identified earlier as having a Singapore office.

The Australian law firms (or international law firms with an Australian office) that currently have a commercial presence in Thailand include (without limitation):

- A&O Shearman;
- Baker McKenzie;
- Herbert Smith Freehills Kramer; and
- Norton Rose Fulbright.

Law firms often establish a commercial presence in Thailand as a limited liability company.

Given the restrictions on practising Thai law, as identified below, in conjunction with language barriers, it is common for Australian law firms to brief local counsel in Thailand rather than attempting to advise Thai clients directly, except on matters of Australian law.

10.3 Nature of the Thai legal system

The Thai legal system is a civil law system influenced by various historical and cultural factors, characterised by a structured judiciary and a commitment to the rule of law.

The evolution of the Thai legal system has been shaped by historical events, including the transition from an absolute monarchy to a constitutional democracy in 1932. This shift marked the beginning of significant legal reforms aimed at modernising the legal framework and enhancing the rule of law. The introduction of codified laws in the early 20th century, influenced by Western legal systems, laid the foundation for the current legal structure.

Today, the Thai legal system is primarily based on the Constitution of Thailand, which serves as the supreme law of the land. It establishes the framework for governance and the protection of human rights.

Beyond the Constitution, law is established by acts and statutes, including the four basic civil codes. The primary sources of law are the Civil and Commercial Code and the Penal Code, supported by relevant Procedure Codes, which govern significant aspects of private law, including contracts, property and family matters. These codes were modelled primarily on the European codes, with reference to other Codes (e.g. Japan), and incorporate elements of other systems (e.g. British Company law). The Constitution and Codes are supplemented by royal proclamations issued by the king on the advice of cabinet and by subordinate legislation.

Judicial precedent in Thailand is not binding. Courts are not bound to follow their own decisions. Lower courts are not bound to follow precedents set by higher courts. However, Thai law has been influenced by common law precedent. Courts are therefore significantly influenced by earlier decisions or decisions of higher courts. The Supreme Court of Justice publishes its decisions, known as ‘Supreme Court Opinions’. These are frequently used as secondary authorities and are numbered according to the year issued.

Under the Constitution, the system of government of Thailand is based on the common law Westminster system, and divided between executive, legislative and judicial branches. The King is the Head of State. However, there have been 20 Constitutions and at least 18 *coup d’etat* since 1932, resulting in rapid and repeated fluctuations between military rule and elected government. As such, Thailand's rule of law has been a subject of significant historical concern, with the country facing challenges at times in maintaining a stable and predictable legal framework.

In October 2025, Prime Minister Anutin Charnvirakul delivered a keynote speech at the 3rd Rule of Law Forum organised by the Thailand Institute of Justice (**TIJ**). Anutin shared that the government is planning to join the Organisation for Economic Cooperation and Development (**OECD**) by meeting key standards, including good governance and the rule of law. He outlined several major initiatives to achieve this goal, including fighting corruption, implementing law reforms and focussing on enhancing legal standards and justice processes to prepare for OECD membership. This includes setting a clear roadmap to elevate the country's legal frameworks and ensure fairness in legal proceedings.

In relation to the challenges facing the Thai legal system, Generis Global as one of the firms providing legal services in relation to Thailand, comments as follows:

> *"The Thai legal system still grapples with significant challenges. Corruption remains a pervasive issue, undermining public confidence in legal institutions and the judiciary. Reports of bribery and influence-peddling can severely impact the impartiality of court proceedings and the equitable administration of justice. Furthermore, human rights concerns, particularly regarding freedom of expression and assembly, have been highlighted by various international organizations, emphasizing the need for continuous vigilance and reform."* [33]

10.4 Nature of legal practice in Thailand

The legal system in Thailand is an intricate framework that relies heavily on its legal practitioners, consisting of lawyers, judges and various other legal professionals. These individuals play pivotal roles in ensuring the proper functioning and administration of justice in the country.

Legal practitioners are required to meet specific educational qualifications, adhere to professional standards and uphold ethical guidelines, which together shape their contributions to the legal landscape of Thailand.

Judges, who are an essential part of Thailand's legal framework, must follow a separate yet equally demanding trajectory. They are required to hold a minimum of a law degree, and many have advanced degrees in law or related fields. Additionally, judges undergo rigorous selection and training processes to guarantee that they not only understand the law but also possess the discernment necessary for fair adjudication. In both fields, adherence to high professional standards is paramount, emphasising the balance between legal aptitude and ethical responsibility.

Ethical considerations are critical in the roles of all legal practitioners in Thailand. They are expected to maintain integrity, confidentiality and professional conduct, which fortifies public confidence in the legal system. Legal practitioners must navigate complex scenarios involving client relationships, conflict of interest and the upholding of justice, all of which further illustrate their vital function within the broader context of Thailand's legal framework.

The Lawyers' Council of Thailand is the peak body of the legal profession in Thailand.

In Thailand, the term 'lawyer' is defined by Section 4 of the Lawyers Act as a person who has registered with the Lawyers Council of Thailand, who has received a legal practitioner's licence. Therefore, the term 'lawyer' signifies that the licence holder is a licensed and registered lawyer. Unlike common law jurisdictions and some civil law countries, Thailand does not divide legal practitioners into barristers or solicitors. Therefore, lawyers in Thailand practice law as a fused profession, which means that any lawyer who acquires a licence to practise law in Thailand can act as both a legal advisor and as an advocate without any legal restrictions.

Specifically, 'Tha Nai Kwam' means registered 'Lawyer' or 'Barrister'. 'Ni Ti Korn' are Thai nationals with some legal training but who are unregistered and working in-house, in academia or government. 'Tee Pruk Sa Khot Mai' are 'legal advisors' who may have some legal training but who are not officially licensed.

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[33] Generis Global Legal Services, *A Comprehensive Overview of the Legal System in Thailand* (Web Page, 29 November 2024) <https://generisonline.com/a-comprehensive-overview-of-the-legal-system-in-thailand/>.

10.5 Impediments to Australian lawyers practising foreign law in Thailand

Thailand is a particularly restrictive Southeast Asian country for the provision of legal services which presents some material risks for Australian lawyers.

Mode 1 – Cross-border supply

The definition of 'trade in services' in TAFTA does include the supply of a service from the territory of a party into the territory of the other party.

However, in practice, there are no rules allowing Australian-based lawyers to advise clients in Thailand on foreign law from Australia using electronic communications. The provision of international legal services via Mode 1 into Thailand is currently tolerated in practice for transactional services but could potentially be in a legal grey area.

Thai regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Thai local law, particularly domestic litigation, from outside Thailand. Complaints by local Thai lawyers could trigger investigations.

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

Unlike other Southeast Asian nations, foreigners are not permitted to provide legal advice in Thailand (whether with respect to Thai or foreign law), even on a temporary basis. Legal practice is considered a prohibited profession that is closed to foreigners in Thailand under the Appendix to the Royal Decree Naming Occupations and Professions Prohibited to Aliens (Foreigners) B.E. 2522 (1979). Under the Alien Working Act B.E. 2551 (2008), it is a criminal offence to provide such services. Doing so can result in imprisonment of up to five years, as well as fines.

Only licensed lawyers in Thailand can appear in court, prepare cases and represent clients in Court proceedings (section 33 of the *Lawyers Act B.E. 2528 (A.D. 1985)*). Registration to practise as a lawyer in Thailand is only open to those of Thai nationality (section 35 of the *Lawyers Act B.E. 2528 (A.D. 1985)*).

Outside of the courts, anyone can provide legal advice in Thailand, but only as unregulated legal consultants or advisors. While foreign lawyers can operate as non-licensed workers who act as legal or business consultants or advisors, this may also raise concerns under visas and hence this may also be a legal grey area.

Work-arounds can generally be adopted for transactional services involving foreign law, hence the risk of regulatory action may therefore be relatively low.

However, Thai regulatory authorities would be concerned by foreign lawyers advising on Thai local law, particularly Thai litigation, on a FIFO basis.

Practical challenges

The legal uncertainty for Australian lawyers advising on foreign law in relation to Thailand using Mode 1 is clearly a concern. The express prohibition on Australian lawyers using Mode 4 is also concerning, particularly given the criminal consequences.

There may also be uncertainty where services may cross the line. Foreign lawyers that operate as non-licensed workers may act as legal or business consultants or advisors that share their expertise in international legal issues, compliance, and corporate law. Foreign lawyers may also act as advisors or arbitrators in international arbitration and mediation cases, provided that the law of arbitration is not Thai law. However, beyond this any provision of services could raise concerns for Thai regulatory authorities.

Under AANZFTA, Thailand has not committed to allow the cross-border supply of legal services.

10.6 Impediments to Australian lawyers practising Thai local law

Thailand's legal services market is one of the least liberalised of the Southeast Asian jurisdictions examined in this Report.

Admission as a legal practitioner in Thailand

Thailand has a closed market for the provision of legal services that only enables the registration of lawyers with Thai nationality. The nationality requirement is reinforced in three ways in Thailand:

- Under section 35 of the Lawyers Act B.E. 2528 (A.D. 1985), registration to practise as a lawyer in Thailand is only open to those of Thai nationality. Only those who have been registered as a lawyer and hold a valid licence in Thailand are able to appear as a litigation lawyer in court, prepare a complaint or an answer, submit or answer an appeal, and answer a motion, petition, or statements incidental to court proceedings on behalf of another person.

- To procure an Ordinary Lawyers Licence (which is separate from registration) the applicant must, amongst other things, be of Thai nationality and have graduated with a Bachelor's Degree or an Associate Degree in law or a certificate in law equivalent to the Bachelor's Degree or Associate Degree from an educational institution accredited by the Lawyers' Council of Thailand.

- Legal practice is considered a prohibited profession that is closed to foreigners in Thailand under the Appendix to the Royal Decree Naming Occupations and Professions Prohibited to Aliens (Foreigners) B.E. 2522 (1979).

As stated above, individuals must obtain a law degree from an accredited university, typically requiring completion of a bachelor's program in law. Following graduation, aspiring lawyers must pass the bar examination administered by the Lawyers Council of Thailand. This rigorous process ensures that they possess the necessary knowledge and skills to navigate the complexities of the legal system. Continuing legal education is also encouraged to keep practitioners abreast of evolving laws and legal precedents.

Practical challenges

Thai nationality is the most significant and problematic barrier to practising law in Thailand, making it a highly restrictive and closed market for legal services. The only legal alternative is to work as a non-licensed consultant or advisor.

10.7 Impediments to Australian law firms setting up a commercial presence in Thailand

The establishment of a commercial presence in Thailand under Mode 3 is regulated and difficult, although several law firms have identified practical work-arounds. If legal services are re-characterised as general transaction consultancy services, any services can potentially be structured in such a way that risks are reduced. However, care would be required.

Foreign participation is only permitted through a limited liability company registered in Thailand. At least ten large international US and UK law firms have a commercial presence in Thailand using this structure and there are smaller foreign practices serving the expatriate community and smaller foreign businesses.

Foreign law firms are permitted to be established in Thailand to provide legal services subject to Foreign Business Licence (**FBL**) requirements. Legal services are included in annex 3 of the Foreign Business Act (**FBA**), which contains the list of businesses prohibited to foreigners. Therefore, a foreign law firm is required to apply for the FBL to operate the service. It is also possible for a foreign law firm to affiliate with a local company having more than 50% shares owned by Thai national(s). The foreign law firm can take its name and have no foreign lawyers present on the ground.

Accordingly, foreign commercial associations in Thailand must hold an FBL under the FBA if they wish to operate with 50% or higher foreign shareholding.

A 'foreigner' is defined in section 4 of the FBA as the following:

(1) A natural person who is not of Thai nationality;

(2) A juristic person not registered in Thailand;

(3) A juristic person registered in Thailand, being of the following descriptions:

a. being a juristic person at least one half of capital shares of which are held by persons under (1) or (2) or a juristic person in which investment has been placed by the persons under (1) or (2) in the amount at least equivalent to one half of the total capital thereof;

b. being a limited partnership or a registered ordinary partnership the managing partner or the manager of which is the person under (1);

(4) a juristic person registered in Thailand at least one half of the capital shares of which are held by persons under (1), (2) or (3) or a juristic person in which investment has been placed by the persons under (1), (2) or (3) in the amount at least equivalent to one half of the total capital thereof.

The FBA classifies business activities into three main 'Lists' to determine the restrictions on foreign ownership. List 1 activities are entirely closed to foreigners, as they are considered sectors that are essential to national interests and security. List 2 activities relate to national safety, culture and the environment. Whilst foreign participation in List 2 activities is not prohibited, it requires special permission from the Thai Cabinet.

List 3 activities are sectors where Thai nationals are not yet considered ready to compete. In all List 3 sectors, foreign shareholding is capped at 49%. By securing an FBL, foreign investors may exceed that 49% foreign shareholding threshold, subject to the approval of the Department of Business Development under the Ministry of Commerce.[34]

Legal services are caught as a List 3 industry. This means foreign commercial associations that provide legal services are restricted unless an FBL is granted, as it is a business in which Thai nationals are not yet ready to compete with foreigners (see Foreign Business Act B.E 2542 (1999) Annexure, Chapter III).

In granting permission to foreigners to establish foreign businesses, regard is to be had to whether the business has advantageous or disadvantageous effects on Thailand's national safety and security, economic and social development of the country, and public order or good morals, amongst other values.

A foreigner who is intending to apply for an FBL must fulfil the following conditions (see Foreign Business Act B.E 2542 (1999), section 16):

- be at least 20 years of age;
- have a residence in the Kingdom of Thailand or have been permitted to enter the Kingdom temporarily under the law on immigration;
- not incompetent or a quasi-incompetent person;
- not bankrupt;

[34] ASEAN Briefing, *Understanding Thailand's Foreign Business Act: Restricted Sectors and Workaround,* <https://www.aseanbriefing.com/news/understanding-thailands-foreign-business-act-restricted-sectors-and-workarounds/>.

- not been punished by a court judgment or ordered to pay a fine in settlement of any offence under the FBA or under the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972), unless having been discharged for a period of not less than five years prior to the date of the application for the licence;

- not having been imprisoned by a court judgment for offences of cheating, cheating creditors, misappropriation or offences related to trade under the Penal Code or the offences related to loans fraudulent to the public or the offences under the law on immigration, unless having been discharged for a period of not less than five years prior to the date of the application for the licence;

- not having had a licence issued under the FBA or under the Notification of the National Executive Council No. 281, dated 24th November B.E. 2515 (1972) revoked within the period of five years prior to the date of the application for the licence.

Practical challenges

Whilst it is possible to apply for an FBL under the FBA to establish a foreign law firm in Thailand, commercial associations must still comply with the prohibition against foreign lawyers practising Thai law. The foreign law firm in Thailand must therefore employ Thai nationals to practise Thai law, or otherwise only employ foreign lawyers as legal or business consultants and advisors. This is a significant barrier that would deter many foreign legal professionals or firms from establishing commercial associations in Thailand.

Under AANZFTA, Thailand has committed to allow Australian law firms to establish a commercial presence in Thailand as a limited liability enterprises with majority Thai ownership. Specifically, commercial presence is permitted only through a limited liability company which is registered in Thailand and which meets the following conditions:

- foreign equity participation must not exceed 49% of the registered capital; and

- the number of foreign shareholders must be less than half of the total number of shareholders of the company concerned.

11 Socialist Republic of Vietnam

11.1 Importance of Vietnam to Australia

The Australia-Vietnam relationship has never been stronger. On 7 March 2024, the Prime Ministers agreed to a joint statement on the elevation to a CSP between Vietnam and Australia, placing Australia amongst Vietnam's top-tier partners. The CSP will support expanded cooperation on climate, environment and energy, and digital transformation and innovation; and build on established collaboration across defence and security, economic engagement, education, science and technology and development assistance.

Vietnamese and Australian ministers meet regularly with high-level visits and dialogues providing a solid foundation for the relationship. In 2025, Australia and Vietnam held the seventh Foreign Ministers' Meeting in Hanoi on 20 August. The Governor-General made a state visit to Vietnam from 9-12 September. In 2024, ministers met for the fourth Economic Partnership Meeting, the inaugural Trade Ministers' Dialogue, the inaugural Ministerial Security Dialogue and announced a new Energy and Minerals Ministerial-level Dialogue.

Our bilateral trading relationship with Vietnam is one of Australia's fastest growing in recent years. In 2024, two-way trade was valued at $28.8 billion. Vietnam has one of the fastest growing economies in the region, driven by export-oriented manufacturing, foreign direct investment and strong domestic demand.

Vietnam's strong economic growth, a shift towards increasing trade openness, and expanding middle-class have increased demand for imports. This creates significant opportunities for Australian exporters of energy, dairy, meat, consumer goods, wheat and grains, cotton and wool, machinery and professional services.

11.2 Importance of Vietnam to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that Vietnam is viewed by Australian lawyers and firms as the fifth most important country in Southeast Asia from a legal services perspective.

Whilst Australian law firms have historically operated in Vietnam and have expressed interest in doing so again, it is widely regarded as a more difficult jurisdiction in which to establish a commercial presence.

At least two Australian law firms (or international law firms with an Australian office) currently have a commercial presence in Vietnam including (without limitation):

- Allens, which has offices in Hanoi and Ho Chi Minh City; and
- Baker McKenzie (Vietnam) Ltd, operating in a strategic alliance with BMVN.

Most Australian law firms would service Vietnam either from Singapore or on a FIFO basis.

Alternatively, given the restrictions on practising Vietnamese law, as identified below, in conjunction with language barriers, it would be common for Australian law firms to brief local counsel in Vietnam rather than attempting to advise Vietnamese clients directly, except on matters of Australian law.

11.3 Nature of the Vietnamese legal system

Vietnam is a one-party state under the control of the Communist Party, which shapes the country's legal system. The country has had a single, unified legal system since 1975, influenced by eastern and western legal traditions, the French civil law system and Soviet communist legal ideology. This amalgamation has created a unique legal framework that emphasises state control and collective rights.

Vietnam's socialist legal system has many characteristics of the civil law system, where statutes are used as the legal source in the trial process. However, Vietnam does not specifically recognise itself as belonging to the common law or civil law system. Vietnam's current legal system is best characterised as a quasi-civil law system influenced by socialist principles, characterised by a structured framework that includes legislative, executive and judicial branches.

The current legal system of Vietnam has the following characteristics:

- Legislation is the most important source of law, including the Law on Lawyers;
- Courts are subordinate to the legislature and must make decisions based on legislation; and
- Policies are set out by the Communist Party, the only political party in Vietnam, which can lead to changes in legislation in the future.

The legal system is organised in a hierarchy in which higher-ranking legal instruments set out general rules and lower-ranking legal instruments provide the details. The Constitution stands at the top of this legal hierarchy and forms the foundation of the entire legal system. The principles of the socialist-oriented legal structure are enshrined in the Constitution

Vietnam’s judicial structure includes a hierarchy of courts, tailored to address a variety of legal matters at various levels. The judicial system in Vietnam operates within a framework that emphasises both the rule of law and the rights of citizens. The People’s Courts form the judicial arm of the state and are responsible for resolving disputes without having the power to review or interpret the laws.

11.4 Nature of legal practice in Vietnam

The legal profession in Vietnam is regulated by the Ministry of Justice and to a lesser extent local bar associations. The Vietnam Bar Federation is the national-bar association to which the local bars are affiliated. The Vietnam Bar Federation is member of the Vietnam Fatherland Front under the leadership of the Vietnam Communist Party and the management of the State of the Socialist Republic of Vietnam.

In Vietnam’s complex legal environment, legal practitioners play a crucial role in ensuring the proper functioning of the justice system. This category encompasses various professionals, including lawyers, prosecutors, and judges, each with distinct responsibilities and functions. Lawyers serve as advocates for their clients, providing legal representation in civil and criminal matters. They are essential in guiding clients through the intricacies of the law, ensuring that their rights are protected and upheld. Legal representation is imperative, particularly in a rapidly evolving legal landscape where individuals may encounter challenges understanding their options and obligations.

Legal practitioners in Vietnam (known as ‘Lawyers’) are bound by ethical obligations, which mandate professionalism, honesty, and respect for the law. These principles guide their conduct and foster trust within the community. However, practitioners also face numerous challenges, including navigating a legal system that is continually adapting to reflect social and economic changes. Issues such as limited resources, increasing caseloads and the need for ongoing education about new regulations can strain their capacity to serve effectively. As Vietnam progresses towards a more developed legal framework, the adaptability and commitment of its legal practitioners remain pivotal in shaping a just society.

An uncertain and shifting legal landscape poses distinct barriers for foreign lawyers who wish to practise in Vietnam. However, the anticipated changes also provide an avenue of growth and opportunity for Vietnam to open their legal services market to foreign professionals and businesses.

11.5 Impediments to Australian lawyers practising foreign law in Vietnam

Vietnam is a particularly restrictive Southeast Asian country for the provision of legal services with some material risks for Australian lawyers.

Mode 1 – Cross-border supply

In practice, there are no rules allowing Australian-based lawyers to advise clients in Vietnam on foreign law from Australia using electronic communications. The provision of international legal services via Mode 1 into Vietnam is currently tolerated in practice for transactional services but could potentially be in a legal grey area.

Vietnamese regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Vietnamese local law, particularly domestic litigation, from outside Vietnam. Complaints by local Vietnamese lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

Vietnam has no restrictions on legal services delivered in Mode 1 in its GATS commitments (defined as CPC 861 excluding: participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Vietnam and legal documentation and certification services of the laws of Vietnam).

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

The Law on Lawyers has no express article relating to FIFO practice of law and it is unclear whether a foreign lawyer is permitted to practise on a FIFO basis.

While we understand there could be express rules allowing temporary practice by foreign lawyers, we are unclear whether FIFO lawyers could meet the following obligations necessary to practise foreign law in Vietnam:

- be present regularly in Vietnam;
- choose to practise either in a Vietnamese branch or foreign law firm or working under a contract for a branch, foreign law firm or Vietnamese law firm; and
- pay personal income tax.

As a result, Vietnam has requirements for practice by foreign lawyers of foreign law that likely preclude FIFO, so foreign lawyers operating on a FIFO basis do so at their own risk.

Work-arounds can generally be adopted for transactional services involving foreign law, hence the risk of regulatory action may be relatively low.

However, Vietnamese regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Vietnamese local law, particularly domestic litigation, on a FIFO basis. The risk of contravening visa requirements could add to this risk.

Practical challenges

The legal uncertainty for Australian lawyers advising on foreign law in relation to Vietnam using Mode 1 is clearly a concern. The risks to Australian lawyers in using Mode 4 could be concerning, subject to clarification of the current legal position.

11.6 Impediments to Australian lawyers practising Vietnamese local law

Practising as a licensed foreign lawyer

The Law on Lawyers permits foreign lawyers to obtain a limited licence which entitles them to provide advisory services in foreign and international law (i.e. become a foreign legal consultant).

Specifically, Law on Lawyers sets out the process for foreign lawyers to apply for a licence to practise in Vietnam. There are significant administrative barriers for legal professionals wishing to apply, and where accepted, the scope of permitted practice areas is highly limited.

Foreign lawyers in Vietnam may only practise in the following forms (see Law on Lawyers (Law No. 65/2006/QH11), art 75):

- working individually for a Vietnam-based branch or foreign law firm; or
- working under contract for a branch, foreign law firm or Vietnamese law-practising organisation.

Under Article 76 of the Law on Lawyers, foreign lawyers practising law in Vietnam may:

- advise on foreign laws and international law;
- provide other legal services related to foreign laws; and
- advise on Vietnamese law – if they also hold a Vietnamese law degree and meet all requirements set for a Vietnamese lawyer.

In this manner, the most significant barrier for foreign lawyers is the restricted ambit of legal services permitted. Foreign lawyers practising in Vietnam may only provide legal advice on foreign and international law, and other legal services relating to foreign law. They also may not participate in proceedings as representatives, advocates or protectors of the lawful rights and interests of litigants before Vietnamese courts. Foreign legal consultants may not practise in legal proceedings as defence counsel, a defender of the parties or as a representative of the client before the bodies conducting legal proceedings of Vietnam.

Previously, foreign lawyers were to apply to the Ministry of Justice to practise law in Vietnam, as provided by the Law on Lawyers. However, on 11 June 2025, the Government of Vietnam issued the Decree 121/2025/ND-CP (the **Decree**) which amended the administration and licensing of legal professionals. Under Article 2 of the Decree, the power to issue professional practice certificates for lawyers is now vested with the Chairman of the Provincial People's Committee (**PPC**). This empowers local authorities to directly govern and oversee legal professionals. This is in anticipation of significant changes to the laws regulating legal professionals expected to come into effect by 2027, which would institutionalise a modern and decentralised governance framework for the judicial system.[35]

Vietnam's legislative framework has not been updated to reflect this change, posing barriers to foreign lawyers through administrative burdens and uncertainty.

A foreign lawyer must validly apply to the Chairperson of the PPC (previously the Ministry of Justice) and pay a prescribed fee to be granted a licence to practise law in Vietnam. The licence is valid for 5 years and may be extended. This licence is a substitute for a work permit that is required for foreign citizens working in Vietnam (see Law on Lawyers (Law No. 65/2006/QH11) as amended in 2012, art 82).

Foreign lawyers must meet the following conditions to practise law in Vietnam:

[35] LTS Law, *Decree 121/2025/ND-CP — Significant Reform on the Authority for Issuing Professional Practice Certificates for Lawyers, Notaries, Auctioneers, and Bailiffs from July 1, 2025* (June 2025).

- having an unexpired lawyer practising certificate issued by a foreign competent agency;
- experienced in giving advice on foreign law and international law;
- committed to comply with the Constitution and law of the Socialist Republic of Vietnam, the code of ethics and professional manners of Vietnamese lawyers; and
- being appointed by a foreign law-practicing organisation to practise in Vietnam, or employed by a branch, a foreign law firm in Vietnam or a Vietnamese law-practicing organisation.

The application for a licence to work as a foreign lawyer in Vietnam is to include the following:

- a written application;
- proof that the applicant is a lawyer of a foreign law-practicing organisation and is appointed to practise in Vietnam, or that they are employed by a branch, a foreign law firm in Vietnam, or a Vietnamese law-practicing organisation for which they plan to work for; and
- a copy of the applicant's practicing certificate, a summary of their professional records, and judicial resume.

Foreign lawyers have the express right to remit their incomes from professional practice abroad.

Legal advice on Vietnamese law may only be provided if a lawyer has a bachelor's degree in the law of Vietnam and satisfy the requirements applicable to Vietnamese lawyers.

Furthermore, foreign lawyers hold the following obligations in Vietnam (see Law on Lawyers (Law No. 65/2006/QH11), art 77(2)):

- to pay personal income tax in accordance with the law;
- to observe the principles of law practice and the obligations of lawyers provided for by the Law on Lawyers, and the rules of professional ethics and conducts of lawyers;
- to be regularly present in Vietnam; and
- other obligations as provided for by the Law on Lawyers and relevant law.

Practical challenges

There are some significant complications involved in obtaining a licence to practise foreign law in Vietnam. As a practical matter, the legal regime contemplates that a foreign lawyer will be on the ground in Vietnam.

11.7 Impediments to Australian law firms setting up a commercial presence in Vietnam

Vietnam's legal services market is more liberalised than that of Thailand, Indonesia and Philippines, but less liberalised than Singapore and Malaysia.

Foreign law firms may be established in Vietnam as either a branch or foreign law firm. Applicants must apply for a permit to set up a branch or foreign law firm, and once this is granted, they must register the operation to the provincial/municipal Justice Service within 60 days of approval.

Foreign law firms and branches practising in Vietnam may only provide law consultancy and other legal services. They cannot appoint their foreign lawyers or Vietnamese lawyers to participate in proceedings before Vietnamese courts or provide services of legal papers and notarisation relevant to

Vietnam's law. However, foreign law firms and branches may appoint Vietnamese lawyers to provide advice on Vietnamese law.

Specifically, branches and foreign law firms may:

- provide legal services in the fields stated in their establishment permits or operation registration papers;
- receive remuneration from clients;
- hire foreign lawyers, Vietnamese lawyers, foreign labourers and Vietnamese labourers;
- receive Vietnamese probationary lawyers to practise law on probation;
- remit abroad their incomes from professional practice in accordance with the provisions of Vietnamese law; and
- exercise other rights as provided for by the Law on Lawyers, the enterprise law, the investment law and relevant laws.

Furthermore, according to the Law on Lawyers (Law No. 65/2006/QH11), art 73(2), branches and foreign law firms have the following obligations:

- to operate only in the fields stated in their establishment permits and operation registration papers;
- to strictly implement their commitments with clients;
- to pay compensation for material damage caused by their lawyers to clients in the provision of legal consultancy or representation beyond legal proceedings or in the provision of other legal services;
- to purchase professional liability insurance for lawyers practising law in Vietnam in accordance with the insurance business law;
- to observe the Vietnamese labour, accounting and statistics laws and fulfill tax and financial obligations;
- to import facilities necessary for their operations in accordance with Vietnamese law; and
- to comply with other obligations as provided for by the Law on Lawyers, the enterprise law, the investment law and relevant laws.

Once a branch or foreign law firm has been granted an establishment grant, as identified below, they must register their operations at a provincial/municipal Justice Service within 60 days. An application for registering operation must include the following:

- A copy of the permit for establishment of a branch or foreign law firm; and
- A paper proving its head-office.

Branch

Branches are dependent units of foreign law-practicing organisations set up in Vietnam.

Foreign law-practicing organisations and their branches must take responsibility before Vietnamese law for their branches' operations.

An application to set up a branch must include the following:

- a copy of the paper providing for the lawful establishment of the foreign law firm, issued by a foreign competent agency or organisation;
- a written introduction of the operations of the foreign law firm;
- a list of the foreign lawyers expected to work at the branch; and
- a decision on nomination of a lawyer to be the chief of the branch.

A foreign law-practising organisation must nominate one lawyer to be the chief of its branch. The chief of a branch shall manage and administer the branch's operations in Vietnam and, at the same time, be an authorised representative of the foreign law-practicing organisation. The chief of a branch may be a Vietnamese lawyer.

Foreign law firm

Foreign law firms are defined as a 100%-foreign-capitalised limited liability company, a law firm in a limited liability partnership, a law firm in a partnership between a foreign law-practicing organisation and a Vietnamese law firm partnership.

- 100%-foreign-capitalized limited liability law firms are law-practicing organisations established by one or multiple foreign law-practicing organisations in Vietnam.
- A law firm in a limited liability partnership is a partnership of foreign law-practicing organisations and Vietnamese law-practicing organisations.
- A law firm partnership is a partnership of foreign law-practicing organisations and Vietnamese law-practicing organisations.

The director of a foreign law firm can be a foreign lawyer or Vietnamese lawyer.

Foreign law firms must comply with the following conditions:

- commitment to comply with the Constitution and the law of the Socialist Republic of Vietnam;
- commitment to have at least two foreign lawyers, including the branch manager, the director of the foreign law firm who is present and practicing in Vietnam at least 183 days in consecutive 12 months; and
- the branch manager and the director of the foreign law firm in Vietnam must have at least 2 consecutive years of experience in law practicing.

An application to set up a foreign law firm must include the following:

- A copy of the paper proving the lawful establishment of the foreign law firm, issued by a foreign competent agency or organisation, or a copy of the operation registration certificate of the Vietnamese law firm if it is a joint venture;
- A written introduction of the operations of the law firm and a written introduction of the operations of the Vietnamese law firm it is a joint venture;
- A list of the foreign lawyers and Vietnamese lawyers expected to work at the firm, enclosed with copies of their law practice certificates and lawyer’s cards;
- A draft charter of the foreign law firm, or a joint-venture contract for a joint venture.

As stated in the Law on Lawyers (Law No. 65/2006/QH11), art 78(4), the charter of a foreign law firm must include the following:

- names and addresses of its head office and branches, and names, addresses and competent representative of the foreign law firm;
- domains of law practice of the foreign law firm;
- rights, obligations, responsibilities and relationships of member lawyers of the foreign law firm;
- the organisation and managerial structure of the foreign law firm;
- the at-law representative of the foreign law firm;
- the operation term and conditions for termination of operations of the foreign law firm; and
- the mode of amendment and supplementation of the charter of the foreign law firm.

Practical challenges

The establishment of a commercial presence in Vietnam under Mode 3 is regulated and onerous. Only a small handful of law firms have currently attempted this, partly because significant effort is required and some regulatory discretion is involved.

Vietnam currently has a restricted foreign legal services market. Foreign lawyers in Vietnam can only practise foreign or international law, and they are prohibited from representing clients in Vietnamese courts. This limits the ability for foreign lawyers to set up commercial associations that compete with domestic law firms.

However, it is anticipated that Vietnam will soon be liberalising their legal services market through a modern and decentralised governance framework. By 2027, Vietnam's Law on Lawyers and Law on Commercial Arbitration are expected to be comprehensively amended to facilitate this liberalisation of the market.[36] Vietnam is continuing to liberalise its legal market - Vietnam's approach is materially driven by its trade commitments.

[36] Decree 121/2025/ND-CP.

12 Republic of the Philippines

12.1 Importance of the Philippines to Australia

The Australia-Philippines relationship is a longstanding friendship built on mutual trust and cooperation. Since 1946, Australia and the Philippines have worked together to ensure a close partnership grounded in a commitment to peace, stability and prosperity in our region. Our cooperation is deep and mature, covering defence, security and development, and growing trade and investment, all supported by strong people-to-people ties.

On 8 September 2023, Prime Minister Albanese visited Manila (the first visit by an Australian Prime Minister in 20 years) to meet with the President of the Philippines, HE Ferdinand R Marcos Jr, and elevated our bilateral relationship to a Strategic Partnership.

On 28-29 February 2024, Prime Minister Albanese welcomed President Marcos to Canberra for his first official visit to Australia. During this visit, President Marcos addressed a historic joint sitting of the Parliament of Australia (the first by a Philippine President) and agreed to a MOU on cyber cooperation and maritime security. A week later, from 4-6 March, the Prime Minister then hosted President Marcos and other Southeast Asian leaders at the ASEAN-Australia Special Summit in Melbourne.

The Philippines is an important trade and investment partner for Australia, with the Philippine economy growing at an average of 6% per year– one of the fastest growing economies in Asia. In 2024, Australia's two-way trade with the Philippines was $10.7 billion – our 20th largest two-way goods and services trading partner. Australia's proximity to the Philippines and its reputation as a supplier of quality materials and services are key factors enhancing the bilateral trade, economic, and investment relationship, with a market of 113 million people.

There are now more than 250 major Australian companies that operate in the Philippines. These Australian companies employ more than 41,000 Filipinos in the business process outsourcing, infrastructure, banking, telecommunications, energy, and education sectors. Numerous additional Australian-owned micro, small and medium sized enterprises in the hospitality, food retail and recreation sectors employ thousands of Filipinos as well.

Education engagement between Australia and the Philippines has grown significantly in recent years. In 2024, 39,227 Filipino students studied in Australia, the fourth-largest international student cohort.

However, Australian enterprises do not always prioritise the Philippines, and many Filipinos look to the United States rather than Australia when considering trade and economic opportunities. Australia struggles to be considered as an alternative over the United States and China, particularly due to the significant Chinese community in the Philippines and the close geographic relationship between the two countries.

There is opportunity to deepen relations between Australia and Philippines, and do so based on principles of mutual trust, respect and benefit. The Philippines' long colonial history of the Spanish and then the United States may lead to concerns that engagement with developed countries will not have mutual benefit.[37]

[37] Law Council of Australia, *Development of country strategies for Japan, China, Indonesia, India and South Korea*, (Submission to the Department of Foreign Affairs and Trade, 7 June 2013) <https://lawcouncil.au/publicassets/e4773631-e1d6-e611-80d2-005056be66b1/130607-Submission-2732-Country-Strategies-Japan-China-Indonesia-India-South-Korea.pdf>.

12.2 Importance of Philippines to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that the Philippines is viewed by Australian lawyers and firms as the sixth most important country in Southeast Asia from a legal services perspective.

We are not aware of any Australian law firms (or international law firms with Australian offices) historically operating in the Philippines or having a Philippine presence other than Baker McKenzie (operating via Quisumbing Torres). As with Vietnam, it is widely regarded as a more difficult jurisdiction in which to establish a commercial presence.

Many law firms have traditionally serviced the Philippines either from Hong Kong or Singapore. Most Australian law firms would service the Philippines on a FIFO basis.

12.3 Nature of the Philippine legal system

The Philippines is a hybrid or mixed-jurisdiction country: the bedrock remains the Spanish civil-law codes of the 19th century, but a century of United States rule overlaid Anglo-American common-law concepts—including adversarial procedure, judicial review and the doctrine of *stare decisis*—on top of codified statutes. The law also incorporates Indigenous customs, Islamic law and modern legislation.

The main sources of Philippine law are the Constitution, statutes, treaties and conventions, and judicial decisions. The Constitution is the fundamental law of the land and as such, it is authority of the highest order against which no other authority can prevail. Philippine law is also derived from cases because the Civil Code provides that 'judicial decisions applying to or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines'.

As such, the legal system in the Philippines operates as a complex framework of interrelated components, encompassing several types, sources and levels of authority. The classification of laws includes statutory law, customary law and jurisprudential law. Statutory laws are enacted by the legislative branch, while customary laws pertain to the long-standing practices that have evolved within Indigenous communities. Jurisprudential law, on the other hand, arises from the interpretations and rulings of courts, which guide the application of statutory and customary laws.

The hierarchical organisation of the Philippine court system consists of the Supreme Court at the apex, followed by the Court of Appeals, Regional Trial Courts, Municipal Trial Courts, and specialized courts such as Family Courts and Shari'ah Courts.

12.4 Nature of legal practice in the Philippines

Legal practitioners (known as 'Attorneys') are vital components of the Philippine legal system, encompassing a range of professionals including lawyers, judges and paralegals. Their roles intertwine to ensure the effective functioning of justice in society. In the Philippines, becoming a lawyer requires a rigorous educational and licensing process. Aspiring lawyers must first complete a four-year undergraduate degree, followed by a three-year Juris Doctor program at an accredited law school. After completing their studies, candidates must pass the Philippine Bar Examination, which is a demanding test that assesses their legal knowledge and proficiency.

Once licensed, lawyers serve multiple functions, such as representing clients in court, providing legal advice, and drafting legal documents. Their responsibilities are governed by ethical standards that promote integrity and professionalism.

The Code of Professional Responsibility outlines the duties of lawyers in the Philippines, which include maintaining client confidentiality, avoiding conflicts of interest, and acting with competence and diligence.

12.5 Impediments to Australian lawyers practising foreign law in the Philippines

The Philippines is a restrictive Southeast Asian country for the provision of legal services with some risks for Australian lawyers.

Mode 1 – Cross-border supply

There are no rules allowing Australian-based lawyers to advise clients in the Philippines on foreign law from Australia using electronic communications. The provision of international legal services via Mode 1 into the Philippines is currently tolerated in practice for transactional services but could potentially be in a legal grey area.

Philippine regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Philippine local law, particularly domestic litigation, from outside the Philippines. Complaints by local Filipino lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

Mode 4 – Presence of natural persons / temporary entry by individual lawyers

The Philippines has requirements for practice by foreign lawyers of foreign law that likely preclude FIFO, so foreign lawyers operating on a FIFO basis do so at their own risk.

Specifically, as with Vietnam, it is unlikely that FIFO lawyers could meet the requirements necessary to practise law in the Philippines. As a result, foreign lawyers advising on foreign law in the Philippines on a FIFO basis are exposing themselves to some risk. The risk of contravening visa requirements would add to this risk.

Foreign employees who work in the Philippines for a short-term (i.e. not exceeding 6 months) are required to secure a Special Work Permit (**SWP**) from the Bureau of Immigration (**BI**). If the employment is long-term (i.e., more than six months), a regular work visa, alien employment permit (**AEP**), and provisional work permit (**PWP**) will have to be secured.

Tourist and business visas have various conditions. The type of visa would depend on the length of stay in the Philippines. Under a circular issued by the Board of Investments, "*conducting business surveys or other isolated business transactions, including consultations advice, and negotiations providing technical consultations; or performing services auxiliary in an isolated contract of sale*," is considered as "non-immigrant business.[38] A Special Work Permit is required for a foreigner to engage in a non-immigrant business.

Ultimately, work-arounds can generally be adopted for transactional services involving foreign law, hence the risk of regulatory action may be relatively low. While foreign nationals cannot obtain a full licence to practise law in the Philippines, there may be opportunities for them to engage in legal work in a more limited capacity. For example, foreign lawyers may be able to provide advisory services in foreign and international law, although they cannot obtain a limited licence to do so.

However, Philippine regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Philippine domestic litigation on a FIFO basis.

It is likely that the domestic profession in the Philippines is reluctant to allow foreign lawyers to advise on domestic litigation in the interests of retaining this (and all legal) work for locals and safeguarding the domestic profession.

[38] (SGD.) Miriam Defensor Santiago, *Special Work Permit* (NAR) VOL. 1 NO.3 / July - September 1990).

Practical challenges

The legal uncertainty for Australian lawyers in advising on foreign law in relation to the Philippines using Mode 1 is clearly a concern. The risk to Australian lawyers using Mode 4 is also concerning.

Under AANZFTA, the Philippines has not made any commitments for the provision of legal services relating to the law of the Philippines.

12.6 Impediments to Australian lawyers practising Philippine local law

The Philippines' legal services market is the least liberalised of the Southeast Asian jurisdictions and this is reinforced in the Philippines Constitution.

While foreign nationals cannot obtain a full licence to practise law in the Philippines, there may be opportunities for them to engage in legal work in a more limited capacity. For example, foreign lawyers may be able to provide advisory services in foreign and international law, although they cannot obtain a full licence to do so.

Admission as a legal practitioner in the Philippines

Only those who are admitted to the Philippine bar and are in good and regular standing are entitled to practise law in the Philippines. According to the Rules of Court, rule 138, section 2, to be admitted to the Philippine Bar, an applicant must:

- be a citizen of the Philippines;
- at least 21 years of age;
- of good moral character;
- resident of the Philippines; and
- must present satisfactory evidence of good moral character, among other academic and procedural requirements.

This means that, under Philippine law, only citizens of the Philippines can become members of the Philippine Bar and practise law. Foreign nationals, regardless of their legal qualifications or experience in their home countries, cannot be admitted to practise law in the Philippines.

The Constitution of the Republic of the Philippines states that the practice of all professions in the Philippines shall be limited to citizens, save in cases prescribed by law.[39] While the Constitution mandates citizenship for practice of a profession, the Supreme Court has the exclusive prerogative to promulgate rules governing lawyer admission and regulation.[40] The Supreme Court restricts the admission to the practice of law through its Bar Examination Committee.

Only Filipino citizens can take the national bar exam, and then only after obtaining a law degree from a government-approved law school in the Philippines. The bar exam is notoriously difficult to pass, with a passing rate of 37.84% in 2024.

There is an exception for foreigners with Filipino citizenship. In this case, a foreign lawyer who reacquires Filipino citizenship may be able to obtain a limited licence to offer advisory services in foreign and international law, becoming a foreign legal consultant. However, they cannot obtain a full licence to practise law.

[39] Constitution of the Republic of the Philippines, art XII, s 14.
[40] Ibid art VIII, s 5(5).

Practical challenges

The Philippines market is closed to foreign lawyers, except on a limited basis.

While foreigners are largely not allowed to practise law in the Philippines, a foreigner may be permitted to work in a different capacity as an employee, even in law firm. There have been instances when a foreigner has been allowed to be an 'intern' in a Philippine law firm.

12.7 Impediments to Australian law firms setting up a commercial presence in the Philippines

The Philippines remains among the more protective regimes in Southeast Asia with respect to ownership and control of legal practices. The animating principle is that the practice of law is a privilege burdened with public trust, incompatible with external commercial interests — whether foreign, corporate, or non-lawyer. While globalisation, regional trade and technology continue to pressure the status quo, any meaningful liberalisation will require a constitutional-scale policy shift or a carefully crafted statute that balances openness with the judiciary's supervisory power.

Foreign law firms are not permitted to establish offices in the Philippines.[41] Foreign lawyers are also not permitted to establish a permanent office, or any form of commercial association with local lawyers, to offer advisory services in foreign and international law.

While foreign law firms, by themselves, are not allowed to operate in the Philippines, several law firms in the Philippines have various forms of affiliation with foreign law firms from the US, UK, Australia and ASEAN.

Moreover, a representative office of a foreign law firm is permitted. Such an office is allowed *de facto* under Securities and Exchange Commission registration as a 'liaison office,' but must refrain from providing Philippine-law advice. Activities are limited to international law, home-country law, or regional coordination.

Practical challenges

The Philippines market is effectively closed to foreign law firms under Mode 3, except on a limited basis. We are aware of some work-arounds used by some global firms, but generally all control of local firms rests in the Philippines.

While some global law firms may claim to have a 'Philippines branch', this often misrepresents Mode 1 services as Mode 3.

While the Philippines has considered legal market liberalisation from time to time, we are not aware of any definitive plans to do so.

[41] APEC Legal Services Initiative, *APEC economy: Philippines; Jurisdiction: Philippines* <https://www.legalservices.apec.org/inventory/philippines.html>.

13 Other Southeast Asian jurisdictions

13.1 Importance of the other Southeast Asian jurisdictions to Australian lawyers and law firms

Consultations conducted as part of this grant-funded activity indicate that Brunei Darussalam, Cambodia, Lao People's Democratic Republic (**Lao PDR**) and Timor Leste are currently of lesser priority to Australian lawyers and law firms. As such, this Report only briefly summarises the rules relating to Mode 3 and Mode 4 below but does not undertake any further analysis.

13.2 Brunei Darussalam

<table>
<tr><th>Mode 4 – Presence of Natural Persons / Temporary Entry</th><th>Mode 3 – Commercial presence</th></tr>
<tr><td><u>Full Licence</u>
Australian lawyers can apply for admission in Brunei Darussalam by petition to the Chief Justice verified by affidavit. They must comply with the procedural requirements of filing and serving the petition application. Applicants must:
Be a Brunei citizen or permanent resident. If they are neither, an applicant must have been active in practice in any Australian State or Territory for at least the preceding seven years;
Be at least 21 years old;
Provide documentary evidence that no disciplinary proceedings were pending or contemplated against the applicant, and that their professional conduct was not under investigation;
Provide two recent certificates to demonstrate their good character;
Served the period of pupillage prescribed by the Pupillage Rules if not exempt.
Once admitted, practitioners have the right to appeal and plead in all courts in Brunei.</td><td rowspan="2"><u>Foreign Associations</u>
There is no regulatory framework for the presence of foreign law firms.
Sole proprietorship and partnership business structures are not allowed to be operated by a non-citizen or non-resident of Brunei Darussalam.</td></tr>
<tr><td><u>FIFO</u>
Judges have the discretion to admit practitioners who do not ordinarily reside in Brunei Darussalam, and:
Intend to appear on a case as Queen's Counsel where they hold unique skills or qualifications necessary for that case whether such special skill and qualifications are available in Brunei; or
Are entitled to practise before the High Court in Australia; have not been admitted using this procedure in respect of more than two other cases in that calendar year; and possess special skills and qualifications for the purpose of the case which are not otherwise available in Brunei.</td></tr>
</table>

13.3 Kingdom of Cambodia

Mode 4 – Presence of Natural Persons / Temporary Entry	Mode 3 – Commercial presence
Limited Licence Foreign lawyers may practise in Cambodia with a Khmer lawyer and may accompany/assist Khmer lawyers before the courts and other institutions in Cambodia. However, foreign lawyers may not represent clients, nor perform any commercial advertising or activity to attract clients. Foreign lawyers may practise in Cambodia, subject to the above conditions, if: • They have been recognised and authorised by their country of origin to practice the legal profession; • They have been authorised by the Council of the Bar Association of the Kingdom of Cambodia; • Their country of origin allows Cambodian lawyers to join their own national Bar (principle of reciprocity).	**Foreign Associations** A foreign business may conduct business in Cambodia either through a: • Commercial representative office or commercial relations office; • Branch; or • Subsidiary. A subsidiary is a company that is incorporated by the foreign company in Cambodia with at least 51% of its capital held by the foreign company. Subsidiaries may be incorporated in the form of partnership or limited company. The subsidiary may carry on business the same as a local company, except for acts that are prohibited for foreigners. As such, foreign lawyers may not represent clients, perform commercial advertising, or activity to attract clients.

13.4 Lao People's Democratic Republic

Mode 4 – Presence of Natural Persons / Temporary Entry	Mode 3 – Commercial presence
Limited Licence Foreign lawyers may practice in Lao PDR on foreign and international laws. Foreign lawyers may be entitled to supply legal consultancy on foreign and international laws but shall not be entitled to supply legal consultancy on Lao law and must not litigate in the People's Court of the Lao. If a foreign lawyer works under a contract with a legal enterprise in Lao PDR, they must: • obtain authorisation from the Ministry of Justice; and • be registered with the Laos Bar Association.	**Foreign Associations** Foreign Legal Enterprises have the right to establish their branches in Lao PDR. Foreign legal enterprises registered in Lao PDR are entitled supply foreign laws and international laws consultancy. Foreign legal enterprises which have: • Lao Lawyer(s) as joint investor(s); or • employ Lao lawyers, are entitled to supply Lao law consultancy and to litigate cases in the People's Court of the Lao through such Lao Lawyers.
Full Licence If a foreign lawyer wishes to apply to be a lawyer in Lao PDR, they must: • Have good qualities, be virtuous and loyal towards the nation, the new regime and the legitimate rights and interests of people, impartiality, and ethics; • Hold at least a bachelor's degree in law; • Attain professional lawyer training; • Complete a lawyer internship and have a certain level of experience in legal work;	

Mode 4 – Presence of Natural Persons / Temporary Entry	Mode 3 – Commercial presence
• Pass the lawyer examination; • Have never been disciplined with a removal from civil service or sentenced by a court to cease freedom because of an act of wilful wrongdoing; • Not currently be a civil servant, soldier, or police officer; • Receive an authorisation to work in Lao PDR or have a permanent residence in Lao PDR; • Have a good knowledge of the Lao language and culture and hold at least a bachelor's degree in Lao law.	

13.5 Democratic Republic of Timor-Leste

Mode 4 – Presence of Natural Persons / Temporary Entry	Mode 3 – Commercial presence
Full Licence The practice of law in Timor-Leste is restricted to those who have been registered with the Legal Training Centre, until the Bar Association is established and begins its functions. To be registered with the Legal Training Centre in Timor-Leste, Australian lawyers must: • Hold a bachelor's degree in law; • Have practised in the legal profession for a minimum of five years, or practiced as a judge, prosecutor, or public defender for a minimum of four years; • Pass public examinations organised by the Legal Training Centre Pedagogical Board to show that they are acquainted with Timor-Leste's legal system; • Be an adult; • Present a certificate of criminal record; and • Have a written and spoken command of at least one of Timor-Leste's national languages, being Portuguese and Tetum.	**Commercial Association** Foreign investors may own and establish businesses in Timor-Leste, and they must be treated as favourably as national investors. Businesses involving a foreign investment may also employ foreign workers under the terms of the applicable legislation. Foreign investments must amount to $100,000 USD or more to be entitled to the rights, guarantees, incentives and benefits established by the law.

Trade Agreements and Market Access Commitments



14 Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA)

14.1 Importance of IA-CEPA

Indonesia is an important trading partner for Australia, and IA-CEPA is a key pillar of Australia's economic architecture with Indonesia. Since IA-CEPA's entry into force on 5 July 2020, two-way trade has almost tripled, from AUD 12.91 billion to AUD 35.38 billion in 2024.

As one of the fastest growing economies in Southeast Asia, Indonesia presents a significant opportunity for Australian businesses. By some estimates, Indonesia will be one of the world's largest economies by 2040. IA-CEPA ensures that Australia is well-placed to deepen economic cooperation and share in Indonesia's growth.

IA-CEPA aims to create a framework for Australia and Indonesia to unlock the potential of the bilateral economic partnership, fostering economic cooperation between businesses, communities and individuals.

The agreement improves Australia's access to Indonesia by eliminating or reducing tariffs on goods and increasing access for service providers and investors to the Indonesian market.

IA-CEPA complements Australia's arrangements with Indonesia under AANZFTA and RCEP. Australia's arrangements with Indonesia under AANZFTA remain unchanged; the two agreements co-exist. IA-CEPA builds on the benefits of AANZFTA by reducing non-tariff barriers to trade and simplifying paperwork. Importers and exporters have the option of selecting which agreement is best suited to them.

Importantly, IA-CEPA seeks to improve access between Australia's and Indonesia's services markets and address impediments to increasing Australian investment in Indonesia and Indonesian investment in Australia.

Market access outcomes on services and investment will provide increased certainty to Australian businesses and services suppliers in the Indonesian market, including guaranteed levels of Australian ownership. Indonesia's commitments are much stronger than they have ever agreed to before in a trade agreement.

Australia's services and investment commitments in IA-CEPA lock in Australia's existing open policy settings, similar to those in other trade agreements.

DFAT is currently seeking views from stakeholders to inform the General Review of IA-CEPA. DFAT is interested in hearing from stakeholders regarding the operation, implementation and impact of IA-CEPA since its entry into force, and areas for further improvement or expansion, including, but not limited to, consideration of deepening liberalisation and further expansion of market access. Submissions are due by 31 March 2026.

14.2 IA-CEPA and trade in legal services

Modes of supply

IA-CEPA deals with Mode 1 (Cross-border Supply), Mode 2 (Consumption Abroad), Mode 3 (Commercial Presence) and Mode 4 (Movement of Natural Persons). Again, this Report is concerned with Mode 1, Mode 3 and Mode 4.

'Trade in services' or 'supply of a service' is defined in Chapter 9 of IA-CEPA as the supply of a service:

- from the territory of a party into the territory of the other party (Mode 1);

- in the territory of a party to a person of the other party (Mode 2);
- by a service supplier of a party, through commercial presence in the territory of the other party (Mode 3); or
- by a natural person of a party in the territory of the other Party (Mode 4).

Positive commitments relating to the supply of legal services under IA-CEPA

In relation to Mode 1, Indonesia has committed to allow the supply of cross-border legal advisory services, such as advice provided via email, covering Australian law, third country law and international law on business and arbitration.

Indonesia has also undertaken to automatically lock in any future liberalisation that would allow Australian law firms to establish a commercial presence in Indonesia (Mode 3).

These outcomes benefit both Indonesia and Australia as increased access to cross-border legal services improves two-way trade and strengthens international business and investment relationships.

Further:

- Article 9.9 (Recognition) provides that for the purposes of the fulfilment, in whole or in part, of a party's standards or criteria for the authorisation, licensing or certification of service suppliers, the party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other party or a non-party;[42] and
- Annex 9A (Professional Services) provides that each party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for certification and licensing, and to take into account other multilateral agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

In relation to the movement of natural persons and entry and temporary stay (Mode 4), IA-CEPA provides as follows:

Description of Category	Conditions and Limitations (including length of stay)
Business Visitors	
A natural person staying in Indonesia for the purpose of participating in business meetings, making business contacts including negotiations for the sales of services, or engaging in other similar activities, including preparing for the establishment of a commercial presence in Indonesia, attending conferences, or giving lectures, without acquiring remuneration from within Indonesia, and without engaging in making direct sales or supplying services to the general public.	Entry and temporary stay are permitted for a period of 60 days, extendable to a maximum of 120 days.

[42] A party shall not accord recognition in a manner that would constitute a means of discrimination between the other party and non-parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

Description of Category	Conditions and Limitations (including length of stay)
Independent Professional for Legal Services[43]	
An Australian national who supplies legal services and is established as self-employed in the territory of Australia who has concluded a bona fide personal contract (other than through an agency for placement and supply services of personnel) with a law firm in Indonesia, requiring the presence on a temporary basis in Indonesia in order to fulfil the contract to provide legal services. The service contract shall comply with the requirements of the laws and regulations in Indonesia.	Entry and temporary stay are permitted for a period of one year, which may be extended for a period of not more than one year for each extension. Subject to charges levied by the Government. A law firm in Indonesia that has concluded a bona fide contract with an independent professional for legal services must have a Foreign Worker Utilisation Plan (RPTKA) approved by the Ministry of Manpower and the Ministry of Law and Human Rights. Economic needs test applies. Foreign lawyers (advocates) are: (a) Subject to recommendation from the Advocate Association; (b) Obliged to transfer legal knowledge and professional capabilities to Indonesian lawyers; and (c) Obliged to transfer knowledge to education, legal research or government institutions for at least 10 hours each month free of charge. The share of foreign lawyers (advocates) in an Indonesian law firm must not exceed 20%, and shall be limited to five foreign lawyers (advocates) per firm.

Obligations imposed by IA-CEPA on the supply of legal services

IA-CEPA provides a platform to expand the bilateral trade in services between Australia and Indonesia. IA-CEPA contains many progressive articles including, relevantly:

Obligation	Content
Article 9.3: National Treatment[44]	(1) Each party shall accord to services and service suppliers of the other party, treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers. (2) For greater certainty, the treatment to be accorded by a party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the party of which it forms a part.
Article 9.4: Most-Favoured-Nation Treatment	Each party shall accord to services and service suppliers of the other party treatment no less favourable than it accords, in like circumstances, to services and service suppliers of any non-party.

[43] Legal Services: Only for advisory services on foreign and international law. For greater certainty, advisory services shall not include legal representation in an Indonesian court of justice or the undertaking of legal proceedings under any circumstances; and notarial activities.

[44] For greater certainty, whether treatment is accorded in 'like circumstances' under Article 9.3 or Article 9.4 depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives or on the basis of nationality. Where treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives, that treatment is not inconsistent with Article 9.3 or Article 9.4

Article 9.5: Market Access[45]	Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that: 1) impose limitations on: (i) the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or 2) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.
Article 9.6: Local Presence	Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.[46]

However, Annex I (Services and Investment), Schedule of Indonesia, provides that Article 9.3 (National Treatment) and Article 9.5 (Market Access) do not apply to legal services.

'Legal services' are advisory services in foreign and international law. Legal services do not include:

- legal representation in an Indonesian court of justice or participation in legal proceedings under any circumstances; and
- notarial activities.

Annex I (Services and Investment), Schedule of Indonesia, also prohibits the commercial presence of foreign law firms (Mode 3).

Further, under Annex II (Services and Investment), Schedule of Indonesia, Indonesia reserves the right to adopt or maintain any measure that does not conform with the obligations imposed by Articles 9.3 (National Treatment), Article 9.5 (Market Access) and 9.6 (Local Presence), subject to the following qualifications.

Please note that the 'Limitations on Market Access' and 'Limitations on National Treatment' columns refer to the supply of a service:

- from the territory of a party into the territory of the other party (Mode 1);
- in the territory of a party to a person of the other Party (Mode 2);
- by a service supplier of a party, through commercial presence in the territory of the other Party (Mode 3); and
- by a natural person of a party in the territory of the other party (Mode 4).

[45] For greater certainty, the parties consider limitations on the participation of foreign capital in terms of maximum percentage equity limits on foreign shareholding or the total value of individual or aggregate foreign investment to breach Article 9.3.

[46] For greater certainty, cross-border supply of a service means the supply of a service, except where it is by a service supplier of a party through commercial presence in the territory of the other party

For all sectors, which includes legal services, Indonesia reserves the right to adopt or maintain any measure that accords more favourable treatment to any services or service suppliers under any bilateral or multilateral international agreement:

- in force or signed prior to the date of entry into force of this Agreement; and
- signed after the date of entry into force of this Agreement, except with respect to the sectors and sub-sectors.

If after the date of entry into force of IA-CEPA, Indonesia subsequently enters into any agreement with a non-party in which it accords treatment to services or service suppliers of that non-party more favourable than it accords to like services or service suppliers of Australia, Australia may request consultations to discuss the possibility of extending such treatment.

On request from Australia, Indonesia must give consideration to negotiate for the incorporation of treatment no less favourable than that provided under the agreement in question. Such incorporation shall consider the overall balance of benefits.

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Horizontal Commitments		
Legal services, only for advisory services on foreign and international law	3) Commercial presence through the constitution, acquisition or maintenance of an enterprise shall be in the form of a limited liability company denoted as PT ('Perseroan Terbatas'), unless otherwise specified. 4) Unbound, except for categories as indicated in Chapter 12 (Movement of Natural Persons).	3) Non-resident taxpayers will be subject to withholding tax of 20% if they derive the following income from an Indonesian source: (a) interest; (b) royalties; (c) dividend; (d) fee from service performed in Indonesia. 3) The right of ownership of land (hak milik) is restricted to Indonesian nationals only. Notwithstanding the above, foreign nationals and foreign companies incorporated and domiciled in Indonesia may acquire land and property on the basis of the following rights: (a) Leasehold (hak guna usaha), granted to a foreign company for a maximum period of 35 years and may be extended for a further period of 25 years. (b) Building rights (hak guna bangunan), granted to a foreign company for a maximum period of 30 years and may be extended for a further period of 20 years. (c) Right of use (hak pakai) granted to: (1) a foreign national for a maximum period of 30 years and may be extended for a further period of 20 years; (2) a foreign company for a maximum period of 25 years and may be extended for a further period of 20 years. (d) Right of lease (hak sewa), accorded to a foreign national and a foreign company for a definite period as may be agreed by the parties. Such acquisitions of land and property must be approved by the relevant authority, subject to such conditions and restrictions as may be imposed by that authority. 3) Indonesia reserves the right to adopt or maintain any measure relating to the privatisation, corporatisation, commercialisation or divestment of Government assets,

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		entities or agencies including: (a) limitations on ownership of assets; (b) transfer or disposal of equity interests or their assets; (c) the right of foreign investors or their investments to control their assets; and nationality of the senior management or members of the board of directors. For greater certainty: a) where Indonesia transfers an interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer or disposal of the interest for purposes of this entry; and b) where Indonesia transfers or disposes of an interest in an existing state enterprise in multiple phases, subparagraph (a) shall apply separately to each such phase. 3) A joint venture supplying services through commercial presence in Indonesia must have a total investment value of greater than IDR 10 billion (excluding land and buildings), except in sectors and subsectors where Indonesia has made commitments under the GATS or the AANZFTA). 1), 2), 3), 4) Indonesia reserves the right to adopt or maintain any measure for the protection of Indonesian essential security interests. 4) Unbound, except for categories as indicated in Chapter 12 (Movement of Natural Persons).

In Australia's SSC to IA-CEPA, under Annex II, Australia agrees to be bound by its market access commitments in relation to legal advisory and representational services in local law (host country law) across Modes 1, 2 and 3.

For legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services, Australia is bound by its IA-CEPA commitments across Modes 1 and 2.

Sector or Sub-Sector	Limitations on Market Access
i) Legal advisory and representational services in domestic law (host-country law)	1) None 2) None 3) None
ii) Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services	1) None 2) None 3) Natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers in South Australia.

This reference to South Australia is outdated and no longer applicable. *The Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019* (SA) took effect in July 2020 to align South Australia's foreign legal practitioner provisions with every other Australian State and Territory.

15 Singapore-Australia Free Trade Agreement (SAFTA)

15.1 Importance of SAFTA

Singapore is one of the world's most prosperous countries. SAFTA is the central pillar of Australia's economic relationship with Singapore.

SAFTA entered into force on 28 July 2003, with subsequent amendments entering into force on 24 February 2006, 13 February 2007, 11 October 2007, 2 September 2011, 1 December 2017 and 8 December 2020.

SAFTA is a comprehensive agreement. It gives Australia outcomes that go deeper and further than the WTO in relation to trade in services, intellectual property, investment and competition policy.

In addition to tariff elimination, SAFTA improves market access for Australian exporters of services, particularly education, environmental, telecommunications, and, relevantly, professional services.

With Singapore a free port, the main focus of SAFTA is in guaranteeing liberal access conditions for many Australian service suppliers. This includes, for example, exporters of legal, financial and educational services.

Singapore is also a party to AANZFTA, RCEP and CPTPP.

15.2 SAFTA and trade in legal services

'Cross-border trade in services'

SAFTA does not make direct reference to the Modes.

However, 'cross-border trade in services' or 'cross-border supply of services' is defined in Chapter 7 of SAFTA as the supply of a service:

- from the territory of a party into the territory of the other party;
- in the territory of a party to a person[47] of the other party; or
- by a natural person of a party in the territory of the other party,

but does not include the supply of a service in the territory of a party by a covered investment.

Positive commitments relating to the supply of legal services under SAFTA

Annex 4-III of SAFTA sets out Singapore's positive commitments for the supply of legal services in Singapore by Singapore citizens and permanent residents (as defined by Singapore laws and regulations) who completed their law degree courses at prescribed universities in Australia and who wish to seek admission as advocates and solicitors of the Supreme Court of Singapore.

In summary, any Singapore citizen or permanent resident who has undergone an undergraduate or a graduate course in law at any one of the Australian Universities listed in the Schedules to the Legal Profession (Qualified Persons) Rules and who is subsequently conferred the corresponding Bachelor of Laws degree or the Doctor of Jurisprudence degree specified in the relevant Schedule for that university shall be eligible to be a qualified person for the purposes of admission as an advocate and solicitor of the Supreme Court of Singapore.

[47] 'Person' means either a natural person or an enterprise.

The Singapore citizen or permanent resident must also be ranked by that university as being amongst the highest 30%, in terms of academic performance, of the total number of the graduates in the same batch who have been conferred the degree or degrees specified in that Schedule in respect of that university.

Article 19 of Chapter 7 (Cross-border Trade in Services) provides that for the purposes of the fulfilment, in whole or in part, of a party's standards or criteria for the authorisation, licensing or certification of a service supplier, the party may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other party or a non-party.[48]

Annex 7-A of SAFTA also provides that:

- the parties shall encourage relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers; and

- a party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination.

Further, under SAFTA, Singapore has also established a dedicated help desk to assist Australian natural persons seeking temporary entry into Singapore.

Obligations imposed by SAFTA on the supply of legal services

SAFTA contains many liberal provisions, relevantly:

Obligation	Content
Article 3: Market Access	Neither party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory: (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[49] (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service

[48] A party shall not accord recognition in a manner that would constitute a means of discrimination between the other party and non-parties in the application of its standards or criteria for the authorisation, licensing or certification of a service supplier, or a disguised restriction on trade in services.
[49] This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

Article 4: National Treatment[50]	1. Each party shall accord to services and service suppliers of the other party, treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers. 2. For greater certainty, the treatment to be accorded by a party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the party of which it forms a part.
Article 5: Most-Favoured-Nation Treatment	Each party shall accord to service suppliers of the other party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-party.
Article 6: Local Presence	Neither party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

However, Annex 4-I(B), Singapore's Reservations to Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment), outlines limitations in relation to the application of Articles 3 (Market Access), 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 6 (Local Presence) to legal services.

Australian lawyers must apply for registration as foreign lawyers for their practice of Australian law, international law and/or third country law with physical presence in Singapore in order to work in foreign law practices (either from Australia or any other jurisdiction) in Singapore.

Australian lawyers who are registered as foreign lawyers for the practice of Australian law, international law and/or third country law with local presence in Singapore and are working in foreign law practices (either from Australia or any other jurisdiction) in Singapore shall be allowed to participate in international commercial arbitration proceedings in Singapore by:

- representing any party in arbitration proceedings; and
- engaging in the giving of advice, preparation of documents or any other assistance in relation to or arising out of arbitration proceedings except for the right of audience in Singapore court proceedings.

In relation to Mode 3 (Commercial Presence), Australian law practices must apply for licensing as foreign law practices (as defined under Singapore law) for their practice of Australian law, international law and/or third country law with offices in Singapore, and upon obtaining such licence, they can employ:

- qualified foreign lawyers (as defined under Singapore law) of any nationality to practise Australian law, international law and/or third country law;
- Singapore lawyers (as defined under Singapore law) to practise only Australian law, international law and/or third country law but not Singapore law; and
- non-legally trained local staff in their Singapore offices.

Australian law practices may provide legal services in relation to Singapore law through a Joint Law Venture or Formal Law Alliance with a Singapore law practice, only to the extent allowed by the laws,

[50] For greater certainty, whether treatment is accorded in 'like circumstances' under Articles 4 (National Treatment) or 5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

rules and regulations concerning Joint Law Ventures and Formal Law Alliances, and subject to the conditions and requirements relating to Joint Law Ventures and Formal Law Alliances.

However, Singapore has undertaken to waive and modify the following statutory conditions governing Joint Law Ventures and Formal Law Alliances for any Australian law practice which is licensed as a foreign law practice in Singapore.

In relation to Rule 51(2)(b) and Rule 54(1)(b) of the Legal Profession (Law Practice Entities) Rules 2015:

- the minimum number of Australian lawyers resident in Singapore which the Australian law practice is required to maintain in a Joint Law Venture or a Formal Law Alliance shall be reduced from 5 to 3;

- the minimum relevant legal expertise and experience in the permitted areas of legal practice required of the 3 Australian lawyers referred to in subparagraph (i) shall be considered on an aggregate basis of 15 years for all 3 Australian lawyers, rather than on the basis of 5 years for each Australian lawyer; and

In relation to Rule 5(1)(g) of the Legal Profession (Regulated Individuals) Rules 2015:

- the minimum relevant legal expertise and experience in the permitted areas of legal practice required for Australian lawyers working in a Joint Law Venture who wish to apply to practise Singapore law under the Legal Profession Act shall be maintained at 3 years.

Further, Article 3 (Market Access), Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment) and Article 6 (Local Presence) do not apply to any measure that a party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.

In relation to legal services, Annex 4-II(B) states that Singapore reserves the right to adopt or maintain any measure in relation to the licensing of law practices and registration of representative offices, and the registration, admission and qualification of persons who are seeking to supply or are supplying legal services.

This includes the recognition of educational and professional qualifications for the purposes of such registration, admission and qualification subject to the specific commitments undertaken by Singapore in Singapore's entry for legal services in Singapore's Schedule to Annex 4-I and in Part 1 of sub-section (I) of Annex 4-III.

The temporary entry of natural persons is restricted to business visitors, contractual service suppliers, independent executives, installers and servicers and intra-corporate transferees as defined in Chapter 11 (Movement of Natural Persons).

'Temporary entry' means entry by a business visitor, a contractual service supplier, an independent executive, an installer or servicer, or an intra-corporate transferee, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes.

Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor's home country.

'Business visitors' means natural persons of a party who are:

- seeking to travel to the other party for business purposes and who must not engage in making direct sales to the general public or in supplying goods or services themselves;

- service sellers;

- investors of a party or employees of an investor (who are managers, executives or specialists) seeking temporary entry to establish an investment; or

- seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public.

A party shall grant temporary entry to a business visitor of the other party who otherwise meets its criteria for the grant of an immigration formality for a period of up to three months.

The sole fact that a party grants temporary entry to a natural person of the other party pursuant to Chapter 11 shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

Australia's commitments, provided for in Annex4-II(A), are outlined below:

Sector or Sub-Sector	Market Access Improvement
i) Legal advisory and representational services in domestic law (host-country law)	Replace existing commitments with no limitations for modes 1-3. Mode 4 is unbound except as indicated in the horizontal section.
ii) Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services	Replace existing commitments with no limitations for modes 1 and 2, mode 3 is limited as follows: In South Australia, natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers. Mode 4 is unbound except as indicated in the horizontal section.

The limitation for South Australia is no longer applicable due to changes in law bringing South Australia's regulation of foreign legal practitioners in line with every other Australian State and Territory.

16 Malaysia-Australia Free Trade Agreement (MAFTA)

16.1 Importance of MAFTA

Malaysia is one of Australia's closest regional partners and one of Southeast Asia's fastest-growing economies. MAFTA further strengthened and expanded Australia's economic relationship with Malaysia and created export and investment opportunities for Australian businesses.

MAFTA is a comprehensive agreement that further integrates the Australian economy into the fast-growing Southeast Asian region. The agreement entered into force on 1 January 2013, opening avenues for Australian goods and services into the Malaysian market.

Under MAFTA, Malaysia and Australia have cut tariffs on a wide range of goods. MAFTA also addresses other barriers to trade and makes administration for traders simpler.

MAFTA is one of four FTAs Australian businesses can use to trade with Malaysia. In addition to MAFTA, Malaysia is also a party to AANZFTA, RCEP and CPTPP. While both Australia and Malaysia are parties to AANZFTA, MAFTA built on that agreement to further liberalise the commercial relationship between the two countries. MAFTA contains a number of 'AANZFTA-plus' elements that give Australian exporters, businesses and individuals greater flexibility and improved access to the Malaysian market. It also eliminated all remaining tariffs on Malaysian goods exported to Australia.

16.2 MAFTA and trade in legal services

Modes of Supply

Chapter 8 of MAFTA (Trade in Services) includes the substantive obligations relating to trade in services for Modes 1 to 3.

Chapter 10 (Movement of Natural Persons) contains the obligations and commitments for the movement of natural persons (i.e. Mode 4).

Positive commitments relating to the supply of legal services under MAFTA

Chapter 8 of MAFTA, which is based on the AANZFTA chapter on 'Trade in Services', provides for a 'positive list' approach to scheduling market access and national treatment commitments, where each party identifies in its own schedule the services for which market access and national treatment apply, including the specification of any limitations to such access or national treatment. This approach is identical to that provided for under AANZFTA.

The market access and national treatment commitments contained in Chapter 8 of MAFTA are:

Obligation	Content
Article 8.3 National Treatment	1. In sectors inscribed in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), and subject to any conditions and qualifications set out therein, each party shall accord to services and service suppliers of the other party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[51] 2. A party may meet the requirement of paragraph 1 by according to services and

[51] Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

	service suppliers of the other party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the party compared to like services or service suppliers of the other party.
Article 8.5: Market Access	1. With respect to market access through the modes of supply identified in subparagraph (o) of Article 8.2 (Definitions), each Party shall accord services and service suppliers of the other party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments).[52] 2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), are defined as: (1) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (2) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (3) limitations on the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[53] (4) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (5) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and (6) 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.

Measures inconsistent with both Article 8.3 (National Treatment) and Article 8.5 (Market Access) are inscribed in the column relating to market access or national treatment in Annex 3 – Schedules of Specific Services Commitments (Malaysia) as outlined below.

Sector or Sub-Sector	Limitations on Market Access (Article 8.5)	Limitations on National Treatment (Article 8.3)
Legal Services (CPC 8619) Covers advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia.	1) None. 2) None. 3) Only through a corporation incorporated in the Federal Territory of Labuan. Legal services shall only be supplied	1) None. 2) None. 3) None.

[52] If a party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (o)(i) of Article 8.2 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that party is thereby committed to allow such movement of capital. If a party undertakes a market access commitment through the mode of supply referred to in subparagraph (o)(iii) of Article 8.2 (Definitions), it is hereby committed to allow related transfers of capital into its territory.
[53] Subparagraph (c) does not cover measures of a party which limit inputs for the services.

Sector or Sub-Sector	Limitations on Market Access (Article 8.5)	Limitations on National Treatment (Article 8.3)
	to offshore corporations established in the Federal Territory of Labuan.	

Further:

- Article 8.10 (Recognition) provides that a party may recognise the education or experience obtained, requirements met, or licences or certification granted in the other party for purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers of the other party.[54]

- This may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the parties or may be accorded unilaterally.

- Where a party recognises, unilaterally or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-party, a party that is a party to an agreement or arrangement, whether existing or future, shall afford adequate opportunity for the other party, if the other party is interested, to negotiate accession to such an agreement or arrangement or to negotiate a comparable one with it.

- Where a party accords recognition unilaterally, it shall afford the other party an adequate opportunity to demonstrate that the education or experience obtained, requirements met, or licences or certifications obtained in the other party should also be recognised.

Chapter 11 provides the framework for the development of mutual recognition arrangements on qualifications, registration, licensing and certification requirements and experience for the fulfilment in whole or in part, of standards and criteria for the authorisation, licensing or certification of professional services suppliers.

Article 11.2 states that the parties shall encourage the development of mutual recognition arrangements among competent bodies on professional services, by facilitating discussion and exchange of information between these bodies.

The FTA Joint Commission, or subsidiary body established by it, assists with this process.

Obligations imposed by MAFTA on the supply of legal services

Unlike AANZFTA, Chapter 8 of MAFTA does not contain a provision for consultations on most-favoured-nation treatment, however, it does include most-favoured-nation treatment in the list of issues that the FTA Joint Commission may consider in its forward work program. Australian companies supplying services to Malaysia will continue to have access to AANZFTA consultations on most-favoured-nation treatment.

Malaysia's commitments under Chapter 10 (Movement of Natural Persons), and under Article 8.3 (National Treatment) and Article 8.5 (Market Access), in relation to the supply of legal services, are outlined in Annex 4 – Schedule of Movement of Natural Persons Commitments (Malaysia).

[54] This is subject to the party not according recognition in a manner which could constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers or a disguised restriction on trade in services.

Annex 4 provides as follows:

Sector or Sub-Sector	Limitations on Market Access (Article 8.5)	Limitations on National Treatment (Article 8.3)
Legal Services (CPC 8619) Covers advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia.	Unbound, except as indicated in 1 (a) and 1(b) and 2 (a) and 3 in the horizontal section.	Unbound, except for the categories of natural persons referred to in the market access column.

Chapter 10 also provides a framework for commitments on the temporary movement of natural persons, including business visitors (including investors and goods sellers), contractual services suppliers, executives, intra-corporate transferees or installers and servicers.

'Temporary entry' means entry by a natural person covered by Chapter 10, without the intent to establish permanent residence.

Relevantly, 'business visitor' only means a natural person who is:

- a service seller or representative of a service supplier and is seeking temporary entry into Malaysia, for the purpose of negotiating the sale of services for that service supplier and will not be engaged in direct sales to the general public or in supplying services directly;

- a goods seller, being a natural person who is seeking temporary entry into Malaysia to negotiate for the sale of goods, or to enter into a distribution or retailing arrangement where such negotiations do not involve direct sales to the general public; or

- an investor of a party, as defined in Chapter 12 (Investment), seeking temporary entry into Malaysia to establish an investment and a natural person employed or otherwise engaged by an investor of the other party in respect of an investment of that investor in Malaysia.

Although Malaysia's commitments under Chapter 11, and under Article 8.3 (National Treatment) and Article 8.5 (Market Access) apply to business visitors, Annex 4 provides that entry and temporary stay of business visitors shall not exceed a total of 90 days.

Australia has similarly made positive commitments to trade in legal services, provided for in its SSC for services commitments to MAFTA:

Sector or Sub-Sector	Limitations on Market Access (Article 8.5)	Limitations on National Treatment (Article 8.3)	Additional Commitments
i) Legal advisory and representational services in domestic law (host-country law)	1) None. 2) None. 3) None.	1) None. 2) None. 3) None.	Limited Licence only is required: only registration with limited licence is required, rather than full admission/ licence, in order to provide: (a) legal advisory services in foreign law, where licensed in the relevant foreign jurisdiction(s); (b) legal advisory services in international law; or (c) legal arbitration and conciliation/mediation services
ii) Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services	1) None. 2) None. 3) None, except that natural persons practising foreign law may only join	1) None. 2) None. 3) None.	

Sector or Sub-Sector	Limitations on Market Access (Article 8.5)	Limitations on National Treatment (Article 8.3)	Additional Commitments
	a local law firm as a consultant and may not enter into a partnership with or employ local lawyers in South Australia.		in relation to foreign and international law. (By contrast, a Full Licence is required for (a)(i) above (legal advisory and representational services in domestic law (host-country law)), for which full admission is required: i.e. practitioners must satisfy admission requirements, including qualification requirements, applicable to domestic legal practitioners.) 3) Joint offices involving revenue sharing between foreign law firms and Australian local law firms are permitted in New South Wales, Victoria, Queensland, Tasmania, Western Australia, the Australian Capital Territory and the Northern Territory subject to the foreign law firms satisfying certain requirements, including in relation to liability, standard of conduct and professional ethics.

The limitation for South Australia is no longer applicable due to changes in law bringing South Australia's regulation of foreign legal practitioners in line with every other Australian State and Territory.

17 Thailand-Australia Free Trade Agreement (TAFTA)

17.1 Importance of TAFTA

TAFTA is one of three FTAs that Australian businesses can use to trade with Thailand. As a member of ASEAN, Thailand is also part of AANZFTA and RCEP.

TAFTA:

- ensures greater access to the Thai market for Australian products;
- enhances prospects for services trade and investment; and
- improves the regulatory and investment environment and promotes increased business mobility.

TAFTA has eliminated the majority of Thai tariffs on goods imported from Australia. The reduction of Thailand's previously high tariff barriers (for some goods, up to 200%) is a significant win for Australian businesses, opening up a range of export opportunities. TAFTA also improves the environment for bilateral services trade and investment.

The agreement entered into force on 1 January 2005 and was Australia's third FTA. It was Thailand's first comprehensive FTA and its first with a developed country. Total two-way trade between Australia and Thailand has more than doubled since TAFTA entered into force.

17.2 TAFTA and trade in legal services

Modes of supply

'Trade in services' is defined in Chapter 8 (Trade in Services) of TAFTA as the supply of a service:

- from the territory of a party into the territory of the other Party (i.e. Mode 1);
- in the territory of a party to the service consumer of the other Party (i.e. Mode 2);
- by a service supplier of a party, through commercial presence in the territory of the other Party (i.e. Mode 3);
- by a service supplier of a party, through presence of natural persons of a Party in the territory of the other party (i.e. Mode 4).

Positive commitments relating to the supply of legal services under TAFTA

Article 806 (Recognition) of Chapter 8 provides that for the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, each party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other party.

Article 812 states that if, after TAFTA enters into force, a party:

- enters into any agreement on trade in services with a non-party, it shall consider a request by the other party for the incorporation in TAFTA of treatment no less favourable than that provided under the former agreement; and
- further liberalises any of its services sectors, sub-sectors or activities, it shall consider a request by the other Party for the incorporation in TAFTA of the unilateral liberalisation.

Obligations imposed by TAFTA

Part IV, Specific Commitments, of Chapter 8 provides as follows:

Obligation	Content
Article 809: Market Access	1. With respect to market access through the modes of supply identified in Article 802 (i), each party shall accord services and service suppliers of the other party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in Annex 8. 2. In sectors where market access commitments are undertaken, the measures which a party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 8, are: (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (this does not cover measures which limit inputs for the supply of services); (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and (f) 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.
Article 810: National Treatment	1. In the sectors inscribed in Annex 8, and subject to any conditions and qualifications set out therein, each party shall accord to services and service suppliers of the other party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[55] 2. A party may meet the requirement of Paragraph 1 by according to services and service suppliers of the other party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the party compared to like services or service suppliers of the other party

However, Annex 8: Thailand's Commitments on Services and Investments, does not contain any provisions relating to legal services. This means that Thailand's trade in legal services is not bound by Article 809 (Market Access) and Article 810 (National Treatment).

[55] Specific commitments assumed under this Article shall not be construed to require any party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Further, Thailand's domestic laws prohibit foreigners from working in the legal profession.[56] As such. the commitments outlined in Annex 8 in relation to Australian nationals and the movement of natural persons do not apply to legal or lawsuit services.

Annex 8 does, however, allow Australian business people who hold the APEC Business Travel Card to attend business meetings/seminars or conduct business contacts without engaging in making direct sales of goods or services to the general public, supplying services, or acquiring remuneration in Thailand for up to 90 days.

Australian businesspeople who do not hold the APEC Business Travel Card will be permitted to perform the same activities for up to 15 days. Such businesspeople shall notify the Department of Employment before conducting business meetings or contacts in Thailand.

In contrast, Australia's Schedule to Annex 8 does carve out trade in legal services as a regulated sub-sector to TAFTA. Legal services here captures:

- advisory services in Australian law, third-country law and international law;
- international commercial arbitration services; and
- other alternative dispute resolution services.

Australia's Schedule notes that natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers in Western Australia and South Australia.[57] It is otherwise unbound except as indicated in the horizontal section, which sets out that Thail nationals are permitted to enter Australia and work without labour testing under the following conditions:

- business visitors will be permitted to enter and stay for up to three months;
- service sellers will be permitted to enter and to stay initially for six months, with a maximum stay of 12 months;
- intra-corporate transferees will be permitted to enter and stay initially for up to four years with a total period of up to 10 years;
- contractual service suppliers will be permitted to enter and stay for up to three years;
- executives and managers of a business with its head of operations in Thailand seeking to establish a subsidiary in Australia will be permitted to enter and stay initially for up to four years; and
- spouses and dependents of intra-corporate transferees will be permitted to enter, stay and work for the period of the intra-corporate transferee's visa.

[56] Appendix to the Royal Decree Naming Occupations and Professions Prohibited to Aliens (Foreigners) B.E. 2522 (1979).
[57] The limitation for South Australia and Western Australia is likely no longer applicable due to changes in law bringing South Australia's and Western Australia's regulation of foreign legal practitioners in line with every other Australian State and Territory.

18 ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)

18.1 Importance of AANZFA

AANZFTA is a comprehensive and single-undertaking FTA that opens and creates opportunities for the 678 million peoples of the ten ASEAN nations, Australia and New Zealand – a region with a combined gross domestic product of approximately USD 5.6 trillion. In line with the ASEAN Community Vision 2025, AANZFTA aims for sustainable economic growth in the region by providing a more liberal, facilitative and transparent market and investment regime among the twelve signatories to AANZFTA.[58]

AANZFTA is an agreement between Australia, New Zealand and the following ASEAN countries:

- Brunei Darussalam;
- Cambodia;
- Indonesia;
- Lao PDR;
- Malaysia;
- Myanmar;
- The Philippines;
- Singapore;
- Thailand; and
- Vietnam.

Timor-Leste is not a signatory to AANZFTA.

AANZFTA delivers extensive tariff reduction and greater certainty for service suppliers and investors. It came into force in:

- January 2010 for Australia, New Zealand, Brunei Darussalam, Myanmar, Malaysia, the Philippines, Singapore and Vietnam;
- March 2010 for Thailand;
- January 2011 for Lao PDR and Cambodia; and
- January 2012 for Indonesia.

AANZFTA is complemented by Australia's bilateral FTAs as well as other plurilateral agreements between Southeast Asian jurisdictions and Australia and New Zealand:

[58] 'Overview: The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)', *AANZFTA*, (Web Page) <https://aanzfta.asean.org/aanzfta-overview>.

- Australia, Brunei Darussalam, Malaysia, New Zealand, Singapore and Vietnam are signatories to the plurilateral agreement CPTPP.

- Australia, Brunei Darussalam, Cambodia, Lao PDR, Malaysia, New Zealand, Singapore, Thailand and Vietnam have ratified RCEP, which entered into force on 1 January 2022, and is discussed at section 19.

First Protocol

On 26 August 2014, in Nay Pyi Taw, Myanmar, Minister for Trade and Investment Andrew Robb signed the First Protocol to amend AANZFTA (**First Protocol**). The First Protocol simplified Rules of Origin and the process for obtaining and verifying Certificates of Origin, with the aim of addressing implementation issues and reducing administrative costs.

The First Protocol entered into force on 1 October 2015 for all but two Parties.[59]

AANZFTA Upgrade

On 21 August 2023, Assistant Foreign Minister Tim Watts, with ASEAN and New Zealand Ministers, signed the Second Protocol to Amend the AANZFTA agreement, known as the AANZFTA Upgrade. The AANZFTA Upgrade improves processes for traders to access AANZFTA's existing tariff preferences and provides new market access commitments and regulatory certainty for service providers.

The AANZFTA Upgrade introduces three new chapters to the Agreement: Micro-Small-and-Medium Enterprises, Government Procurement and Trade and Sustainable Development.

The AANZFTA Upgrade entered into force on:

- 1 April 2025 for Australia, Brunei Darussalam, Lao PDR, Malaysia, New Zealand and Singapore;

- 22 August 2025 for Vietnam; and

- 1 October 2025 for Thailand.

The AANZFTA will enter into force for Cambodia, Indonesia, Myanmar and the Philippines 60 days after the date they have notified the depository of the completion of their domestic processes.

18.2 AANZFTA and trade in legal services

One of the objectives of AANZFTA is to progressively liberalise trade in services among the parties, with substantial sectoral coverage.

'Trade in services' is defined in AANZFTA as:

- from the territory of one party into the territory of any other party;

- in the territory of one party to the service consumer of any other party;

- by a service supplier of one party, through commercial presence in the territory of any other party; and

- by a service supplier of one party, through presence of natural persons of a party in the territory of any other party.

[59] The First Protocol entered into force for Cambodia on 11 January 2016 and for Indonesia on 1 March 2019.

Relevantly, commercial presence is defined as any type of business or professional establishment, including through the:

- constitution, acquisition or maintenance of a juridical person; or
- creation or maintenance of a branch or a representative office, within the territory of a party for the purpose of supplying a service.

AANZFTA, through its chapter on Trade in Services, enhances the commitments and obligations made on services liberalisation under the WTO. For instance, under AANZFTA, Australia made GATS-plus and commercially meaningful commitments in a number of services sectors, including legal services.

Chapter 8 of AANZFTA outlines the parties' commitments to Trade in Services, including legal services, across Modes 1, 3 and 4. These commitments follow a positive-list approach to scheduling market access and national treatment commitments, under which each party specifies in its schedule any limitations that apply.

The commitments are outlined in the extracted articles below.

Obligation	Content
Article 3: National Treatment	1. In sectors inscribed in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. 2. A Party may meet the requirement of Paragraph 1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.
Article 4: Market Access	1. With respect to market access through the modes of supply identified in Article 2(s) (Definitions), each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments). 2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), are defined as: (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (d) limitations on the total number of natural persons that may be employed in

	a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and (f) 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.
Article 7: Consultations on Most-Favoured-Nation Treatment	1. Subject to Paragraph 2, if, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party in which it provides treatment to services or service suppliers of that non-Party more favourable than it accords to like services or service suppliers of other Parties under this Agreement, any other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-Party. The requested Party shall enter into consultations with the requesting Party bearing in mind the overall balance of benefits. The requesting Party shall notify all the other Parties of their request for consultations under this Paragraph. 2. No Party shall be obliged to apply Paragraph 1 with respect to treatment provided under any bilateral or plurilateral agreement between an individual ASEAN Member State, or individual ASEAN Member States, and non-Parties or Australia or New Zealand. 3. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Services Committee established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations. 4. Notwithstanding Paragraph 1, a Party shall not be obliged to enter into consultations in relation to treatment provided under any international agreement that entered into force or was signed prior to the date of entry into force of this Agreement including, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements

Obligations imposed by AANZFTA on the supply of legal services

As noted at 0, nations are only bound by the obligations in AANZFTA for trade in legal services where they have explicitly established sector carve-outs for legal services within their SSCs for services.

As such, Vietnam, Indonesia, Thailand, Lao PDR and Cambodia are the only Southeast Asian jurisdictions that are bound by AANZFTA obligations with respect to trade in legal services as they all have SSCs for services annexed to AANZFTA.

Vietnam's schedule to AANZFTA provides market access commitments for legal market across Modes 1-3, with the exception of:

- participation in legal proceedings as a representative of clients; and
- legal document and certification services of the laws of Vietnam.

Consistent with Vietnam's domestic regulations under the Law on Lawyers, Vietnam's schedule to AANZFTA provides that foreign lawyers are only permitted to establish a commercial presence through a branch, subsidiary of a foreign law organisation, foreign law firm, or partnership. The limitations set out in Vietnam's schedule is stated in the Law on Lawyers. Vietnam does not have any constraints as to national treatment.

Indonesia's schedule to AANZFTA provides that Indonesia agrees to be bound by AANZFTA commitments across Modes 1 and 2 for both market access and national treatment for trade in

advisory services in home country law and international law. However, Indonesia chooses to be 'unbound' in Modes 3, and is therefore not subject to AANZFTA commitments in relation to the commercial presence of law firms.

Thailand's schedule to AANZFTA provides for no limitations to its commitments on market access or national treatment, with the exception of Mode 4. Thailand permits the commercial presence of foreign law firms if foreign equity participation does not exceed 49% of the registered capital, and the number of foreign shareholders is less than half of the total number of shareholders of the company concerned. However, the absence of scheduled limitations to market access and national treatment under the AANZFTA is not reflective of Thailand's highly regulated and restrictive domestic regulations which requires Thai nationality in order to practise law and furthermore considers legal practice a prohibited profession that is closed to foreigners.

The SSC for Lao PDR provides for market access and national treatment of legal services, excluding:

- participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR; and
- legal documentation and certification services of the laws of Lao PDR.

It also caps foreign equity participation to 49% under Mode 3.

Cambodia makes positive commitments for legal services across Modes 1-4. Mode 3 is limited, whereby foreign commercial associations must be in association with Cambodian law firms and may not directly represent clients in court.

Malaysia similarly makes positive commitments for legal services across Modes 1, 2 and 3, including for advisory and consultancy services relating to Australian law, and international law and offshore corporation laws of Malaysia. Mode 3 is limited, whereby foreign commercial associations must be incorporated in the Federal Territory of Labuan, and legal services can only be supplied to offshore corporations established in the Federal Territory of Labuan.

The Philippines' schedule to AANZFTA covers the professional services sector, not legal services specifically. However, it provides that there are certain professions that are constitutionally protected and closed to foreign practice. It also notes that a person practising a regulated profession must secure a special permit to do so.

Details of each of these SSCs to AANZFTA with respect to legal services are outlined below.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
Australia's Schedule of Specific Services Commitments		
Legal advisory and representational services in domestic law (host-country law)	1) None. 2) None. 3) None.	1) None. 2) None. 3) None.
Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation	1) None. 2) None. 3) Natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local	1) None. 2) None. 3) None.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
services.	lawyers in South Australia.[60]	
Additional Commitments	Limited Licence only is required: Only registration with limited licence is required, rather than full admission/ licence, in order to provide: (a) legal advisory services in foreign law, where licensed in the relevant foreign jurisdiction(s); (b) legal advisory services in international law; or (c) legal arbitration and conciliation/mediation services in relation to foreign and international law. (By contrast, a Full Licence is required for (a)(i) above (legal advisory and representational services in domestic law (host country law)), for which full admission is required: i.e. practitioners must satisfy admission requirements, including qualification requirements, applicable to domestic legal practitioners.) 3) Joint offices involving revenue-sharing between foreign law firms and Australian local law firms are permitted in NSW, Victoria, Queensland, Tasmania, WA, the ACT and the NT subject to the foreign law firms satisfying certain requirements, including in relation to liability, standard of conduct and professional ethics.	
Vietnam's Schedule of Specific Services Commitments		
Legal services, excluding: • **participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam;** • **legal documentation and certification services of the laws of Vietnam.**	1) None. 2) None. 3) Foreign lawyers' organisations are permitted to establish commercial presence in Viet Nam in the following forms: • Branches of foreign lawyers' organisations; • Subsidiaries of foreign lawyers' organisations; • Foreign law firms; and • Partnerships between foreign lawyers' organisations and Viet Nam's law partnerships.[61] • Commercial presences of foreign lawyers' organisations are permitted to make consultations on Vietnamese laws if the consulting lawyers have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese law practitioners. • Commercial presences of foreign lawyers' organisations are allowed to employ	1) None. 2) None. 3) None. 4) Unbound, except as indicated in the horizontal section, in which there are conditions placed on intra-corporate transferees, other personnel, service salespersons and persons responsible for setting up a commercial firm.

[60] This reference to South Australia is outdated and no longer applicable. The *Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019* (South Australia) took effect in July 2020 to align South Australia's foreign legal practitioner provisions with every other Australian State and Territory.
[61] For clarity, a 'foreign lawyers organisation' is an organisation of practicing lawyers established in any commercial corporate form in a foreign country (including firms, companies, corporations, etc.) by one or more foreign lawyers or law firms. A foreign law firm is an organisation established in Vietnam by one or more foreign lawyers' organisations for the purpose of practicing law in Vietnam.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
	Vietnamese lawyers who meet practicing requirements in accordance with provisions of Vietnamese laws. • Foreign lawyers who have lawyer practicing license in Vietnam, issued by Vietnamese competent authority, are allowed to practise in Vietnamese law firms to make consultations on foreign law and international law. 4) Unbound, except as indicated in the horizontal section, in which there are conditions placed on intra-corporate transferees, other personnel, service salespersons, and persons responsible for setting up a commercial firm.	
Indonesia's Schedule of Specific Services Commitments		
Legal Services (Advisory services in home country law, and international law).	1) None. 2) None. 3) Unbound.	1) None. 2) None. 3) Unbound.
Thailand's Schedule of Specific Services Commitments		
Legal services	1) Unbound. 2) None. 3) Foreign equity participation must not exceed 49% of the registered capital or unless otherwise specified in the sector-specific commitments; and the number of foreign shareholders must be less than half of the total number of shareholders. 4) Unbound.	1) Unbound. 2) None. 3) None. 4) Unbound.
Lao PDR's Schedule of Specific Services Commitments		
Legal services, excluding: • **Participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR;** • **Legal documentation and certification services of the laws of Lao PDR**	1) None. 2) None. 3) Foreign equity participating limited to 49%. 4) Unbound, except for measures affecting the temporary entry and stay of natural persons who qualify under certain categories including business visitors and intra-corporate transferees.	1) None. 2) None. 3) Non-Lao PDR natural and juridical persons are not allowed to own land but may own premises and lease land up to 75 years. Unbound with respect to subsidies, investment incentives and other state support measures, eligibility for which may be limited to particular regions, categories of persons, or enterprises. Foreign investors shall provide adequate training opportunities to Lao PDR nationals. Tax measures,

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
		generally pertaining to small and medium enterprises may result in a difference of treatment in favour of Lao PDR services and service suppliers. 4) Unbound, except for measures concerning the categories of natural persons referred to in the market access column. Unbound for all measures relating to social insurance schemes including inter alia unemployment and pension benefits.
Cambodia's Schedule of Specific Services Commitments		
Legal Services	1) None. 2) None. 3) In commercial association with Cambodian Law Firms and may not directly represent clients in courts. 4) Unbound except for measures concerning the temporary entry and temporary stay of a natural person who falls into certain categories including business visitors, persons responsible for setting up a commercial establishment and intra-corporate transferees. Specifically, business visitors are permitted to stay in Cambodia for an initial 30 days, which may be extended to 90 days. Cambodia remains unbound to all measures with respect to permanent residents.	1) None. 2) None. 3) None. 4) Unbound except for measures affecting the categories of natural persons referred to in the market access column. Cambodia remains unbound to all measures with respect to permanent residents.
Malaysia's Schedule of Specific Services Commitments		
Legal Services **Covers advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia.**	1) None. 2) None. 3) Only through a corporation incorporated in the Federal Territory of Labuan. Legal services shall only be supplied to offshore corporations established in the Federal Territory of Labuan.	1) None. 2) None. 3) None.
The Philippines' Schedule of Specific Services Commitments		
Professional Services	1) 2) Service outputs: For professions with specific service outputs (e.g. plans, specifications, audit reports), such outputs shall be recognized by the Philippine government	4) Pursuant to Section 14, Article XII of the 1987 Philippine Constitution, the practice of profession in the Philippines shall be limited to citizens of the Philippines, save in

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
	provided it is signed by a registered professional with the Professional Regulation Commission (PRC) or a foreign professional with an issued Special Temporary Permit by the PRC. Also limits national treatment. 4) If the activity or undertaking of the natural person constitutes the practice of a regulated profession under Philippine laws and regulations, the natural person must secure a special permit to practice the regulated profession from the PRC pursuant to Section 7(j) of Republic Act (R.A.) No. 8981 (PRC Modernization Act of 2000). The natural person shall likewise comply with the requirements relative to practice of profession by a foreign national as provided for in the appropriate regulatory law. Also limits national treatment. 1) 2) 3) 4) The practice of regulated professions shall be subject to reciprocity requirements.	cases prescribed by law. If the activity or undertaking of the natural person constitutes the practice of a regulated profession under Philippine laws, rules and regulations, the natural person must secure a special permit or license to practice the regulated profession from the Professional Regulation Commission (PRC). The natural person shall likewise comply with the requirements relative to practice of profession by a foreign national as provided for in the appropriate professional regulatory law. Pursuant to the 1987 Philippine Constitution and other relevant laws, in activities expressly reserved to citizens of the Philippines or corporation or association where foreign equity participation is limited to a maximum of 40%, all executive and managing officers must be citizens of the Philippines. A non-Filipino citizen as officer or assigned to do technical functions shall have two Filipino understudies.

19 Regional Comprehensive Economic Partnership (RCEP)

19.1 Importance of RCEP

RCEP unites 15 nation states and is the world's largest FTA by combined GDP, population and total export value of signatory parties.

RCEP includes 20 chapters in total, covering commitments in areas such as trade in goods, trade in services, investments, intellectual property, e-commerce, competition, government procurement and dispute settlement.

RCEP negotiations were launched in November 2012 between ASEAN countries and ASEAN's FTA partners which include Australia, China, India, Japan, New Zealand and the Republic of Korea. Together, these countries account for approximately 30% of the global GDP and 30% of the world's population.

Since the 1997-98 East Asian Financial Crisis, proposals for ASEAN-centred regional economic integration have included a 2001 proposal to establish an ASEAN+3 (China, Japan and the Republic of Korea) East Asia Free Trade Area (**EAFTA**) and Japan's 2006 proposal to establish an ASEAN+6 Comprehensive Economic Partnership in East Asia (**CEPEA**), including Australia, India and New Zealand.

In 2009, a joint study group of representatives from ASEAN, Australia, China, India, Japan, the Republic of Korea and New Zealand recommended to leaders that work towards CEPEA should proceed.

At the Fourth East Asia Summit in October 2009, officials were tasked to consider the recommendations of EAFTA and CEPEA. In November 2011, ASEAN proposed its own model for an ASEAN-centred regional FTA – RCEP.

RCEP was initially endorsed by ASEAN leaders in November 2011. At ASEAN's invitation, officials from Australia and ASEAN's five other FTA partners - China, India, Japan, the Republic of Korea and New Zealand - participated in preparatory discussions in the latter half of 2012 to develop Guiding Principles and Objectives for Negotiating RCEP (which were considered by ministers in August 2012).

At the 7th East Asia Summit on 20 November 2012, the then Prime Minister Julia Gillard and Minister for Trade and Competitiveness Dr Emerson joined leaders from ASEAN and ASEAN's FTA partners to officially launch RCEP negotiations.

Australia ratified RCEP on 2 November 2021 following the completion of Australia's domestic treaty-making procedures.

RCEP entered into force on:

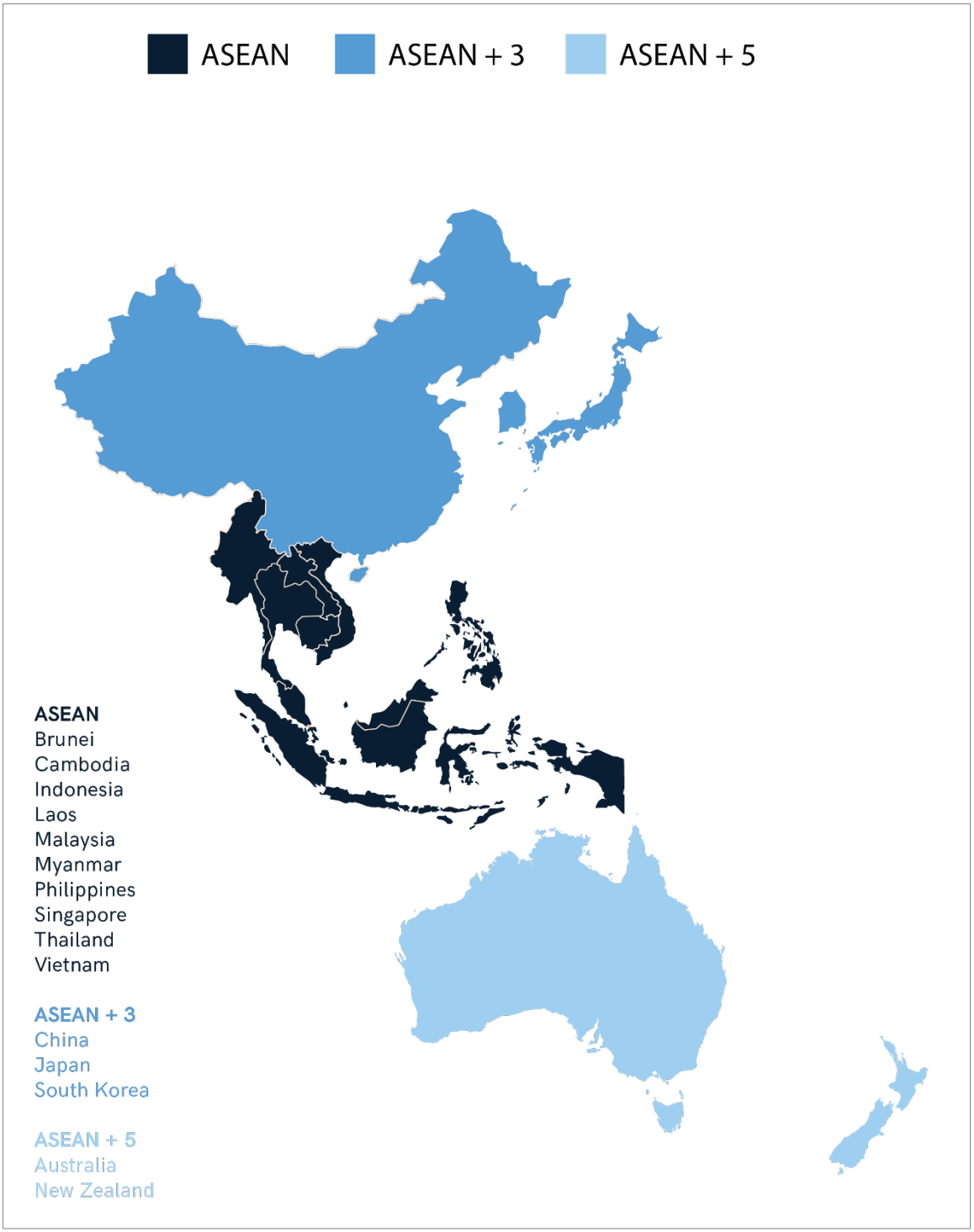
- 1 January 2022 for ten original parties: Australia, Brunei Darussalam, Cambodia, China, Japan, Lao PDR, New Zealand, Singapore, Thailand and Vietnam;
- 1 February 2022 for the Republic of Korea;
- 18 March 2022 for Malaysia;
- 2 January 2023 for Indonesia; and
- 2 June 2023 for the Philippines.

India withdrew from RCEP negotiations in November 2019, and on 15 November 2020, leaders endorsed the Ministerial Declaration on India's participation in RCEP stating that India may commence RCEP accession negotiations at any time following entry into force.

Timor-Leste is not a signatory to RCEP.

RCEP co-exists with other FTAs between and among signatory parties. Businesses can decide which FTA they use, including between SAFTA, TAFTA and AANZFTA, based on a range of factors such as the tariffs and associated rules of origin applied.

The following image outlines the 15 members of the RCEP agreement



19.2 RCEP and trade in legal services

The ministers from the 15 RCEP signatories signed the RCEP text on 15 November 2020, making certain market access commitments.

Chapter 8 in RCEP makes commitments to trade in services in relation to national treatment and market access, including legal services.

The commitments concerning national treatment, market access and most-favoured-nation treatment under Chapter 8 are extracted below:

Obligation	Content
Article 8.4: National Treatment	1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. 2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures). 3. A Party may meet the requirement under paragraph 1 or 2 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. 4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.
Article 8.5: Market Access	1. With respect to market access through the modes of supply identified in subparagraph (r) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex II (Schedules of Specific Commitments for Services). 2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.8 (Schedules of Non-Confirming Measures), are defined as: (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (d) limitations on the total number of natural persons that may be

	employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and (f) 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.
Article 8.6: Most-Favoured-Nation Treatment	1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments on Most-Favoured-Nation Treatment shall: (a) in respect of the sectors and subsectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) that are identified with an "MFN"; (b) in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services); or (c) in respect of the sectors and subsectors that are not contained in its Most-Favoured-Nation Treatment Sectoral Exemption List Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services), and subject to any conditions and qualifications set out therein, accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or of any non-Party. 2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or of any non-Party. 3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement. 4. Notwithstanding paragraphs 1 and 2, each Party which is a Member State of ASEAN reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is a Member State of ASEAN taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the Parties which are Member States of ASEAN. 5. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Obligations imposed by RCEP on the supply of legal services

RCEP adopts both a positive-listing and negative-listing approach in its schedules of specific commitments. This approach is detailed by Henry Gao of Singapore Management University:

> *"Whilst all the Parties schedule their investment commitments pursuant to the negative-listing approach under Article 10.8, for the scheduling of services commitments, the Parties are allowed to pick and choose from either a positive-listing approach or the negative-listing approach according to Article 8.3. This resulted in a confusing set up when it comes to Annex III, which not only records a Party's reservations and non-conforming measures on*

investment for those that takes a positive-listing approach (Cambodia, Lao People's Democratic Republic, Myanmar, Philippines, Thailand, Viet Nam, China, and New Zealand), but also reservations and non conforming measures on both services and investment for those that takes a negative-listing approach (Brunei Darussalam, Indonesia, Malaysia, Singapore, Australia, Japan, and the Republic of Korea).

As its title suggests, under Article 10.8, the Parties are allowed to schedule two types of restrictions: reservations and non-conforming measures. Non conforming measures under List A of Annex III refer to the measures under the first paragraph, which are existing restrictions that the Parties are allowed to maintain. It does not allow a Party to introduce new restrictions, and thus essentially lock in the existing liberalisation such Party provides. If the Party wishes to maintain the flexibility of introducing new restrictions in the future, it can schedule it under List B of Annex III, which allows a Party to adopt new restrictions according to the second paragraph of Article 10.8. Each entry to the two lists shall list the sector or sub-sector it covers, with its classification under the Central Product Classification, which is also the basis of the services sectoral classification under the GATS. The entry shall also specify the particular obligation it deviates from, describes the restrictions, and identifies the relevant laws and regulations that such restrictions are based on."[62]

The relevant commitments under Annex II – Schedules of Specific Commitments for Services with respect to trade in legal services are extracted below:

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
Cambodia's Schedule of Specific Commitments for Services		
Legal services	1) None. 2) None. 3) In commercial association with Cambodian Law Firms and may not directly represent clients in courts. 4) Unbound except for measures concerning the temporary entry and temporary stay of a natural person who falls in one of the categories referred to in Cambodia's Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons). However, Cambodia remains unbound to all measures with respect to permanent residents.	1) None. 2) None. 3) None. 4) Unbound except for measures affecting the categories of natural persons referred to in the market access column. However, Cambodia remains unbound to all measures with respect to permanent residents.
Legal Services **Foreign legal consultancy on law of jurisdiction where service supplier is qualified as a lawyer (including home country law, third country law and**	1) None. 2) None. 3) None. 4) Unbound except for measures concerning the temporary entry and temporary stay of a natural	1) None. 2) None. 3) None. 4) Unbound except for measures affecting the categories of natural persons referred to in the

[62] Henry Gao, 'The Investment Chapter in the Regional Comprehensive Economic Partnership: Enhanced Rules without Enforcement Mechanism' (2022) 446 *ERIA Discussion Paper Series,* 6-7.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
international law)	person who falls in one of the categories referred to in Cambodia's Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons). These categories include business visitors, persons responsible for setting up a commercial establishment and intra-corporate transferees. However, Cambodia remains unbound to all measures with respect to permanent residents.	market access column. These categories include business visitors, persons responsible for setting up a commercial establishment and intra-corporate transferees. However, Cambodia remains unbound to all measures with respect to permanent residents.
Lao PDR's Schedule of Specific Commitments for Services		
Legal services, excluding: • **Participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR;** • **Legal documentation and certification services of the laws of Lao PDR**	1) None. 2) None. 3) Foreign equity participation is limited to 49%. 4) Unbound, except for measures affecting the temporary entry and stay of natural persons who qualify under one of the categories referred to in Lao PDR's Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons). In its Schedule in Annex IV, Lao PDR extends its commitments under Article 9.5 (Schedules of Specific Commitments on Temporary Movement of Natural Persons) for the temporary entry and temporary stay of natural persons only for business visitors and intra-corporate transferees engaging in legal services, excluding legal representation or legal documentation and certification.	1) None. 2) None. 3) Unbound. 4) Unbound, except for measures concerning the categories of natural persons referred to in the market access column. Lao PDR extends its commitments under Article 9.5 for the temporary entry and stay of business visitors and intra-corporate transferees engaging in legal services. Unbound for all measures relating to social insurance schemes including unemployment and pension benefits.
The Philippines' Schedule of Specific Commitments for Services		
Professional Services	1) 2) Service outputs: For professions with specific service outputs (e.g. plans, specifications, audit reports), such outputs shall be recognized by the Philippine government provided it is	

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
	signed by a registered professional with the Professional Regulation Commission (PRC) or a foreign professional with an issued Special Temporary Permit by the PRC. Also limits national treatment. 4) If the activity or undertaking of the natural person constitutes the practice of a regulated profession under Philippine laws and regulations, the natural person must secure a special permit to practice the regulated profession from the PRC pursuant to Section 7(j) of Republic Act No. 8981 (PRC Modernization Act of 2000). The natural person shall likewise comply with the requirements relative to practice of profession by a foreign national as provided for in the appropriate regulatory law. Also limits national treatment. 1) 2) 3) 4) The practice of regulated professions shall be subject to reciprocity requirements.	
Thailand's Schedule of Specific Commitments for Services		
Legal services	1) Unbound. 2) None. 3) Only a limited liability company, or a type of legal entity as specified in this Schedule, incorporated and registered in Thailand pursuant to Thai laws and regulations is permitted. Commercial presence must meet one of the following categories as indicated in the sector-specific commitments: Foreign equity participation must not exceed 49% of the registered capital or unless otherwise specified in the sector-specific commitments; and the number of foreign shareholders must be less than half of the total number of shareholders. 4) Unbound	1) Unbound. 2) None. 3) None. 4) Unbound.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
Legal advisory for drafting of documents concerning only international commercial law, excluding local laws and regulations	1) None. 2) None. 3) In commercial presences, foreign equity participation must not exceed 70% of the registered capital or unless otherwise specified in the sector-specific commitments. 4) Unbound.	1) None. 2) None. 3) None. 4) Unbound.

Moreover, RCEP signatory parties also have scheduled their commitments under Annex III – Schedules of Reservations and Non-Conforming Measures for Services and Investment. These are extracted below:

Sector or Sub-Sector	Limitations on Commitments
Australia's Schedule of Reservations and Non-Conforming Measures for Services and Investment	
i) Legal advisory and representational services in domestic law (host-country law)	1) None 2) None 3) None
ii) Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services	1) None 2) None 3) None, except that natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers in South Australia.[63]
Brunei Darussalam's Schedule of Reservations and Non-Conforming Measures for Services and Investment	
Professional Services – Legal Services	Obligations Concerned: National Treatment (Article 8.4 and Article 10.3) Market Access (Article 8.5) Most-Favoured-Nation Treatment (Article 8.6 and Article 10.4) Local Presence (Article 8.11) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7) Trade in Services and Investment Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of legal services in Brunei Darussalam.
Indonesia's Schedule of Reservations and Non-Conforming Measures for Services	
'Legal services' are advisory services in foreign and international law. **Legal services do not include:** **legal representation in an Indonesian court of justice or**	Type of Obligation: National Treatment (Article 8.4) Market Access (Article 8.5) Trade in Services Commercial presences of foreign law firm services supplier are prohibited

[63] This reference to South Australia is outdated and no longer applicable. The *Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019* (South Australia) took effect in July 2020 to align South Australia's foreign legal practitioner provisions with every other Australian State and Territory.

Sector or Sub-Sector	Limitations on Commitments
participation in legal proceedings under any circumstances; and notarial activities.	
Malaysia's Schedule of Reservations and Non-Conforming Measures for Services	
Legal services (other than arbitration)	Obligations concerned: National Treatment (Article 8.4 and Article 10.3) Market Access (Article 8.5) Most-Favoured-Nation Treatment (Article 8.6 and Article 10.4) Local Presence (Article 8.11) Trade in Services and Investment **Peninsular Malaysia and the Federal Territory of Labuan** Foreign law firms and foreign lawyers are not permitted to practice save as provided under the Legal Profession Act 1976 [Act 166] and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014 [P.U. (A) 148/2014]. Foreign law firms from recognised jurisdictions must apply to the Selection Committee to be established as a Qualified Foreign Law Firm (QFLF) or an International Partnership (IP) with a Malaysian law firm. A maximum of five QFLF licences may be issued initially and only to foreign law firms with proven expertise in International Islamic Finance. Only foreign lawyers from recognised jurisdictions can apply to work in a QFLF, an IP or a Malaysian law firm. Such foreign lawyers must be resident in Malaysia for not less than 182 days in any calendar year. A QFLF and an IP, and a registered foreign lawyer working in a Malaysian law firm are subject to the provisions of the Legal Profession Act 1976 [Act 166]. Foreign lawyers providing legal services in Malaysia on a "fly in and fly out" basis shall be subject to the provisions under section 37(2B)(b) of the Legal Profession Act 1976 [Act 166]. **Sabah and Sarawak** Foreign law firms and foreign lawyers are not permitted to practice in Sabah or Sarawak.
Singapore's Schedule of Reservations and Non-Conforming Measures for Services	
Business Services - Professional Services (Legal Services)	Type of Reservation: National Treatment (Article 8.4 and Article 10.3) Market Access (Article 8.5) Most-Favoured-Nation Treatment (Article 8.6 and Article 10.4) Local Presence (Article 8.11) Senior Management and Board of Directors (Article 10.7) Trade in Services and Investment: Singapore reserves the right to adopt or maintain any measure affecting the supply of legal services in Singapore.

Chapter 9 of RCEP makes commitments in relation to the Temporary Movement of Natural Persons. Article 9.5 in Chapter 9 provides that each party shall sets out in its Schedule in Annex IV its commitments for the temporary entry into and temporary stay in its territory of natural persons of another Party. Each jurisdiction's schedule to Annex IV is extracted below:

Category	Description	Conditions and Limitations (including length of stay)
Australia		
A. Business Visitors	Business visitors being natural persons seeking to travel to Australia for business purposes whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia and who must not engage in making direct sales to the general public or in supplying the goods or services themselves.	
	(i) Service sellers, as business visitors being natural persons not based in Australia who are sales representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier.	Temporary entry is for an initial stay of six months and up to a maximum of 12 months.
	(ii) Business visitors, being natural persons seeking to travel to Australia for the purpose of participating in business negotiations or meetings.	Temporary entry is for periods of stay up to a maximum of three months
	(iii) Business visitors, being natural persons who are seeking to travel to Australia for business purposes, including investment purposes.	Temporary entry is for periods of stay up to a maximum of three months
	(iv) Business visitors, being natural persons who are seeking entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sale to the general public.	Temporary entry is for periods of stay up to a maximum of three months

Category	Description	Conditions and Limitations (including length of stay)
B. Intra-Corporate Transferees	(i) Executives and Senior Managers being natural persons who are employees of an enterprise of another Party operating lawfully and actively in Australia, and who will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian government department responsible for immigration matters: http://www.homeaffairs.gov.au/ Temporary entry is for an initial period of stay of up to four years, with the possibility of further stay
	(ii) Specialists being natural persons with advanced trade, technical or professional skills who are employees of an enterprise of another Party operating lawfully and actively in Australia, who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation, and who have been employed by that employer for not less than two years immediately preceding the date of the application for temporary entry. A specialist may include members of a licensed profession.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian government department responsible for immigration matters: http://www.homeaffairs.gov.au/ Temporary entry is for periods of stay up to two years, with the possibility of further stay.
C. Independent Executives	Independent executives being natural persons whose work responsibilities match the description set out below and who intend, or are responsible for, the establishment in Australia, of a new branch or subsidiary of an enterprise which has its head of operations in the territory of another Party and which has no other representative, branch or subsidiary in Australia. Independent executives will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian government department responsible for immigration matters: http://www.homeaffairs.gov.au/ Temporary entry is for periods of stay up to two years, with the possibility of further stay.

Category	Description	Conditions and Limitations (including length of stay)
	supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.	
D. Contractual Service Suppliers	Contractual service suppliers (including Independent Professionals or Specialists) Contractual service suppliers being natural persons with trade, technical or professional skills and experience who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation, and who are: (i) employees of an enterprise of another Party that has concluded a contract for the supply of a service within Australia and that does not have a commercial presence within Australia; or (ii) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian government department responsible for immigration matters: http://www.homeaffairs.gov.au/ Labour market testing may be required for some occupations, to the extent that this is not inconsistent with Australia's commitments under the WTO. Temporary entry is for periods of stay up to 12 months, with the possibility of further stay.
E. Spouses	Further to Article 9.3 (Spouses and Dependants), spouses of temporary entrants covered by (B), (C) and (D) are accorded full working rights where stay of those temporary entrants is greater than 12 months.	For such spouses, temporary entry and temporary stay is for the same period as for the temporary entrant.
Brunei Darussalam		
Intra-Corporate Transferees	Executives, managers or specialists: (i) who are employees of a firm that provides services within Brunei Darussalam through a branch, subsidiary or affiliate established in Brunei Darussalam; and (ii) (who have been in the prior employment of their firms outside Brunei Darussalam for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following: Executives: Natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision making and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of	Entry for these intra-corporate transferees is limited to a three-year period that may be extended for up to two additional years for a total period not exceeding five years. Entry shall be granted subject to terms, conditions, or limitations as prescribed under Brunei Darussalam's immigration laws and regulations and economic needs testing requirements. Entry shall only be granted for intra-corporate transferees supplying a service listed in Attachment A. This does **not** include legal services.

Category	Description	Conditions and Limitations (including length of stay)
	the service or services of the organisation. Managers: Natural persons within an organisation who primarily direct the organisation, or a department of sub-division of the organisation, supervising and controlling the work of other supervisory, professional or managerial employees, who have the authority to hire and fire	
Cambodia		
Business Visitors	Natural persons who: (i) enter Cambodia for the purposes of participating in business meetings, establishing business contacts including negotiations for the sale of services or other similar activities; (ii) stay in Cambodia without receiving income from sources within Cambodia; and (iii) do not engage in making direct sales to the general public or supplying services.	Entry visa for business visitors shall be valid for a period of 90 days for an initial stay of 30 days, which may be extended.
Persons Responsible for Setting Up of a Commercial Establishment	Natural persons working in an executive or managerial position, receiving remuneration from a juridical person, as defined below, who are responsible for the setting up, in Cambodia, of a commercial presence of a service provider of a Party, that will support employment of persons described in categories (i), (ii), and (iii) of the Intra-Corporate Transferees definition.	The natural persons responsible for setting up of a commercial establishment are not subject to a maximum duration of stay. Economic Needs Testing Requirement is applied.
Intra-Corporate Transferees	Natural persons who have been employed by a juridical person of another Party for a period of not less than one year and who seek temporary entry to provide services through a branch, subsidiary or affiliate in Cambodia and who are: (i) Executives: without requiring compliance with labour market tests, natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of	Temporary residency and work permit is required for the natural persons in the categories defined under intra-corporate transferees. Such permits are issued for two years and may be renewed annually up to maximum of five years in total. Economic Needs Testing Requirement is applied to the category of Specialists.

Category	Description	Conditions and Limitations (including length of stay)
	the organisation. (ii) Managers: without requiring compliance with labour market tests, natural persons employed by a juridical person and who possess knowledge at an advanced level of expertise or proprietary knowledge of a juridical person product, service, research, equipment, techniques, or management, and who primarily direct the organisation or a department of the organisation; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. They do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service. (iii) Specialists: Natural persons, within an organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's services, research equipment, techniques, or management.	
Indonesia		
Business Visitor	A natural person staying in Indonesia for the purpose of participating in business meetings, business contacts including negotiations for the sales of services, or other similar activities including those who prepare for the establishment of a commercial presence in Indonesia, attend conferences or give lectures. Such persons must not acquire remuneration from within Indonesia, and must not engage in making direct sales or supplying services to the general public.	Entry and temporary stay is permitted for a period of 60 days, extendable to a maximum of 120 days.
Intra-Corporate Transferees **Appendix IVA (Sector-Specific Commitments**)	A natural person or a group of natural persons entrusted by the shareholders of a services providing entity with the final overall control and direction of the organisation, and legally responsible to act on behalf of the organisation inside or outside of the court.	Entry and temporary stay is permitted for up to two years and could be extended for a maximum two times subject to two years extension each time. Must be working in a sector listed in Appendix IVA (Sector-Specific Commitments) that is not scheduled as

Category	Description	Conditions and Limitations (including length of stay)
		"unbound", and must satisfy the additional conditions and limitations set out therein. Any foreign natural persons supplying services are subject to charges levied by the Government. Any foreign natural persons employed in the territory of Indonesia must hold a valid working permit issued by the Ministry of Manpower. Economic needs test applies to managers and technical experts for all sectors unless specified otherwise.
	Legal Services Only for advisory services on foreign law (home country law or International Law on Business and Arbitration). For greater certainty, advisory service shall not include: (a) legal representation in Indonesian court of justice or undertake legal proceedings under any circumstances; and (b) notarial activities	Foreign lawyers (advocate) as Technical Expert are: • only allowed to work or take part in Indonesian law firm as technical experts in foreign law or international law on business and arbitration • subject to permit from the Government and recommendation from Advocate Association • obliged to transfer legal knowledge and professional capabilities to Indonesian Lawyers • obliged to transfer knowledge to education, legal research, or government institutions at least 10 hours each month free of charge. The share of foreign lawyers (advocate) in Indonesian law firm must not exceed 20% and shall be limited to five foreign lawyers (advocate) per firm.
Lao PDR		
Business Visitors	Natural persons who: • Enter Lao PDR to be engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier; • Stay in Lao PDR without receiving remuneration from sources within Lao PDR; and • Do not engage in making direct sales to the general public or supplying services.	Lao PDR extends its commitments under Article 9.5 (Schedules of Specific Commitments on Temporary Movement of Natural Persons) for the temporary entry and temporary stay of natural persons only for business visitors and intra-corporate transferees engaging in the subsectors listed at Appendix A. This includes legal services, excluding: • Participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR; • Legal documentation and certification services of the laws of Lao PDR.

Category	Description	Conditions and Limitations (including length of stay)
		The temporary stay of business visitors is subject to a maximum duration of stay of 90 days.
Intra-Corporate Transferees	Natural persons who have been employed by a juridical person of another Party outside Lao PDR for a period of not less than one year immediately preceding the request for transfer to Lao PDR, who seek temporary entry to supply services through commercial presence of that juridical person in Lao PDR, who cannot be substituted by Lao PDR nationals, and who fall within one of the following categories: • Executives • Managers • Specialists	In all cases, the total number of foreign natural persons in the categories defined under intra corporate transferees shall not exceed 20% of the total staff. For the natural persons in the categories defined under intra-corporate transferees, temporary residency and work permit will be issued for one year which may be renewed every six months for up to three years as long as conditions indicated for each category are satisfied.
Malaysia		
Legal services (other than arbitration)	(a) Service sellers or representatives of a service supplier seeking temporary entry into the territory of Malaysia, for the purpose of negotiating the sale of services for that service supplier and who will not be engaged in direct sales to the general public or in supplying services directly; (b) Goods sellers, seeking temporary entry into the territory of Malaysia for the sale of goods, or to enter into a distribution or retailing arrangement that does not involve direct sales to the general public; or (c) Natural persons who attend meetings or conferences or engage in consultations with business associates.	Unbound except as indicated in A (a) and (c), and B (a) and (b), in the Horizontal Commitments. These are extracted below: <u>A. Business visitors</u> (a) Service sellers or representatives of a service supplier seeking temporary entry into the territory of Malaysia, for the purpose of negotiating the sale of services for that service supplier and who will not be engaged in direct sales to the general public or in supplying services directly; (c) Natural persons who attend meetings or conferences or engage in consultations with business associates. <u>B. Intra-Corporate Transferees</u> (a) Senior managers being natural persons within an organisation in Malaysia: (i) having proprietary information of the organisation; (ii) exercising wide latitude in decision making relating to the establishment, control, and operation of the organisation; (iii) primarily directing the management of the organisation; and (iv) receiving only general supervision or direction from the board of directors or

Category	Description	Conditions and Limitations (including length of stay)
		partners of the organisation; (b) Specialists or experts being natural persons within the organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation. This is provided that such natural persons are employees of a foreign service supplier who have been employed for not less than two years immediately preceding the date of the application for temporary entry; And only for foreign lawyers from recognised jurisdictions who may apply to work in a Qualified Foreign Law Firm (QFLF), an International Partnership (IP), or a Malaysian law firm. Such foreign lawyers must be resident in Malaysia for not less than 182 days in any calendar year. A registered foreign lawyer working in a Malaysian law firm is subject to the provisions of the Legal Profession Act 1976 [Act 166]. Foreign lawyers providing legal services in Malaysia on a "fly in and fly out" basis shall be subject to the provisions under section 37(2B)(b) of the *Legal Profession Act 1976* [Act 166].
Singapore		
Intra-corporate Transferees	Intra-corporate transferees refer to managers, executives and specialists, as defined below, who are employees of firms that provide services within Singapore through a branch, subsidiary, or affiliate established in Singapore and who have been in the prior employ of their firms outside Singapore for a period of not less than one year immediately preceding the date of their application for admission	Entry for these intra-corporate transferees is limited to a three-year period that may be extended for up to two additional years for a total term not exceeding five years. Only for certain subsectors: does **not** include legal services.
Philippines		
Business Visitor	A natural person seeking to enter or stay in the territory of the Philippines temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of the Philippines: (i) as a representative of a goods seller or service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller or service supplier, where such negotiations do not	Temporary entry and temporary stay shall be granted to a Business Visitor of another Party, who stays in the Philippines for an initial period of 30 days, which may be extended.

Category	Description	Conditions and Limitations (including length of stay)
	involve direct sale of goods or supply of services to the general public; (ii) as an employee of a juridical person for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the territory of the Philippines; (iii) for the purpose of participating in business negotiations or meetings; or (iv) for the purpose of establishing an investment or setting up a commercial presence in the territory of the Philippines.	
Intra-Corporate Transferees	A natural person who is an employee of a juridical person established in the territory of another Party, who is transferred temporarily for the supply of a service through commercial presence (either through a joint venture, representative office, branch, subsidiary or affiliate) in the territory of the Philippines, and who has been an employee of the juridical person.	Temporary entry and temporary stay shall be granted to an Intra-Corporate Transferee (i.e., Executive, Manager, and Specialist) of another Party, who stays in the Philippines for an initial period of 30 days, which may be extended.
Vietnam		
Intra-Corporate Transferee	Managers, executives, and specialists, of a foreign enterprise which has established a commercial presence in the territory of Viet Nam, temporarily moving as intra-corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least one year.	Intra-Corporate Transferees shall be granted entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam. At least 20% of the total number of managers, executives, and specialists shall be Vietnamese nationals. However, a minimum of three non-Vietnamese managers, executives, and specialists shall be permitted per enterprise.
Other Personnel	Managers, executives, and specialists, who cannot be substituted by Vietnamese and who are employed outside of Vietnam's territory by a foreign enterprise which has established a commercial presence in the territory of Vietnam with a view to participating in the foreign enterprise's activities in Vietnam.	Other personnel shall be granted entry and a stay permit in conformity with the term of the concerned employment contract or for an initial period of three years, whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.
Persons Responsible for Setting Up a Commercial Presence	Managers and executives, as defined in (A) above, within a juridical person, who are responsible for the setting up, in Viet Nam, of a commercial presence of a service provider of a Party when (i) these people are not engaged in making direct sales or supplying services; and (ii) the service provider	The stay of persons responsible for setting up a commercial presence is limited to a 90-day period.

Category	Description	Conditions and Limitations (including length of stay)
	has its principal place of business in the territory of a Party other than Viet Nam and has no other commercial presence in Vietnam.	
Thailand		
Short Term Business Visitor **Intra Corporate Transferee**		Thailand extends its commitments under Article 9.4 (Grant of Temporary Entry) for the temporary entry and temporary stay of natural persons only for Short Term Business Visitor and Intra Corporate Transferee engaging in certain subsectors in Appendix A – Sectoral Specific Commitments. This does **not** include legal services.
Myanmar		
Business Visitor **Intra-Corporate Transferee**		Myanmar only extends its conditions and limitations for the categories of business visitors and intra-corporate transferees to certain sectors, as noted in their Attachment to Annex IV. This does **not** include legal services.

20 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

20.1 Importance of the CPTPP

CPTPP is an FTA signed on 8 March 2018 in Santiago, Chile, between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The UK signed its accession protocol to join CPTPP in July 2023.

CPTPP entered into force on:

- 30 December 2018 for Australia, Canada, Japan, Mexico, New Zealand and Singapore;
- 14 January 2019 for Vietnam;
- 19 September 2021 for Peru;
- 29 November 2022 for Malaysia;
- 21 February 2023 for Chile;
- 12 July 2023 for Brunei Darussalam;
- 15 December 2024 for the UK; and
- 21 November 2025 for Uruguay.

CPTPP evolved from the Trans-Pacific Partnership (**TPP**), which was signed on 4 February 2016 yet never entered into force because the United States withdrew from the agreement.

In 2018, CPTPP was created as a succeeding agreement, retaining two-thirds of its predecessor's provisions and suspending a limited set of provisions. The suspensions are to remain in place until the parties agree to end them, by consensus. Article 1 of the CPTPP provides that the parties agree to incorporate the TPP, by reference, into CPTPP *mutatis mutandis*, and as such, the CPTPP treaty text should be read in conjunction with the text of the original TPP.

CPTPP does not cover the ASEAN countries Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Timor-Leste or Thailand.

Since coming into force, CPTPP delivered a net benefit in expanding economic opportunities for Australian businesses and liberalising trade and investment flows between Australia and CPTPP members.

The average annual value of Australia's total goods and services exports to CPTPP members was worth $141 billion (over 2019-23), increasing 54.6% from the period before CPTPP (which averaged $91.3 billion annually over 2014-18).

The average annual value of Australia's total goods and services imports from CPTPP members was worth $92.8 billion in the 2019-23 period, increasing 16.6% from $79.6 billion in the 2014-18 period prior to CPTPP.

On 1 January 2025, Australia assumed the Chair of the CPTPP.

Australia's theme for 2025 was Delivering Sustainable Trade and Resilient Growth and focused on three overarching priorities:

- Increasing trade: leveraging CPTPP to further boost trade between members, bringing economic gains to our communities;
- Facilitating trade: Aiming to make it easier for members to trade with each other by improving processes; and
- Spreading the benefits of trade: Australia is committed to ensuring that CPTPP supports inclusive and sustainable trade practices.[64]

2025 CPTPP-EU Trade and Investment Dialogue Joint Ministerial Statement

In Melbourne, Australia on 20 November 2025, the European Trade Commissioner launched the first EU-CPTPP Trade and Investment Dialogue. The EU and the members of CPTPP represent 32% of global GDP and 37% of global trade. The EU-CPTPP Trade and Investment Dialogue covered result-oriented cooperation between the two blocs in five key areas: trade diversification, digital trade, trade and investment facilitation, supply chain resilience and the global trade environment, including WTO reform.

The CPTPP-EU shared understanding reflects the ambitious standards of CPTPP and the EU, and their shared commitment to upholding fair and open trade that is transparent, predictable and rules-based. They underscored the importance of the CPTPP-EU shared understanding in supporting sustainable development and growth, fostering a predictable trading environment and advancing cooperation in the digital economy.

The EU and CPTPP parties acknowledged that the dialogue took place during a particularly challenging time for the global trading system, and underscored their commitment to strengthening the rules-based, non-discriminatory, open, free and fair, inclusive, equitable, sustainable and transparent multilateral trading system with the WTO at its core.

2025 CPTPP-ASEAN Trade and Investment Dialogue Joint Ministerial Statement

On 20 November 2025 in Melbourne, Australia, ASEAN and the parties to CPTPP held the inaugural CPTPP-ASEAN Trade and Investment Dialogue.

The parties reaffirmed their support for ASEAN centrality in the ASEAN-led architecture, and implementation of the ASEAN Outlook on the Indo-Pacific, which is based on the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity.

In line with the ASEAN Community Vision 2045 and the ASEAN Economic Community Strategic Plan 2026-2030, the parties welcomed ASEAN's continued efforts to build a highly integrated and cohesive economy, as well as a competitive, innovative and dynamic region that enables seamless trade and investment across and beyond Southeast Asia.

20.2 CPTPP and trade in legal services

Chapter 10 of CPTPP regulates the trade of services, including the trade of legal services at Annex 10-A. It provides for the following modes of transnational legal services: FIFO, through the use of web-based or telecommunications technology, by establishing a commercial presence, or a combination of these methods. Chapter 10 is structured on a negative list basis, meaning that all services are included unless specifically excluded in the annexes. It operates on a 'ratchet' structure, whereby the regulation of services is set at existing levels and are not to be increased in future.

[64] 'TPP provisions a boon for the Australian legal profession', *Law Council of Australia* (Web Page, 4 February 2016) <https://lawcouncil.au/media/media-releases/tpp-provisions-a-boon-for-the-australian-legal-profession>.

Positive commitments relating to the supply of services under the CPTPP

Chapter 10 of CPTPP makes the following commitments in relation to trade in services, including in relation to Modes 1, 3 and 4

Obligation	Content
Article 10.3: National Treatment	1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers. 2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.
Article 10.4: Most-Favoured-Nation Treatment	Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party.
Article 10.5: Market Access	No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that: (a) impose limitations on: (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test; (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.
Article 10.6: Local Presence	No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.
Annex 10-A: Professional Services	*Legal Services* 9. 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. 10. 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; (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; (e) the following modes of providing transnational legal services are accommodated: (i) on a temporary fly-in, fly-out basis; (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); (f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and (g) a foreign law firm may use the firm name of its choice.

Schedules

The commitments made by CPTPP signatory parties in relation to cross border trade in services is limited where specifically excluded in the schedules to Annex I and II. These schedules, as they relate to legal services, are extracted below.

Sector / Sub-Sector	Limitations
Brunei Darussalam's Schedule	
Annex I	
Legal Services	Obligations Concerned: • National Treatment (Article 9.4 and Article 10.3). • Senior Management and Boards of Directors (Article 9.11). • Market Access (Article 10.5). Investment and Cross-Border Trade in Services: 1. A foreign national or service supplier may not supply legal services in Brunei Darussalam except in relation to international law or home country law. 2. A foreign national or service supplier may not establish an enterprise for the supply of legal services in Brunei Darussalam in relation to international law or home country law, except through a partnership with at least one registered Bruneian advocate and solicitor.
Annex II	
Legal Services	Obligations Concerned: • National Treatment (Article 9.4 and Article 10.3). • Performance Requirements (Article 9.10). • Senior Management and Boards of Directors (Article 9.11). • Market Access (Article 10.5). • Local Presence (Article 10.6). Investment and Cross-Border Trade in Services 1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of legal services in Brunei Darussalam, in relation to the laws of Brunei Darussalam. 2. This entry does not apply to the supply of legal services in Brunei Darussalam

Sector / Sub-Sector	Limitations
	in relation to international law or home country law, which is set out in Annex I – Brunei Darussalam – 29.
Malaysia's Schedule	
Annex I	
Legal Services (other than arbitration)	Obligations Concerned: • National Treatment (Article 9.4 and Article 10.3). • Market Access (Article 10.5). • Local Presence (Article 10.6). Investment and Cross-Border Trade in Services **Peninsular Malaysia and the Federal Territory of Labuan** Foreign law firms and foreign lawyers are not permitted to practice Malaysian law save as provided for under section 40(O) of the *Legal Profession Act 1976* [Act 166] and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014. Foreign law firms from recognised jurisdictions must apply to a Selection Committee to be established as a Qualified Foreign Law Firm (QFLF) or an International Partnership (IP) with a Malaysian law firm. A maximum of five QFLF licences may be issued in the initial period and only to foreign law firms with proven expertise in International Islamic Finance. Only foreign lawyers from recognised jurisdictions can apply to work in a QFLF, an IP or a Malaysian law firm. Such a foreign lawyer must be resident in Malaysia for not less than 182 days in any calendar year. A QFLF and an IP, and a registered foreign lawyer working in a Malaysian law firm are subject to the provisions of the *Legal Profession Act 1976* [Act 166]. Foreign lawyers providing legal services in Malaysia on a "fly in and fly-out" basis shall be subject to the provisions under section 37(2B)(b) of the *Legal Profession Act 1976* [Act 166]. **Sabah and Sarawak** Foreign law firms and foreign lawyers are not permitted to practice in Sabah or Sarawak.
Annex II	
Legal Services covering mediation and Shari'a law	Obligations Concerned: • National Treatment (Article 9.4 and Article 10.3). • Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4). • Performance Requirements (Article 9.10). • Senior Management and Boards of Directors (Article 9.11). • Local Presence (Article 10.6) Investment and Cross-Border Trade in Services Malaysia reserves the right to adopt or maintain any measures relating to mediation and Shari'a law.

Sector / Sub-Sector	Limitations
Singapore's Schedule	
Annexure II	
Legal Services	Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6). Investment and Cross-Border Trade in Services: Singapore reserves the right to adopt or maintain any measure affecting the supply of legal services in the practice of Singapore law.
Vietnam's Schedule	
Annex I	
Legal Services (CPC 861)	Obligations Concerned: • National Treatment (Article 9.4 and Article 10.3). Investment and Cross-Border Trade in Services Foreign lawyers organisations[65] and foreign lawyers may provide legal services in Viet Nam, through the following forms: (a) branches of foreign lawyers organisations; (b) wholly foreign limited liability law firm; (c) joint venture limited liability law firm; and (d) partnerships between foreign lawyer organisations and Viet Nam's law partnerships. These entities are not allowed to: (i) participate in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Vietnam; and (ii) participate in legal documentation and certification services[66] of the laws of Vietnam. Foreign lawyers practising law in Vietnam are not permitted to advise on Vietnamese law unless they have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese lawyers. They are not allowed to defend or represent clients before the courts of Vietnam.

Furthermore, CPTPP provides in Chapter 12 – Temporary Entry for Business Persons, that each signatory party shall make commitments in relation to the temporary entry and stay of business persons (Mode 4) in Annex 12-A.

[65] A "foreign lawyers organisation" is an organisation of practising lawyers established in any commercial corporate form in a foreign country (including firms, companies, corporations, etc.) by one or more foreign lawyers or law firms.

[66] For greater certainty, "legal documentation and certification services" include notary services and other services as provided in Vietnamese law, but do not include commercial contracts and business charters. Drafting on such matters as commercial contracts and business charters may be conducted by Vietnamese lawyers working in foreign lawyer organisations.

Description of Category	Description	Conditions and Limitations (including length of stay)
Brunei Darussalam's Schedule		
Business Visitor	Business Visitors means a business person who: (a) is a goods seller and is seeking temporary entry into Brunei Darussalam, for the purpose of the sale of goods or to enter into a distribution or retailing arrangement where such negotiations do not involve direct sales to the general public; (b) is a service seller or representative of a services supplier and is seeking temporary entry into Brunei Darussalam for the purpose of negotiating the sale of services for that service supplier and will not be engaged in direct sales to the general public or in supplying services directly; (c) attends meetings or conferences or engages in consultations with business associates; or (d) is a goods seller seeking temporary entry into Brunei Darussalam for the purpose of attending or participating in trade conventions and trade fairs.	Temporary entry is up to three months and can be extended for up to 12 months.
Intra-Corporate Transferees	Intra-Corporate Transferees means a Manager, Executive or Specialist.	Temporary entry is limited to a three year period that may be extended for up to two additional years for a total term not to exceed five years. Temporary entry of spouses and dependants of ICTs is for the same period as the business persons concerned. Subject to laws, regulations and policies for spouses and dependants working as professionals supplying highly specialised services and core services in the energy sector the right to work is up to two years. Extensions are possible but may be subject to economic needs test. For spouses and dependants working as other types of professionals the right to work is for a total period up to 12 months or for the duration of the contract, whichever is shorter. The initial right to work is for three months and may be extended in increments of up to three months. Extensions beyond the 12 months period are possible but maybe subject to economic needs test.
Investors	Investors means a business person who seeks to make an investment or has made investments in Brunei Darussalam, and seeks temporary entry for the purpose of dealing with any matters concerning that investment.	Temporary entry is up to three months and can be extended for up to 12 months.
Professionals	Professionals means a business person who seeks to travel to Brunei Darussalam	Temporary entry for professionals that fall under the highly specialised services and

Description of Category	Description	Conditions and Limitations (including length of stay)
	temporarily for the purpose of carrying out professional activities. The professional must possess appropriate educational and other qualifications relevant to the service to be provided.	core services categories in the energy sector is for up to two years or for the duration of the contract, whichever is shorter. Temporary entry for other professionals is for a period of up to 12 months or for the duration of the contract, whichever is shorter. The initial entry period is for three months and may be extended in increments of up to three months. Temporary entry of spouses and dependants of professionals is for the same period as the business persons concerned.
Malaysia's Schedule		
Business Visitor	(a) a service seller or representative of a service supplier seeking temporary entry into Malaysia, for the purpose of negotiating the sale of services for that service supplier and that will not be engaged in direct sales to the general public or in supplying services directly; (b) a goods seller, who is seeking temporary entry into Malaysia for the sale of goods, or to enter into a distribution or retailing arrangement that does not involve direct sales to the general public; (c) a person who attends meetings or conferences or engages in consultations with business associates; (d) an investor of a Party, as defined in Chapter 9 (Investment).	Temporary entry is for a period of up to 90 days. Does not receive any remuneration from a source located within Malaysia.
Vietnam's Schedule		
Service Sales Persons	Vietnam extends its commitments under this category to all parties that have made commitments under the headings of: • Business Visitors • Service Sales Persons Service Sales Persons are those who are not based in the territory of Vietnam and receiving no remuneration from a source located within Vietnam, and who are engaged in activities related to representing a service provider of another party for the purpose of negotiating for the sale of the services of that provider where: (i) such sales are not directly made to the general public; and (ii) the sales person is not directly engaged in supplying the service.	The entry of these sales persons is limited to a period of six months.
Intra-Corporate Transferees	Intra-Corporate Transferees comprise managers, executives and specialists of an enterprise of another Party, which has	These persons shall be granted entry for an initial period of three years which may be extended subject to the term of

Description of Category	Description	Conditions and Limitations (including length of stay)
	established a commercial presence in the territory of Vietnam, temporarily moving as Intra-Corporate Transferees to that commercial presence, and those who have been previously employed by the enterprise for at least one year.	operation of those entities in Vietnam. For any commercial presence established in the territory of Vietnam by an enterprise of another Party, at least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of three non Vietnamese managers, executives and specialists shall be permitted. The entry of spouses and dependents of Intra-Corporate Transferees shall be the same as the entry of the Intra-Corporate Transferees.
Persons Responsible for Setting up a Commercial Presence	Persons Responsible for Setting up a Commercial Presence are managers and executives (as defined in B above) within a juridical person, who are responsible for the setting up, in Vietnam, of a commercial presence of a service provider of another Party when: (i) these people are not engaged in making direct sales or supplying services; and (ii) the service provider has its principal place of business in the territory of another Party and has no other commercial presence in Vietnam.	The entry of these persons is limited to a period of one year. The entry of spouses and dependents of Persons Responsible for Setting up a Commercial Presence shall be the same as the Persons Responsible for Setting up a Commercial Presence concerned.
Other Personnel	Other Personnel comprise managers, executives and specialists, as defined in B who cannot be substituted by Vietnamese and who are employed outside Vietnam's territory by an enterprise of another Party which has established a commercial presence in the territory of Vietnam with a view to participating in the foreign enterprise's activities in Viet Nam.	These persons shall be granted entry in conformity with the term of the concerned employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.
Contractual Service Suppliers	Contractual Service Suppliers are business persons who are employees of an enterprise of another party having no commercial presence in Vietnam and having obtained a service contract from a Vietnamese enterprise engaged in business operation in Vietnam. The competent authority of Vietnam must be able to establish the necessary procedures to guarantee the bona fide character of the contract. Contractual Service Suppliers must possess either: (a) a university degree or a technical qualification document demonstrating knowledge of an equivalent level; (b) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws and regulations of Viet Nam; or (c) at least five years of professional	Contractual Service Suppliers may enter Vietnam for a period of six months or for the duration of the contract, whichever is shorter. Extensions may be possible. The number of Contractual Service Suppliers covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws and regulations and requirement of Viet Nam. The entry of spouses and dependents of Contractual Service Suppliers shall be the same as Contractual Service Suppliers concerned.

Description of Category	Description	Conditions and Limitations (including length of stay)
	experience in the sector. Contractual Service Suppliers should have been employed by the foreign enterprise having no commercial presence in Vietnam for a period of no less than two years and have met the requirements prescribed for Specialists above. The entry of Contractual Service Suppliers is allowed for the following sectors: • Legal services.	

21 Overview of specific GATS commitments relating to trade in legal services

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
Australia's Schedule of Specific Commitments		
Legal services **Home country law, including public international law**	1) None. 2) None. 3) Natural persons practising foreign law may only join a local law firm as an employee or as a consultant and may not enter into partnership with or employ local lawyers.	1) None. 2) None. 3) At least one equity partner in a firm engaged in advising on foreign law matters must be a permanent resident (NSW, Victoria); at least one equity partner in a foreign law firm must be resident for a minimum period of 180 days per calendar year (Queensland).
Additional commitments	3) Joint offices involving revenue-sharing between foreign law firms and Australian local law firms are permitted in NSW, Victoria, Queensland and Tasmania subject to the foreign law firms satisfying certain requirements, including in relation to liability, standard of conduct and professional ethics.	
Cambodia's Schedule of Specific Commitments		
Legal services	1) None. 2) None. 3) In commercial association with Cambodian law firms,[67] and may not directly represent clients in courts. 4) Unbound, except as indicated in the horizontal section (outlined below): a. measures concerning the entry and temporary stay of a natural person who falls within the category of business visitor, intra-corporate transferee, amongst others; and b. entry visa for business visitors is valid for 30 days, which may be extended to a maximum of 90 days.	1) None. 2) None. 3) None. 4) Unbound, except as indicated in the horizontal section (outlined below): a. measures concerning the entry and temporary stay of a natural person who falls within the category of business visitor, intra-corporate transferee, amongst others; and b. entry visa for business visitors is valid for 30 days, which may be extended to a maximum of 90 days.
Foreign legal consultancy on law of	1) None.	1) None.

[67] If legal services provided in foreign law (including home country and third country law) and international law, the commercial association with Cambodian law firms is not required. Commercial association is understood to include any commercial arrangement and does not imply a specific juridical form.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
jurisdiction where service supplier is qualified as a lawyer (including home country law, third country law and international law)	2) None. 3) None. 4) Unbound, except as indicated in the horizontal section (outlined below): a. measures concerning the entry and temporary stay of a natural person who falls within the category of business visitor, intra-corporate transferee, amongst others; and b. entry visa for business visitors is valid for 30 days, which may be extended to a maximum of 90 days.	2) None. 3) None. 4) Unbound, except as indicated in the horizontal section (outlined below): a. measures concerning the entry and temporary stay of a natural person who falls within the category of business visitor, intra-corporate transferee, amongst others; and b. entry visa for business visitors is valid for 30 days, which may be extended to a maximum of 90 days.
Malaysia's Schedule of Specific Commitments		
Legal services covering advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia	1) None. 2) None. 3) Only through a corporation incorporated in the Federal Territory of Labuan. Legal services shall only be supplied to offshore corporations established in the Federal Territory of Labuan. 4) Unbound except for measures affecting the entry and temporary stay of natural persons falling in the categories of intra-corporate transferees, and others (specialists or experts, and business visitors). Entry and stay of these natural persons shall not exceed a total of five years; for business visitors, entry shall not exceed a total of 90 days.	1) None. 2) None. 3) None. 4) Unbound except for measures affecting the entry and temporary stay of natural persons falling in the categories of intra-corporate transferees, and others (specialists or experts, and business visitors). Entry and stay of these natural persons shall not exceed a total of five years; for business visitors, entry shall not exceed a total of 90 days.
Thailand's Schedule of Specific Commitments		
Legal services	1) Unbound. 2) None. 3) None other than that indicated in the horizontal section (outlined below): a. Commercial presence is only through a limited liability company which is registered in Thailand and which meets the following conditions: i. foreign equity participation does not exceed 49%	1) Unbound. 2) None. 3) No limitations as long as foreign equity participation does not exceed 49%. 4) Unbound.

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
	of the registered capital; and ii. the number of foreign shareholders is less than half of the total number of shareholders of the company concerned, unless otherwise stated. 4) Unbound.	
Timor-Leste's Schedule of Specific Commitments		
Legal Services **Advisory services on foreign and public international law**	1) None. 2) None. 3) None. 4) Unbound, except for measures concerning the entry and temporary stay of natural persons falling in the categories of business visitors, employees of a foreign commercial presence, and contract service suppliers and independent professionals. Business visitors are permitted to stay for a maximum of 60 days. Employees of a foreign commercial presence are permitted to stay for six months extendable up to two years and a maximum of one year for those with a technical/specialist function (subject to a labour market test). Contract service suppliers and independent professionals (subject to a labour market test) are permitted to stay up to 60 days per year.	1) None. 2) None. 3) Foreign legal practitioners are required to work with Timorese lawyers. Foreign law firms authorised to operate in Timor-Leste are permitted to hire lawyers licensed to practise in Timor-Leste. 4) Unbound, except for measures concerning the entry and temporary stay of natural persons falling in the categories of business visitors, employees of a foreign commercial presence, and contract service suppliers and independent professionals. Business visitors are permitted to stay for a maximum of 60 days. Employees of a foreign commercial presence are permitted to stay for six months extendable up to two years and a maximum of one year for those with a technical/specialist function (subject to a labour market test). Contract service suppliers and independent professionals (subject to a labour market test) are permitted to stay up to 60 days per year.
Vietnam's Schedule of Specific Commitments		
Legal services, excluding: • **participation in legal proceedings in the capacity of defenders or representatives of**	1) None. 2) None. 3) Foreign lawyers' organisations are permitted to establish commercial presence in Vietnam in the following forms:	1) None. 2) None. 3) None. 4) Unbound, except for measures relating to entry and temporary stay of natural persons falling within the categories of intra-corporate

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment
their clients before the courts of Vietnam; and • **legal documentation and certification services of the laws of Vietnam.**	• branches of foreign lawyers' organisations; • subsidiaries of foreign lawyers' organisations; • foreign law firms; or • partnerships between foreign lawyers' organisations and Vietnam's law partnerships. Commercial presences of foreign lawyers' organisations are permitted to make consultations on Vietnamese laws if the consulting lawyers have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese law practitioners. 4) Unbound, except for measures relating to entry and temporary stay of natural persons falling within the categories of intra-corporate transferees (managers, executives and specialists), other personnel, service sales persons, persons setting up a commercial presence, or contractual service suppliers.	transferees (managers, executives and specialists), other personnel, service sales persons, persons setting up a commercial presence, or contractual service suppliers.
Lao PDR's Schedule of Specific Commitments		
Legal services, excluding: • **participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR; and** • **legal documentation and certification services of the laws of Lao PDR**	1) None. 2) None. 3) Foreign equity participation limited to 49%. 4) Unbound, except as indicated in the horizontal section (outlined below): a. movement of natural persons providing services; and b. unbound, except for measures affecting the temporary entry and stay of natural persons who qualify as business visitors or intra-corporate transferees. The temporary stay of business visitors is subject to a maximum duration of stay of 90 days. The total number of foreign natural persons across business visitors and intra-corporate transferees shall not exceed 20% of the total staff.	1) None. 2) None. 3) Unbound. 4) Unbound, except as indicated in the horizontal section (outlined below): a. movement of natural persons providing services; and b. unbound, except for measures affecting the temporary entry and stay of natural persons who qualify as business visitors or intra-corporate transferees. The temporary stay of business visitors is subject to a maximum duration of stay of 90 days. The total number of foreign natural persons across business visitors and intra-corporate transferees shall not exceed 20% of the total staff.

Recommendations and Conclusion



22 Strategies to improve market access

22.1 Deepen commitments and upgrade existing FTAs to the 'gold standard'

It is recognised that legal services liberalisation is not necessarily on the 'top 10' list of goods and services that practically drive the core focus of Australian trade negotiations. The agricultural sector in Australia, for example, often has priority in market access negotiations given the significant economic advantages that would flow to Australia from improved market access for agricultural exports.

As such, the strategies and recommendations for the Australian Government in this Report have a pragmatic focus on what could potentially be achievable for the Australian legal profession, given its relative prioritisation in trade negotiations, over the coming years.

In this regard, a key starting point for any FTA negotiation is to draw from commitments already made or offered by counties in the WTO and other FTAs involving the relevant country. If the country has already made concessions in the WTO and any other FTA or FTA negotiations, this clearly demonstrates the country's willingness and ability to do so in respect of Australia.

Specifically, the Southeast Asian nations the subject of this Report will have made various concessions in the following contexts:

- **The GATS SSC** – As set out in 0 of this Report, the relevant Southeast Asian nations are all signatories to the GATS and many have SSCs that in many instances already address trade in legal services;

- **Existing FTAs** – Of the various FTAs concluded to date, CPTPP likely provides the 'gold standard' for obligations relating to trade in legal services as it provides the most granular and greatest range of commitments. CPTPP explicitly recognises the essential role played by transnational legal services in facilitating trade and economic growth, and outlines that the manner in which foreign lawyers are permitted to practise foreign law shall be no more burdensome than the requirements imposed on domestic lawyers. It also accommodates for the use of FIFO, technology, commercial presences, or a combination of these modes to provide for transnational legal services. As only a small subset of Southeast Asian nations is party to CPTPP, the CPTPP may provide a useful precedent for other FTAs;

- **Other FTAs** – The relevant Southeast Asian nations may be signatories to FTAs with other countries, such as the United States, which include commitments relating to trade in legal services. This Report does not analyse these other commitments, but they would be part of the research normally undertaken by the Australian Government for FTA negotiations; and

- **Non-completed FTAs** – There are several FTAs that were either never concluded, or other FTAs that are still under negotiation. To the extent that commitments were offered (or even negotiated to an outcome), but never formally locked in via a ratified FTA, there should be scope to leverage from those commitments.

The FTAs entered into by Australia to date already adopt the approach of building upon pre-existing commitments in respect of the WTO and are therefore colloquially regarded as 'WTO plus' agreements, because they involve commitments beyond the existing GATS commitments in the WTO. To the extent any FTA is not 'WTO plus' in respect of trade in legal services, a starting point for any updating would be to ensure that the FTA at least reflects any commitments made in the GATS pertaining to trade in legal services.

Beyond this, TiSA negotiations are widely regarded as the 'high water mark' in relation to the liberalisation of trade in services. The TiSA negotiations were a significant international effort aimed at liberalising worldwide trade in services, but ultimately did not result in any concluded agreement.

While Australia was a party to these negotiations, none of the Southeast Asian nations the subject of this Report were involved. As such, there is unlikely to be any scope to leverage from TiSA commitments in the context of upgrading existing FTAs for Southeast Asia, however, TiSA does provide a set of useful precedent clauses that can be incorporated into FTAs where this can be negotiated in the circumstances.

In respect of FTAs with countries other than Australia, this Report has not undertaken an analysis of each FTA entered into by each of the Southeast Asian nations with such other countries or the extent to which such FTAs address trade in legal services. We assume this work would already be undertaken by the Australian Government as part of the preparatory work for FTA negotiations with any country, and so would already be known by DFAT. As such, DFAT will already know the likely scope to push for commitments in any FTA that match concessions already given by the relevant country in other FTAs into which Australia has entered.

We understand that in FTA negotiations it is usually possible to agree to a package of commitments at the start of the negotiating process that essentially seek to upgrade and align the particular FTA with commitments already made in the WTO and other relevant FTAs. Any such package may be a relatively straightforward way to update the relevant FTAs in respect of trade in legal services, therefore ensuring a common minimum standard is adopted across the FTAs to which Australia is a party.

This Report suggests that the upgrading of plurilateral agreements be prioritised in comparison to Australia's bilateral FTAs with Southeast Asian jurisdictions. Doing so is advantageous as ASEAN often operates and undertakes negotiations as a unified bloc, rather than bilaterally. Plurilateral upgrades therefore better stimulate regulatory cooperation, transparency, common commitments across the region and address regulatory barriers to trade in legal services.

However, this strategy is contingent on all parties to the plurilateral agreement agreeing to implement the relevant terms. In practice, any commitments remain subject to, and constrained by, domestic regulatory frameworks and the oversight of legal professional bodies within each party's jurisdiction.

Further, the upgrading of bilateral FTAs with our key trading partners including Indonesia, Singapore, Malaysia and Vietnam is still critical. These jurisdictions have highly idiosyncratic legal licensing rules that require country-specific negotiation. Such negotiations also provide Australia with an opportunity to capacity-build, and strategically invest resources into FTA upgrades with valuable economic partners.

22.2 Strengthen rules on digital trade to adapt to the digital shift

As highlighted by Kristen Bondietti of the Australian Asia Pacific Economic Cooperation (**APEC**) Study Centre, in a presentation to the Law Council that informed this Report, digitalisation is changing services delivery and trade, including in relation to the supply of legal services.

Digitalisation is driving remote delivery of services. So-called 'digitally deliverable services' (**DDS**) are the fastest growing component of world trade. The use of digital technologies is particularly high in the nations in Southeast Asia with some 85% of services exports now delivered digitally in each of Indonesia, the Philippines and Vietnam.

Innovative technologies and artificial intelligence are continuing to create new services offerings and ways of working, including in the legal profession. For example, advisory services are now delivered on multiple technologies and platforms, including new law technologies (such as virtual data rooms, online portals, chatbots and document databases).

Australia already has a 'digital trade strategy' that is an existing focus of the Australian Government. We do not know if this is one of the 'top 10' focus areas for the Australian Government, but assume that it likely is based on various recent commentary.

The Digital Trade Strategy is articulated in a DFAT strategy paper as of April 2022. The paper explains that the Digital Trade Strategy provides a framework for Australia to maximise economic

growth by shaping an enabling environment for digital trade. It guides Australia's practical action as a leader in digital trade, informing Australia's work to develop digital trade rules to deliver commercial benefits and push back against digital protectionism.

Under the Digital Trade Strategy:

> *"In delivering a modern and digital economy to drive Australia's future prosperity, Australia will maximise economic growth by shaping an enabling environment for digital trade. To do this, Australia will pursue global digital trade rules that reduce barriers to digital trade and support the growth of an open and competitive economic environment, including through:*
>
> - *Advocating for digital trade liberalisation, standards and regulatory cooperation with international partners and through participation in international fora.*
> - *Negotiating liberalising and trade-facilitative digital trade rules and commitments in bilateral, multilateral and plurilateral agreements.*
> - *Supporting the implementation of digital trade rules internationally, including through development assistance and capacity building projects and through promotion of Australian business overseas."*

As identified in this Report, the provision of legal services in the 2020s already involves a very high digital component. As such, liberalisation achieved in the context of digital trade liberalisation has the potential to improve Australia's ability to deliver legal services into Southeast Asia.

Specifically, this Report identifies that a key aspect of the delivery of legal services in the 2020s involves 'Mode 1' and hence cross-border supply. Under this Mode, lawyers located in Australia provide legal services to clients located in Southeast Asia by way of email, Microsoft Teams, Zoom and other forms of modern electronic communications and software.

However, as identified in this Report, such provision of legal services is not necessarily expressly permitted by domestic laws in the relevant jurisdictions. Generally, the position in most Southeast Asian jurisdictions is that:

- The provision of international legal services via Mode 1 into the country is widespread among law firms and is currently tolerated in practice for transactional services, even though it may technically be in a legal grey area.
- However, local regulatory authorities would be concerned by any evidence of foreign lawyers advising on domestic litigation from outside the country involving local law, as this would directly impinge on the role of local legal counsel. Complaints by local lawyers could trigger investigations.
- International arbitration is an exception and tends to be regarded more as an international law service, even though it many involve some advocacy on matters of local law in the context of the international arbitration, provided local courts are not involved. However, care needs to be taken.

As such, there would be greater scope to seek to more formally recognise the provision of international legal services via electric commerce in Mode 1, given this practice already widely occurs. As highlighted by participants at the Law Council's Roundtable on Trade in Legal Services in Southeast Asia, professional services and especially legal services underpin all trade. Foreign lawyers are already providing legal services for international projects and transactions, and this practice should be regularised and facilitated. By doing so, such recognition may provide a useful degree of certainty to Australian lawyers and firms that the provision of international legal advice on transactional matters will not result in regulatory action by the relevant country or contravene insurance conditions.

However, it is not suggested in this Report that any liberalisation is sought in relation to the cross-border supply of legal services on local law or local advocacy, except international arbitration. In any event, Australia itself has not opened its legal market to such a degree.

Beyond the Digital Trade Strategy, there are various existing mechanisms that could be used to promote greater regulatory dialogue in relation to new legal services technologies. For example, regulatory dialogue is contemplated by the recent United Kingdom Singapore Digital Economy Agreement (**UKSDEA**). The UKSDEA establishes high-standard rules to promote end-to-end digital trade between Singapore and the United Kingdom and provides greater legal certainty and clarity for businesses by enabling the open and secure flow of data across borders. The UKSDEA also includes a wide range of cooperative elements in emerging areas such as Artificial Intelligence, FinTech and digital identities.

22.3 Promote Best Practice Principles to address domestic regulatory frameworks

As identified in this Report, the Law Council has long been an important contributor to government on the development of legal services market access policy and advocating for the liberalisation of legal services markets, particularly in the Asia-Pacific region. Under its current *Strategic Plan 2021-2026,* the Law Council aims to maximise Australia's participation in the global services market.

In 2015, the Law Council developed '*Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Practice*' (**Best Practice Principles**) and continues to promote these principles internationally in accordance with its strategic objectives. The Best Practice Principles provide an important reference point for the Law Council's various submissions and an important objective in relation to minimum standards of market access for Australian legal professionals. A copy of the Best Practice Principles is set out in **Annexure A**.

The Law Council developed the Best Practice Principles to provide a neutral, principles-based framework for the regulation of foreign lawyers and transnational law practice. The Best Practice Principles are consistent with the IBA's 1998 resolution on the regulation of foreign lawyers and are informed by extensive research by the Law Council on regulatory systems as well as input from both law firms and their clients.

Specifically, the Best Practice Principles reflect the long-standing approaches of the IBA (*IBA Statement of General Principles for the Establishment and Regulation of Foreign Lawyers, 6 June 1998*) and discussions held at the APEC Legal Services Workshop in Singapore (30-31 July 2009).

The Best Practice Principles were developed in 2012, with input from the Law Council of Australia and the legal profession, via the International Legal Services Advisory Council (**ILSAC**), a high-level public-private sector consultative forum established by the Australian Government to provide advice on international legal and related services issues. The ILSAC had previously proposed in July 1988 six guiding principles for achieving the liberalisation of international trade in legal services.

The Best Practice Principles start by documenting some fundamental reasons why such principles are important and why it is important to permit and co-ordinate the supply of cross-border legal services, namely:

- The need for domestic (host country) and foreign lawyers to work together to provide fully integrated transnational legal services to support various transactions, projects and other matters.

- The mutual benefits for both foreign lawyers and the domestic legal profession through knowledge and expertise transfer and exposure to international best practice (and that any regulation should be sufficiently flexible to permit the free flow of knowledge and expertise between foreign lawyers and the domestic profession).

- The need for transnational legal services to address a complex mix of local and foreign law with the extent of that mix subject to constant change during a transaction (as such it is unrealistic to identify and define a boundary between local and foreign law in such transactions).

Notably, a similar acknowledgement is included in clause 9 of Annex 10-A (Professional Services) of the Trans-Pacific Partnership that is included in the CPTPP, which provides:

> *"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."*[68]

The Best Practice Principles then seek to provide some comfort to local lawyers that the types of legal services provided by offshore law firms tend not to be the types of domestic legal services consumed by domestic clients, namely:

- The demand for transnational commercial and business legal services is client driven and such clients are invariably well-informed and sophisticated international and domestic corporations.

- Foreign lawyers providing foreign law services do not seek to provide domestic consumer legal services in areas such as family law, wills and probate, personal injury or criminal law.

The Best Practice Principles next call for a proportionate approach that reflects the different circumstances of each jurisdiction, namely:

- The extent of consumer protection measures imposed on foreign lawyers engaged in providing fully integrated transnational legal services should therefore be appropriately tempered.

- Countries will progressively adopt foreign lawyer regulatory systems that are suitable to their individual circumstances.

The actual principles themselves seek to establish minimum regulatory standards to ensure foreign lawyers achieve fair and equitable treatment under domestic regulatory rules. There are six core principles as follows:

> *"1. Regulation of foreign lawyers and transnational law practice should be based on the following overarching objectives:*
>
> *(a)* ***Quality assurance****: foreign lawyers may be required to submit to the local ethical, conduct and disciplinary standards that are no more burdensome than requirements on domestic lawyers;*
>
> *(b)* ***Public interest – consumer protection:*** *rather than minimum residency requirements, foreign lawyers may be required to disclose to clients their status as a foreign lawyer and may also be required to maintain professional indemnity insurance or, alternatively, disclose to clients that they do not have such insurance;*
>
> *(c)* ***Public interest – consumer service:*** *regulations and processes should be designed to encourage and facilitate the efficient and effective availability of fully integrated transnational commercial legal services;*
>
> *(d)* ***Transparency****: foreign lawyer regulations should be clear and publicly available; and*

[68] Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed on 8 March 2018, (entered into force 30 December 2018) annex 10-A cl 9.

(e) ***Fairness:*** *regulations should be fair, uniformly applied, no more burdensome than requirements on domestic lawyers and based on objective criteria where restrictions, if any, are justifiable for quality assurance and in the public interest.*

2. *Regulatory framework should provide flexibility to permit foreign lawyers and domestic (host country) lawyers to work together by entering fee-sharing arrangements or other forms of professional or commercial association.*

3. *Formal recognition of an entitlement by foreign lawyers to practise the law of their home jurisdiction should be based on and to the extent that they are entitled to practise law in their home jurisdiction.*

4. *Regulatory framework should accommodate the relevant professional mobility and modes of service delivery requirements – transnational legal services are provided on a temporary fly-in, fly-out basis; through the use of telecommunications technology (telephone, video conference etc); by establishing a commercial presence; and, in most instances, through a combination of fly-in fly-out and one or both of the other modes.*

5. *Foreign lawyers should have the right to prepare and appear in commercial arbitration, conciliation and mediation proceedings and provide services as Arbitrators, Conciliators and Mediators where qualified to do so.*

6. *Respecting host country customs or general usage conventions, foreign lawyers should be permitted to use the firm name of their choice."*[69]

Building on this existing work, it would be open to the Law Council to itself adopt, and to encourage the various law societies and bar associations around Australia to also adopt, the Best Practice Principles in relation to the manner in which existing rules and regulations in Australia are applied and administered.

A step beyond that would then be to take the same Best Practice Principles and incrementally encourage the Law Council's counterparts in the various Southeast Asian jurisdictions to also adopt the Best Practice Principles.

By way of example, in the competition law regulatory community, the various regulatory agencies for competition law around the world formed what is now known as the International Competition Network (**ICN**) which aims to facilitate cooperation between competition regulators, including the identification and adoption of international best practice. A similar approach could be adopted through the IBA or otherwise in a particular region in relation to promoting best practice within that region.

22.4 Adopt Best Practice Principles in FTAs, including as a 'Regulatory Reference Paper'

The need for minimum standards of domestic regulation in relation to cross-border trade in services is already recognised to a limited degree in the GATS and FTAs. Relevantly, for example, the CPTPP incorporates Article 10.8 of the Trans-Pacific Partnership which provides as follows in relation to domestic regulation:

> *"1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner".*
>
> and

[69] 'Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Law Practice', Law Council of Australia (Policy Statement, November 2015) <https://lawcouncil.au/publicassets/8f4fa001-8055-f011-94b6-005056be13b5/2015%2011%20-%20PS%20-%20Best%20Practice%20Principles%20for%20Regulation%20of%20Foreign%20Lawyers.pdf>.

"4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) within a reasonable period after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(b) to the extent practicable, establish an indicative timeframe for the processing of an application;

(c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and

(f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents."[70]

A range of other similar relevant obligations are contained within the CPTPP (including some that mirror some aspects of the Best Practice Principles). However, not all Southeast Asian nations are currently signatories to the CPTPP. CPTPP does not cover the ASEAN countries Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Timor-Leste or Thailand.

Beyond this, the approach of the WTO and GATS varies across different service sectors with more granular obligations negotiated in some particularly important sectors, but not all.

For example, the existence of the Best Practice Principles echoes an approach to trade in services that has been successful in the telecommunications sector, namely the adoption of the WTO GATS Regulatory Reference Paper in Basic Telecommunications (**RRP Telecoms**):

- The GATS includes sector-specific annexes for a few particularly important service sectors, including one for financial services and one for telecommunications. As a supplement to the annex for telecommunications, a set of core regulatory principles were developed to spell out principles of pro-competitive regulation as well as to crystalise international best practice in certain areas of telecommunications regulation.

- The GATS signatory countries can adopt the RRP Telecoms in their GATS SSC commitments. When they do, the RRP Telecoms has the status of an international treaty. This approach has been successful with most of the WTO Members adopting the RRP Telecoms.

- The RRP Telecoms sets forth the definitions and principles on the regulatory framework for basic telecommunications services and the role and scope of regulators. It commits GATS signatory countries to creating an open and transparent regime and a regulatory environment which would treat all players fairly in a globally consistent manner.

The RRP Telecoms has led to the adoption of similar approaches both within and outside the WTO framework, including the 'Reference Paper on Services Domestic Regulation' (**RRP DomReg**):

- In December 2021, some 69 WTO Members submitted to the WTO a new plurilateral agreement known as the Joint Initiative on Services Domestic Regulation. Under this arrangement, they committed to develop disciplines to mitigate the unintended trade restrictive

[70] Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed on 8 March 2018, (entered into force 30 December 2018) art 10.8.

effects of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. A key part of this initiative was the development and implementation of another Regulatory Reference Paper, namely the RRP DomReg.

- The RRP DomReg contains a set of disciplines on the transparency, predictability and efficiency of domestic services regulation. Participants can give legal effect to the RRP DomReg through incorporation in their respective GATS SSCs. This can be done by any WTO Members by activating a dedicated procedure adopted by the WTO Council for Trade in Services for the certification of new or improved commitments.

- The RRP DomReg also reflects the extent to which the next generation of FTAs is seeking to promote the addition of constraints on domestic regulation to ensure that it remains proportionate, fair and non-discriminatory, and in the public interest. Interestingly, this dovetails well with the Best Practice Principles promulgated historically by the Law Council.

Self-evidently, pushing for the adoption of Best Practice Principles for legal services within the WTO would be extremely ambitious, particularly given the many issues facing the future role of the WTO and the many challenges on achieving multilateral, or even plurilateral, agreement. Such an approach is not recommended by this Report.

However, it would be open to the Law Council to work with the Australian Government to adopt an approach like the RRP Telecoms or RRP DomReg within existing trade agreements focussed on the APAC region, including AANZFTA. As such, any work by the Law Council in promoting the Best Practice Principles with counterpart organisations in the region could ultimately form the basis of the inclusion of a similar set of principles within a local FTA such as AANZFTA, potentially involving voluntary and progressive adoption by those Southeast Asian nations willing to provide additional commitments.

22.5 Refine generic legal services market access request for Southeast Asia

Beyond the Best Practice Principles, the Law Council has had a long and constructive relationship with DFAT and the former ILSAC to improve foreign legal services market access for providers of Australian legal services.

In 2016, the Law Council developed a set of market access priorities for Australia's legal and related service suppliers internationally, known as the *Generic Legal Services Market Access Request.* This information is intended to assist trade negotiators and others engaging in advancing the market access interests of Australia's legal and related service suppliers. A copy of the Generic Legal Services Market Access Request (**GLSMAR**) is set out in **0**.

The GLSMAR mirrors the level of market access that foreign lawyers have in Australia, and is therefore an appropriate and justifiable set of requests for reciprocal market access from an Australian perspective. The GLSMAR includes the right to:

- provide legal services on a FIFO basis, without mandatory residency or registration requirements;

- provide legal services covering the laws of multiple jurisdictions in respect of which the Australian lawyer is qualified to advise;

- establish a commercial presence;

- use the firm name used in Australia (respecting local customs or usage in the host country);

- enter commercial association with local lawyers and law firms, and the ability to negotiate fee and profit-sharing arrangements; and

- prepare and appear in arbitrations, conciliations and mediations, as well as provide services as Arbitrators, Conciliators and Mediators.

The GLSMAR also seeks to facilitate the free movement of professionals (non-burdensome visa conditions and processes), as both independent service providers and intra-corporate transferees.

The GLSMAR provides a useful blueprint regarding requests for the Australian legal services profession in relation to entry into Southeast Asian markets. The GLSMAR is set out below with comments based on the findings of this Report in relation to the Southeast Asian jurisdictions, noting these comments are considered further and translated into specific recommendations later in this Report:

GLSMAR request	Application to Southeast Asia
Establish a commercial presence (through branch office or other legal presence with a right to establish one or more commercial presences as provided to local lawyers) and, where a commercial presence has been established, the option to use the firm name used in Australia respecting local customs or usage in the host country	The two most important jurisdictions for Australian commercial presence are Indonesia and Singapore, followed by Malaysia and Vietnam. While Singapore is relatively liberalised, Indonesia is not. Malaysia and Vietnam are between the two. The key request relating to commercial presence in relation to these countries would be to ensure that existing structures adopted by Australian law firms for commercial presence in these countries are not outlawed or impeded; and to ensure that regulatory discretion is exercised fairly and reasonably in the regulation of these structures. Key concerns in relation to commercial presence involve: • restrictions on commercial association and fee sharing; • administrative burden; • prohibitive fees; and • restrictions on the scope of practice.
Provide legal services covering the laws of multiple jurisdictions in respect of which the Australian legal service provider or employees of the Australian legal service provider are qualified to advise	The market access request needs to recognise the distinctions between domestic law and foreign law and the different Modes. Generally, advising on matters of domestic advocacy and litigation is unlikely to be a fruitful focus of market liberalisation at this point in time, particularly as Australia itself does not have full liberalisation. Rather, the focus should be on ensuring that international legal services are permitted on a cross-border or FIFO basis for transactions and large projects, thereby supplementing domestic local law expertise with international expertise. Australian lawyers should also be permitted to requalify as domestic lawyers in the context of commercial presence. Key concerns in relation to requalification involve: • nationality requirements; • residency requirements; and • caps on foreign lawyers (including ratio requirements).
Have the option of entering commercial association with local lawyers and law firms, with the freedom to negotiate fee and profit-sharing arrangements	See the comments relating to commercial presence above.

Provide legal services on a fly-in/fly-out basis, without mandatory residency or registration requirements	Malaysia is the only Southeast Asian jurisdiction that currently expressly permits FIFO services. Other jurisdictions could raise issues in the context of visa requirements and domestic practising restrictions, although, as noted above, certain practices are widely tolerated. Again, the focus should be on ensuring that international legal services are permitted on a cross-border or FIFO basis for transactions and large projects, thereby supplementing domestic local law expertise with international expertise.
Include secondments and similar exchange programs to and from the host country	The use of 'projects based' exceptions from local requirements may assist in the context of Southeast Asia, as discussed below.
Prepare and appear in arbitrations, conciliations and mediations as well as provide services as Arbitrators, Conciliators and Mediators	The approach of some Southeast Asian nations is to have express carve-outs for international arbitration. This could be sought more generally across the various relevant nations.
Free movement of professionals (non-burdensome visa conditions and processes) to work as independent service providers and intra-corporate transferees, and entry/work rights for their partners (Spouse/DeFacto) and dependents	See the comments in relation to FIFO and commercial presence above.

As such, the Law Council's current market access request remains relevant in relation to Southeast Asia, although with some adjustments to reflect the conclusions from this Report.

22.6 Seek greater regional alignment of professional standards

A key insight also provided by the Australia APEC Study Centre was that interoperability of standards is a key enabler of international trade. Trusted domestic and international standards are necessary, yet the fragmentation of standards creates costs and barriers to trade. Greater alignment across borders with a focus on international best practice is therefore becoming ever more important for facilitating services trade.

In this context, the legal profession faces standards in the form of the requirements for admission as a lawyer in each jurisdiction.

In consultations and interviews conducted as part of the preparation of this report, one recurring point of discussion involved the extent to which legal professional qualifications should be the subject of mutual recognition between Australia and Southeast Asia.

In Australia, local legal profession laws provide for the automatic mutual recognition of admission to the profession between Australian states and territories. They also provide for mutual recognition of the entitlement of a holder of a practising certificate or registration as an Australian foreign lawyer granted in one jurisdiction to engage in legal practice in any other jurisdiction.

A lawyer trained and admitted to the legal profession in New Zealand may apply to have their qualifications recognised under the *Trans-Tasman Mutual Recognition Arrangement* (**TTMRA**) and the *Trans-Tasman Mutual Recognition Act 1997* (Cth). The TTMRA grants lawyers holding a current Australian practising certificate the ability to seek admission to the legal profession in New Zealand and apply for a New Zealand practising certificate, and vice versa.

Specifically:

- The TTMRA is a non-treaty arrangement between the Government of New Zealand and the Commonwealth, State and Territory Governments of Australia that provides for the mutual

recognition of goods and occupational registration. It is implemented into law in New Zealand and Australia under mirror legislation, with the New Zealand version being the *Trans-Tasman Mutual Recognition Act 1997*.

- There is a separate MRA that applies internally among the jurisdictions of Australia.

- The TTMRA is built upon, and is a natural extension of, the MRA. It represents a deepening of the Australia-New Zealand Closer Economic Relations Trade Agreement (**ANZCERTA).**

Importantly, the TTMRA was premised on Australia and New Zealand's respective trust and confidence in the outcomes of each other's regulatory regimes, regardless of differences that may exist. There are safeguards built into the TTMRA if there is significant divergence in regulatory approaches.

In a legal services context, TTMRA works in practice because the Australian and New Zealand legal systems are highly similar. Both countries have a common law legal system of English heritage. Australian and New Zealand case law is regarded as persuasive by courts on both sides of the Tasman. The way lawyers are regulated is broadly similar. While the legal systems do have some differences (for example, New Zealand does not have a Constitution, but does have a legislated Bill of Rights), these differences do not prevent lawyers educated and qualified in one jurisdiction from having the skills and abilities to readily practice in the other.

In application to Southeast Asia, the conditions for mutual recognition do not currently exist. Of the various jurisdictions, Singapore has the closest legal system to Australia, but even then, there are some significant differences in approach. Other jurisdictions in Southeast Asia, such as Indonesia and Vietnam, have very different legal systems, including civil law systems or combinations of different approaches. The level of trust and confidence that exists between Australia and New Zealand does not exist between Australia and most Southeast Asian jurisdictions, perhaps except for Singapore.

Furthermore, mutual recognition is also not possible where Southeast Asian jurisdictions have developing economies and emerging legal markets. For instance, Timor-Leste is in the early stages of establishing its legal profession, such that the Bar Association has not yet commenced its functions. In this context, the substantial barriers to entry for foreign lawyers are justifiable where the domestic market itself is not yet developed. It is hence easier for mature legal markets such as Australia to provide for mutual recognition and open market access as opposed to emerging Southeast Asian jurisdictions.

These differences and difficulties mean that mutual recognition should not be an objective for legal services as between Australia and Southeast Asia, given that the necessary preconditions for mutual recognition do not yet exist. That being said, there should be greater recognition of legal qualifications in the context of meeting practising requirements in the various jurisdictions, including the recognition of Australian university degrees. As such, this could be a useful programme of work to pursue.

The next question arises as to whether any such work programme should be a matter for government or for local regulatory bodies, such as the Law Council and its constituent bodies.

The insights from this Report suggest the following:

- The specifics of qualification requirements are best a matter for local regulatory authorities and not for the government. The local regulatory authorities are better placed to understand the detail and nuances of legal practice and to assess competence.

- However, government does have a role in ensuring that any regulatory discretion is exercised fairly and reasonably with transparency in an objective manner. (In some instances, this has already been the subject of WTO or FTA commitments).

- The adoption of Best Practice Principles, as proposed above, would assist in ensuring that such regulatory discretion was applied appropriately and with accountability (again, in some instances this has already been the subject of WTO or FTA commitments).

- Going forward, it may be helpful to develop and implement a work programme that seeks to achieve better recognition of qualifications, but Australia should not be seeking to impose higher requirements on others than it currently applies itself.

As part of this approach, it may also be possible to develop a more uniform set of practical principles and guidelines across Australia and Southeast Asia which can be applied by legal professional bodies and practitioners in the context of considering applicants from other jurisdictions.

However, it is also true that some FTAs already provide a framework that addresses some of these issues. In the CPTPP, for example, the following obligation is included in Annexure 10-A of the Trans-Pacific Partnership (as incorporated into the CPTPP) relating to Professional Services:

> *"General Provisions*
>
> 1. *Each Party shall consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.*
>
> 2. *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 or registration procedures.*
>
> 3. *Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.*
>
> 4. *A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements."*[71]

As such, the approach of the CPTPP suggests a similar approach could be adopted more broadly in other FTAs, even though not all nations in Southeast Asia are signatories to the CPTPP.

Also relevantly, the recent FTA between Australia and the United Kingdom, which entered into force on 31 May 2023, extends further than most other FTAs that Australia has entered into in terms of provisions relating to legal services.

The Australia-United Kingdom Free Trade Agreement (**A-UKFTA**) guarantees existing levels of access for Australian and UK lawyers and encourages further liberalisation of the legal services market. The FTA recognises, but does not change, legal profession regulatory frameworks and mechanisms presently in place across both countries.

It sets out high-level expectations on how regulation is conducted and creates a mechanism called the Legal Services Regulatory Dialogue for independent regulators and professional bodies in the legal services sector to come together to discuss and address issues related to trade in legal services.

[71] Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed on 8 March 2018, (entered into force 30 December 2018) annex 10-A.

However, again, there is a high degree of commonality between the legal systems of Australia and the United Kingdom, facilitating a more granular and liberal approach.

22.7 Build trust and cooperation via multiple paths for regional stakeholder engagement

As the discussion in the preceding sections recognises, the achievement of improved market access for Australian lawyers and law firms into Southeast Asia is not a matter for government alone. Rather, improved market access is greatly assisted by creating a high degree of trust and confidence between regulatory institutions and within the legal profession itself.

During the interviews with various stakeholders that informed the drafting of this Report, it became apparent that so-called 'soft law' strategies are as important to market liberalisation in relation to professional services, as is the negotiation of FTAs. Soft law strategies seek to build the conditions for further legal market liberalisation such that subsequent government initiatives will receive sufficient political and institutional support.

In international law, 'soft law' has emerged as a significant tool in addressing various global challenges. Unlike hard law, soft law provides flexibility and adaptability, making it an effective mechanism for international cooperation in areas where binding agreements may be difficult to achieve. Specifically, 'soft law' refers to non-binding agreements, declarations, guidelines and principles that influence international relations. Unlike hard law, which consists of treaties and conventions that are legally enforceable, soft law lacks obligatory force. This allows soft law to provide a framework that is more flexible, enabling states to cooperate without the pressure of legal commitments.

An important example of a historic 'soft law' initiative that may provide the foundation for further legal market liberalisation (or a model for further engagement in a localised Southeast Asian context) is the APEC Legal Services Initiative (**APEC LSI**).

In essence, the APEC LSI seeks to enhance transparency of requirements and procedures for professional legal services providers to practise foreign law across APEC economies, identify information gaps, and aid in the development of best practices for the regulation of foreign lawyers. While respecting the integrity of each economy's decision-making, the APEC LSI aims to strengthen the capacity of APEC economies to facilitate the provision of services in foreign and/or international law.

The APEC LSI was sponsored by Australia, and co-sponsored by Singapore, New Zealand, Canada, Chinese Taipei and the United States. It should be noted that the APEC LSI is only current up to 21 August 2007. It is also not actively maintained to ensure accuracy.

While the APEC LSI is far broader in geographic coverage than Southeast Asia alone and despite its outdated information, it does suggest there could be a useful role for such initiatives within the more limited geographic context of Southeast Asia.

Moreover, the ASEAN community already adopts soft law strategies within the framework of the ASEAN Charter to enhance regional cooperation between the ASEAN nations. Specifically:

- The ASEAN region, with its diverse political, economic and cultural landscape, offers a unique situation where soft law strategies can promote regional cooperation. The nonbinding nature of soft law allows for flexibility and adaptability, which is particularly beneficial in a region where member states have distinct levels of development and diverse national interests.

- The ASEAN Charter, adopted in 2007, marked an important milestone in the institutionalisation of ASEAN. The Charter established the legal and institutional framework for the organisation, which aims to promote peace, stability and prosperity in the region. However, the Charter also recognised the importance of flexibility and nonbinding agreements in accommodating the diverse political and economic conditions of its member states. This dual approach, which

combined hard and soft law, aimed to enhance the effectiveness of ASEAN's cooperation efforts.

- The use of soft law in ASEAN is seen in various areas, including economic cooperation, environmental protection and human rights. For example, the ASEAN Economic Community (**AEC**) Blueprint and the ASEAN human rights declaration are among soft law instruments that direct the actions of member states without imposing legally binding obligations. These instruments rely on mutual trust, consensus and peer pressure to achieve compliance, reflecting the ASEAN way of promoting the principle of non-interference and respect for sovereignty.

Given Southeast Asia already uses soft law extensively to progress ASEAN initiatives, there is ample opportunity for Australia to promote a 'soft law' approach in Southeast Asia to incrementally promote greater legal market liberalisation. Again, such an approach could involve a series of steps to progressively build trust and confidence between regulatory institutions and within the legal profession itself across Southeast Asia.

Of particular relevance to the Law Council:

- bilateral engagement with different bar councils and law associations in the Southeast Asian region;
- engagement within mechanisms already set up by existing FTAs, such as the 'Professional Services Working Group' established by the CPTPP;
- multilateral engagement through the IBA, particularly the IBA Trade in Legal Services Committee; and
- regional engagement through LAWASIA and POLA.

22.8 Promote non-governmental regulatory dialogue via obligations in FTAs

Consistent with the discussion theme above regarding the significant role of NGOs in achieving greater market access, some of the more recent FTAs entered into by Australia expressly sought to encourage non-governmental regulatory dialogue via obligations in the relevant FTAs.

The CPTPP, for example, deferred much of the detail pertaining to the regulation of the legal profession to the relevant local regulatory bodies, suggesting that a 'bottom up' approach (starting from regulatory entities) was regarded as more appropriate to resolve matters of detail, while a 'top down' approach (starting from government) may be better in ensuring adoption of core principles of transparency and fairness.

Clause 10 of Annex 10-A of the Trans-Pacific Partnership (as incorporated into the CPTPP) provides, for example:

> *"10. 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;*

(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;

(e) the following modes of providing transnational legal services are accommodated:

(i) on a temporary fly-in, fly-out basis;

(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);

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

(g) a foreign law firm may use the firm name of its choice."[72]

As such, this approach suggests that FTAs are not necessarily an appropriate vehicle to resolve specific matters of granular domestic regulation. Rather, FTAs can set up a framework for regulatory dialogue between regulatory authorities to refine the specific details.

Relevantly, the recent FTA entered into between Australia and the United Kingdom also creates a Legal Services Regulatory Dialogue to encourage the respective regulatory authorities in each jurisdiction to resolve more granular matters. The objectives of the Dialogue are to:

- Consider any matters affecting the re-qualification of lawyers of one party seeking admission to practise in the other party. Issues in scope for consideration include:

  (i) the progressive reduction and removal of academic pre-requisites and additional practical legal training, particularly for experienced lawyers;

  (ii) post-qualification supervision;

  (iii) the improvement in transparency and availability of existing conditional admission routes;

  (iv) the feasibility of recognising legal qualifications obtained in one party without the requirement for an aptitude examination or adaptation period to be undertaken in the other party; and

  (v) timeframes for requalification and admission to practise law;

- Share expertise on matters affecting the types of business structures through which lawyers and enterprises of one party may establish and supply legal services in the other party, including limited liability partnerships, incorporated legal practices, or multi-disciplinary partnerships; and

- Share information and knowledge on other regulatory matters, including on licensing and standards, recognition of professional qualifications, and on wider matters affecting the trade in legal services between the parties.

[72] Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed on 8 March 2018, (entered into force 30 December 2018) annex 10-A cl 10.

Again, such an approach could provide precedent for further upgrading of FTAs in respect of Southeast Asia.

22.9 Integrate capacity building as a key element, but without a colonial mentality

Almost all of the stakeholders interviewed for the purposes of preparing this Report commented regarding the importance of capacity building. Such capacity building was often pointed to as a core reason why greater market access should be provided by Southeast Asian nations to Australian lawyers and law firms.

However, there are various political nuances to this approach, including the perception of the nations involved. This point was also made to us during interviews, including by those that had been historically involved in negotiating FTAs that covered legal services.

Generally, Southeast Asian nations would not appreciate Australia adopting a patronising or paternalistic approach in which Australia portrayed its lawyers to be somehow better qualified or more experienced than lawyers in Southeast Asian jurisdictions. Indeed, lawyers in Southeast Asian jurisdictions can be highly qualified (and arguably sometimes 'better' qualified than Australian lawyers), potentially including foreign qualifications from some of the most prestigious law schools in the world.

In this context, one Australian law firm highlighted that Vietnam still requires an expatriate lawyer to be located on the ground in each of their local offices in Vietnam, however in reality, the local Vietnamese lawyers in those offices are better qualified and more experienced than the Australian expatriate lawyers. The question was asked why Vietnam still subscribes to a colonial approach of requiring a foreign lawyer to be present in each office when its own local legal talent can be of an exceptional and superior quality.

That being said, the concept of capacity building clearly has merit, particularly for less developed economies and legal markets. It is not always the case that local law firms or lawyers will necessarily have the breadth and depth of experience on highly complex legal matters or matters that require a high degree of sectoral experience, such as global M&A megadeals, project financing and major infrastructure projects. Moreover, even where such expertise does exist, the local market in the relevant country can be extremely thin, such that only a small number of lawyers have the requisite expertise. However, those lawyers may already be acting in different roles for the same matter and are hence conflicted.

Indonesia's regulations for foreign lawyers integrate capacity building to some extent already, as they require that foreign lawyers provide 120 hours of free (*pro bono*) legal services each year in either education institutions, legal research activities or government agencies. While some of the lawyers interviewed for this Report thought that the requirement was an unwelcome burden, others considered this requirement an effective means of capacity building in the local Indonesian economy. In a context where Southeast Asian jurisdictions' policies and regulation of foreign lawyers and law firms is driven by protectionism over the local economy and its resources, integrated capacity building such as this ensures that the local industry shares some of the benefit involved with foreign trade in legal services.

As such, there is a clear role for offshore lawyers and law firms to supplement local talent, often working with local firms, to provide access to greater expertise and experience. Over time, local law firms may well build that experience.

By way of example, the author of this Report was involved in providing all legal services for the deployment of a new telecommunications mobile network in Myanmar. At the time, there were no local lawyers in Myanmar with telecommunications expertise, other than one law firm that had historically acted for the incumbent and hence was conflicted. The author of this Report therefore provided support using a combination of cross-border supply and FIFO, working closely with a local law firm in Myanmar on matters of domestic and local law. Over time, the lawyers at the local law firm

gained expertise in telecommunications and eventually took over from the author to act for the client in Myanmar when the telecommunications network rollout was completed.

During the project, the author could not have advised in Myanmar without the support of the local law firm. Conversely, the client in Myanmar could not have obtained the legal support it required without the support of the author and his international expertise.

22.10 Adopt innovative approaches – a 'whole of value chain' or 'projects-based' approach

During consultations and interviews conducted as part of the preparation of this Report, a number of innovative approaches were raised by various stakeholders for consideration.

One approach worthy of consideration is a 'projects-based' approach. Under this approach, there may be a particular project in a Southeast Asian country where it is clear that the support of lawyers from outside the country may be required. The example given above of the rollout of a mobile telecommunications network in Myanmar is such an example. In these circumstances, foreign lawyers that wish to be involved could approach the government to obtain a temporary permit that enables them to provide legal services on a cross-border or FIFO basis, potentially subject to knowledge transfer conditions.

A 'project-specific approach' may also enable foreign lawyers to cover more of the value chain in relation to those areas where they have deeper expertise, hence better reflecting the way in which modern trade in legal services is conducted.

During interviews for the purpose of preparing this Report, a project-specific approach was also suggested for Indonesia that would enable junior lawyers from other parts of a law firm's international network to rotate through the Jakarta office of that firm to gain expertise.

However, we appreciate that such an approach does not currently exist in any Southeast Asian jurisdictions, and that a significant element of negotiation and discussion would be required before any such approach were contemplated. As identified above, a project-specific approach may therefore be one area where the Law Council could potentially seek to generate support from its counterparts in the Southeast Asian region, ultimately leading to incorporation into future FTAs.

22.11 Be ambitious with a long-term view

Finally, liberalisation of the legal services markets in Southeast Asia will require a long-term view with a high degree of ambition. As identified earlier, the legal services sector is one of the least liberalised of the various services sectors globally and Southeast Asia contains some jurisdictions that are at the least liberalised end of the continuum and without any current appetite to change this. As such, any reforms are likely to be incremental over a significant period, involving a mix of soft law strategies and government initiatives.

23 Recommendations for the Australian Government

23.1 General strategic approach

During discussion of potential strategies that could be adopted by the Australian Government in relation to enhancing existing FTAs, it was clear that there can be no one-size-fits-all approach. Each Southeast Asian jurisdiction is unique in its approach, and they each sit in different places along the continuum of market liberalisation.

We are thankful to the Australian APEC Study Centre for sharing their thoughts and experiences regarding promising strategies, including in a presentation given as part of the Law Council Roundtable in September 2025. This Report draws on the discussion during that roundtable as well as the experiences shared by a number of stakeholders and law firms that have had experiences in market access into Southeast Asia.

Flowing from the various information processed by the authors of this Report, seven main points were evident regarding the general strategic approach that could be adopted by the Australian Government in upgrading existing FTAs:

1. Focus efforts where economic activity (and barriers to it) matter most.

This approach also requires consideration of which Modes matter the most for Australian lawyers and law firms in respect of the different jurisdictions.

(a) The two most important jurisdictions from Australia's perspective are Indonesia and Singapore and both are countries in which commercial presence is considered important. Beyond this, Malaysia and Vietnam have also attracted significant Australian interest, although Malaysia can be served easily from Singapore on a FIFO basis; and

(b) The remaining jurisdictions in Southeast Asia tend to be served by Australian lawyers and law firms on either a cross-border supply and/or FIFO basis without any current contemplation that a commercial presence is desirable.

2. Engage with those stakeholders that are most willing to engage.

(a) The legal services sector is conservative and inherently less willing to liberalise than other sectors, given its very nature as a profession. As such, the domestic political context to seeking further liberalisation is important; and

(b) If the domestic profession is not supportive of further liberalisation in any Southeast Asian jurisdiction, it is unlikely to be achieved. As such, a necessary precondition to obtaining further commitments is engagement by the Law Council with its counterparts, including in the context of the initiatives discussed in this Report, to create local support for further liberalisation.

3. Build on existing arrangements and initiatives.

(a) As discussed in this Report, there are a wide variety of existing FTAs and other arrangements that provide a building block for further commitments in other FTAs.

(b) Bilateral arrangements with countries may be a better route to achieve specific initiatives with countries to address issues of concern.

(c) Conversely, the use of regional FTAs and initiatives can assist the legal sector in some nations to 'leapfrog' to international best practice, hence avoiding the need for the negotiation of a bilateral FTA.

4. Build on progress over time.

(a) As identified earlier in this Report, progress will take considerable time and effort. As such, parallel initiatives may be required, including 'soft law' initiatives to establish greater trust and confidence that can support greater market liberalisation.

(b) Initiatives to achieve 'higher standards' of liberalisation in some areas could then serve as precedents and pilots that could be adopted more generally. An example previously discussed is Malaysia's adoption of an express exemption for FIFO provision of legal services which could serve as a precedent for adoption more generally in the region.

5. Deepen bilateral and regional cooperation.

(a) As well as building on existing arrangements and initiatives, there is scope to co-ordinate FTA efforts with other international initiatives as part of an integrated strategy. For example, FTA efforts could be co-ordinated with international forums on standards, technology and regulation relative to legal services.

(b) Greater co-ordination, particularly in relation to technology, could improve understanding and assist in incubating new areas, such as greater alignment of regional standards in relation to the use of artificial intelligence in the legal profession. Soft-law initiatives such as the APEC LSI could play a valuable role as part of this.

6. Build understanding and trust with stakeholders.

(a) As identified earlier in this Report and as noted above, sufficient trust and confidence is required by local stakeholders before the political support is achieved necessary for Southeast Asian nations to make further commitments. As such, a critical component of the strategy would be 'soft law' approaches.

(b) Some degree of marketing is required as to the importance of international legal services for the mutual benefit of the nations involved, bearing in mind the need to avoid any condescending or paternalistic approach. Some work may be required to counter the negative views of FTAs held by some in the local legal profession in some countries.

7. Undertake capacity building.

(a) Less developed countries in Southeast Asia may see more benefits from capacity building than the more developed countries in the region. There may well be scope to seek greater market access within the context of wider capacity building initiatives, including continuing professional development and training or sharing of regulatory processes and approaches.

(b) Even for the more developed countries there are benefits that may not be fully appreciated. For example, capacity building assisted Indonesia to join the Washington Accord for Engineering with other Southeast Asian jurisdictions now seeking to do the same.

Bearing in mind these seven main points on a strategic approach for the Australian Government, we make some recommendations below on the potential approach for each relevant Mode of Supply used by Australian lawyers and law firms to provide legal services into Southeast Asia.

23.2 Specific approach for Mode 1 (cross-border supply)

As identified in this Report, Mode 1 has become increasingly prominent in the supply of legal services by Australian lawyers and law firms into Southeast Asia in recent years and particularly since the COVID-19 pandemic. Mode 1 tends to involve the supply of legal services by email, Microsoft Teams, Zoom, online portals and other communications software.

Moreover, many of the Southeast Asian jurisdictions themselves are world leaders in the consumption and use of electronic services, hence there is now an expectation that legal services will be provided using cross-border electronic supply.

Given this background, some insights can be reached on a proposed strategy:

(a) Seek to build upon any Mode 1 commitments already made by the relevant jurisdiction in the WTO or any previous FTAs.

A number of Southeast Asian jurisdictions have already made Mode 1 commitments in the context of the GATS and FTAs. As such, it should be possible to build upon these existing commitments, and it may be possible to achieve this upgrade quickly at the start of negotiations by including the upgraded commitments as part of a package of updating measures.

(b) Seek to promote the benefits of Mode 1 supply by building understanding and trust, including via soft law initiatives at the Law Council level.

As identified earlier, there are a variety of initiatives that can be undertaken to build trust and confidence to create the conditions necessary for further legal market liberalisation. The Law Council has a vital role to play in interacting with its counterparts in other Southeast Asian nations to progress such initiatives.

(c) Seek full Mode 1 commitments for legal services for foreign law services in a transactional or project context.

In most Southeast Asian jurisdictions, the provision of international legal services via Mode 1 is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Some jurisdictions have a higher degree of tolerance than others, but most recognise that international legal services do assist the local economy and, in any event, are difficult to successfully regulate.

(d) Do not seek Mode 1 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations.

Local regulatory authorities in most Southeast Asian jurisdictions would be concerned by any evidence of foreign lawyers advising on local law, particularly domestic litigation, from outside the country. Complaints by local lawyers could trigger investigations and, in some jurisdictions (such as Indonesia) could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

However, most jurisdictions recognise the benefits in permitting foreign lawyers to be involved in international arbitrations and mediations, particularly those jurisdictions (such as Singapore and Malaysia) that seek to operate international arbitration centres for the region.

(e) Indirectly address Mode 1 commitments through the current focus on electronic commerce in FTAs and greater 'soft law' initiatives. As part of this seek to strengthen rules on digital trade to adapt to the digital shift.

Some Southeast Asian nations have already made full commitments on Mode 1 and hence the issue is more the extent to which these commitments have not been carried back into domestic law, which could be assisted by soft law initiatives of the type discussed in this Report.

The current focus on addressing digital trade is relevant to legal services, hence could be part of a wider trade negotiation package, as exemplified by the recent technology-specific FTA concluded between Singapore and the United Kingdom.

23.3 Specific approach for Mode 4 (presence of persons / FIFO)

Many Australian lawyers and law firms historically serviced Southeast Asia by using Mode 4 as the primary mode of service delivery, often coupled with Mode 1 (cross-border supply). During the COVID pandemic when Australian lawyers were blocked from travel outside Australia, the use of Mode 4 declined and was replaced more by Microsoft Teams and Zoom.

However, the nature of relationships with Southeast Asian clients means it is often still imperative for Australian lawyers to travel to Southeast Asia. Moreover, it is difficult to conduct commercial negotiations over the internet and there is often no substitute for meeting in person for critical meetings and negotiations. In addition, regulatory agencies expect meetings to occur in person, with some exceptions.

Given this background, some insights can be reached on a proposed strategy:

(f) Seek to build upon any Mode 4 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.

A number of Southeast Asian jurisdictions have already made Mode 4 commitments in the context of the GATS and FTAs. As such, it should be possible to build upon these existing commitments, and it may be possible to achieve this upgrade quickly at the start of negotiations by including the upgraded commitments as part of a package of updating measures.

(g) Seek to promote the benefits of Mode 4 supply by building understanding and trust, including via soft law initiatives at the Law Council level and by building on existing initiatives.

As identified earlier, as with Mode 1, there are a variety of initiatives that can be undertaken to build trust and confidence to create the conditions necessary for further legal market liberalisation. As with Mode 1, the Law Council has a vital role to play in interacting with its counterparts in other Southeast Asian nations to progress such initiatives.

(h) Seek full Mode 4 commitments for legal services for foreign law services in a transactional or project context, potentially supported by an express statutory permission and/or project-specific exemptions.

As with Mode 1, in most Southeast Asian jurisdictions the provision of international legal services via Mode 4 is currently tolerated in practice for transactional services but could potentially be in a legal grey area.

Malaysia is currently the only Southeast Asian jurisdiction with an express statutory permission that allows foreign lawyers to practise foreign law services for up to 60 days in country. This statutory permission can provide a model for other jurisdictions; and

As discussed earlier, it may be possible to seek an express authorisation for Mode 4 access on a project-specific basis in which the benefits of having foreign lawyer involvement are expressly recognised for transactions or projects.

(i) Do not seek Mode 4 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations.

As with Mode 1, local regulatory authorities in most Southeast Asian jurisdictions would be concerned by any evidence of foreign lawyers advising on local law on a FIFO basis, particularly domestic litigation.

As with Mode 1, complaints by local lawyers could trigger investigations and, in some jurisdictions (such as Indonesia) could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

As with Mode 1, most jurisdictions recognise the benefits in permitting foreign lawyers to be involved in international arbitrations and mediations, particularly those jurisdictions (such as Singapore and Malaysia) that seek to operate international arbitration centres for the region.

(j) Seek to ensure that Mode 4 commitments are reflected into business visas, potentially via modifications to visa conditions or the use of project-specific exemptions.

At present, the terms and conditions of business visas do not necessarily reflect the reality of the use of FIFO to provide legal services. As such, law firms and lawyers often need to characterise their business trips to align with the terms of the visas. Some risk is involved that visas could be refused or cancelled if foreign lawyers were to be involved in more than business development activities.

23.4 Specific approach for Mode 3 (commercial presence)

Mode 3 (Commercial presence) is the most difficult of the Modes used by Australian lawyers and law firms. Generally, only the largest of the Australian law firms have one or more offices in Southeast Asia. Southeast Asian offices are more common for the international law firms that also have an office in Australia, although some of the large domestic Australian law firms have now merged into international law firms.

Given this background, some insights can be reached on a proposed strategy:

(k) Seek to build upon any Mode 3 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.

As with Modes 1 and 4, a number of Southeast Asian jurisdictions have already made Mode 3 commitments in the context of the GATS and FTAs. As such, it should be possible to build upon these existing commitments; and it may be possible to achieve this upgrade quickly at the start of negotiations by including the upgraded commitments as part of a package of updating measures.

(l) Seek to promote the benefits of Mode 3 supply by building understanding and trust, including via soft law initiatives at the Law Council level and by building on existing initiatives. As part of this, build trust and cooperation via multiple paths for regional stakeholder engagement.

As identified earlier, as with Modes 1 and 4, there are a variety of initiatives that can be undertaken to build trust and confidence to create the conditions necessary for further legal market liberalisation. The Law Council has a vital role to play in interacting with its counterparts in other Southeast Asian nations to progress such initiatives.

(m) Generally seek to incrementally deepen commitments and upgrade any existing FTAs to the 'gold standard', with a focus on Indonesia and Singapore, and to a lesser extent Malaysia and Vietnam.

The two most important jurisdictions for Australian commercial presence are Indonesia and Singapore, followed by Malaysia and Vietnam. While Singapore is relatively liberalised, Indonesia is not. Malaysia and Vietnam are between the two.

The key request relating to commercial presence in relation to these countries would be to ensure that existing structures adopted by Australian law firms for commercial presence in these countries are not outlawed or impeded; and to ensure that regulatory discretion is exercised fairly and reasonably in the regulation of these structures.

Key concerns in relation to commercial presence are identified in this Report and include, for example, restrictions on commercial association and fee sharing, administrative burden, prohibitive fees; and restrictions on the scope of practice.

(n) Seek Mode 3 commitments for legal services for foreign law services in a transactional or project context, potentially supported by project-specific exemptions and with an emphasis on capacity building.

In most Southeast Asian jurisdictions, the provision of foreign legal services via Mode 3 is currently limited to transactional services and international law. As discussed earlier, it may be possible to seek an express authorisation for Mode 3 exceptions on a project-specific basis for particular lawyers in which the benefits of having foreign lawyer involvement are expressly recognised for particular transactions or projects.

(o) Do not seek Mode 3 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations and except to address specific regulatory issues.

Local regulatory authorities in most Southeast Asian jurisdictions would be concerned by any evidence of foreign lawyers advising on local law, particularly domestic litigation. Complaints by local lawyers could trigger investigations and, in some jurisdictions (such as Indonesia) could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

Most jurisdictions recognise the benefits in permitting foreign lawyers to be involved in international arbitrations and mediations, particularly those jurisdictions (such as Singapore and Malaysia) that seek to operate international arbitration centres for the region.

Australian lawyers should also be permitted to requalify as domestic lawyers in the context of commercial presence. Key concerns in relation to commercial presence are identified in this Report and include, for example, nationality requirements, residency requirements, and caps on foreign lawyers (including ratio requirements).

(p) Promote non-governmental regulatory dialogue via obligations in FTAs, including seeking greater regional alignment of professional standards.

As identified earlier in this Report, the more recent FTAs contemplate a regulatory dialogue between non-governmental stakeholders to address more granular matters, including matters pertaining to the alignment of professional standards. This Report suggests the Law Council is well-placed to use such dialogue mechanisms to address many of the concerns raised in this Report with a view to pursuing the strategy identified here.

(q) Promote Best Practice Principles to address domestic regulatory frameworks. Ultimately look to move such Best Practice Principles into FTAs, including as a 'Regulatory Reference Paper'.

The Law Council's 'Best Practice Principles' could provide an important starting point for soft law initiatives to seek to address issues arising in the exercise of domestic regulatory discretion. Some of the principles are already incorporated into the GATS and FTAs so can be appropriately leveraged. Beyond this, it may be possible to promote the further adoption of such principles within FTAs, including by the ultimate adoption of a Regulatory Reference Paper.

24 Conclusions

24.1 Objectives of this Report

This Report has arisen in the context of the current government's implementation of Australia's SEA Economic Strategy and the corresponding desire of DFAT to modernise Australia's FTAs. In relation to professional and financial services, Australia's SEA Economic Strategy recommended a review of the scope of existing FTAs to determine priorities for agreement upgrade negotiations. To progress this recommendation, DFAT announced the Terms of Reference for its Southeast Asian FTA modernisation review in February 2025.

In conjunction with DFAT's review, the Australian Government has committed funds towards a grant program to support peak industry bodies and representative organisations feed insights and sectoral priorities to government. The Law Council has been the recipient of a grant, and this Report:

- assesses the current barriers for trade in legal services and transnational practice by Australian lawyers and firms in Southeast Asia; and
- sets out a strategy to address identified market access barriers and influence further liberalisation to improve conditions for legal business.

24.2 Summary of findings on jurisdictions

Republic of Indonesia

Consultations conducted as part of this grant-funded activity indicate that Indonesia is viewed by Australian lawyers and firms as the most important country in Southeast Asia from a legal services perspective.

The provision of international legal services via Mode 1 into Indonesia is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Indonesian regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Indonesian local law, particularly domestic litigation, from outside Indonesia. The historic experience is that complaints by local Indonesian lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

It is likely that the domestic profession in Indonesia is reluctant to allow foreign lawyers to advise on domestic litigation in the interests of retaining this work for locals and safeguarding the domestic litigation market. Indonesia has committed in IA-CEPA to permit FIFO services in Mode 4 in relation to foreign law, but FIFO could constitute a technical breach of business visa requirements if care is not taken by the relevant lawyer regarding the scope of work.

Work-arounds can generally be adopted for FIFO for transactional services involving foreign law, hence the risk may be practically low. However, Indonesian regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Indonesian local law, particularly Indonesian litigation, on a FIFO basis. Even expert witnesses in litigation have sometimes been challenged.

Indonesia's legal services market is one of the least liberalised of the Southeast Asian jurisdictions. Only Indonesian citizens can obtain a full licence to practise Indonesian local law. Further. the requirements for foreign lawyers to be licensed in Indonesia are onerous and partly subject to the discretion of Indonesian regulatory authorities, which discretion is subject to change. The establishment of a commercial presence in Indonesia under Mode 3 is also heavily regulated, even though the local market is regarded as 'under-lawyered' by global standards.

Nonetheless, Indonesia has commitments under FTAs that allow foreign lawyers to provide advisory services and form joint ventures with local firms. Further, Australian firms have generally used work-

arounds, via affiliated local law firms, to operate in Indonesia. However, arrangements must be carefully structured, and the various practising requirements can act as significant impediments to market access.

Republic of Singapore

Consultations conducted as part of this grant-funded activity indicate that Singapore is viewed by Australian lawyers and firms as the second most important country in Southeast Asia from a legal services perspective, partly because firms can use a Singapore office to service most other Southeast Asian jurisdictions.

The provision of international legal services via Mode 1 into Singapore is widespread among law firms and is currently tolerated in practice for transactional services, even though it may technically be in a legal grey area.

Singapore's regulatory authorities would likely object to foreign lawyers using Mode 1 to advise on Singapore domestic litigation (other than Singapore arbitration) or on matters involving Singapore local law from outside Singapore, given this would directly impinge on the role of local Singaporean legal counsel. Complaints by local lawyers could trigger investigations.

There are no rules allowing temporary practice of foreign law by foreign lawyers, hence any FIFO by Australia lawyers is at their own risk. FIFO could constitute a technical breach of visa requirements if care is not taken by the relevant lawyer regarding the scope of work.

Work-arounds can generally be adopted for FIFO for transactional services involving foreign and/or international law, hence the risk of regulatory action may be relatively low. However, Singaporean regulatory authorities would unlikely look favourably upon foreign lawyers advising on Singapore local law, particularly Singapore litigation, on a FIFO basis.

While Australian citizens could obtain a full licence to practise Singapore local law, the requirements to do so are onerous and not all Australian qualifications are fully recognised. That being said, Australia itself adopts a similar approach.

Singapore's legal services market is the most liberalised of the Southeast Asian jurisdictions. The establishment of a commercial presence in Singapore under Mode 3 is regulated, but in a generally more permissive way than other jurisdictions. Singapore has intentionally sought to establish itself as a hub for regional legal services and has adopted a flexible model, allowing for different corporate forms for foreign law firms based on the scope of legal practice.

The different models provide varying degrees of ability to practise Singapore and foreign law, but do involve some administrative and practical restrictions. As at October 2025, Singapore is in the process of updating some of its models to address practical concerns that have arisen. Although these changes are framed as market-liberalising, some market participants suggest they may in fact be intended to restrict market access to protect the local Singapore legal profession.

Federation of Malaysia

Consultations conducted as part of this grant-funded activity indicate that Malaysia is viewed by Australian lawyers and firms as the third most important country in Southeast Asian countries from a legal services perspective, however, there is a significant gap between Malaysia, Indonesia and Singapore in terms of relevance and importance. This is partly because many law firms would routinely service Malaysian clients out of their existing offices in Singapore, rather than seeking to establish a specific commercial presence in Malaysia.

The provision of international legal services via Mode 1 into Malaysia is widespread among law firms and is currently tolerated in practice for transactional services, even though it may be in a legal grey area. Malaysian regulatory authorities would be concerned by any evidence of foreign lawyers advising on Malaysian domestic litigation or on matters involving Malaysian local law from outside Malaysia, given this would directly impinge on the role of local Malaysian legal counsel. Complaints by local lawyers could trigger investigations.

Nonetheless, Malaysia's legal services market is one of the more liberalised of the Southeast Asian jurisdictions, behind Singapore. Malaysia expressly permits the temporary practice of foreign law by foreign lawyers on a FIFO basis, provided the stay in Malaysia does not exceed 60 days. Longer stays are permitted for lawyers involved in arbitral proceedings. However, as in the case of Mode 1 practice, Malaysian regulatory authorities would be concerned by any evidence of foreign lawyers advising on Malaysian litigation involving domestic Malaysian law on a FIFO basis.

For any stays longer than 60 days, foreign lawyers are required to register as foreign lawyers, which involves significant administrative complexity.

While Australian citizens could obtain a full licence to practise Malaysian local law, the requirements to do so are onerous.

The establishment of a commercial presence in Malaysia under Mode 3 is regulated, however, it is not well used by foreign law firms given Malaysia's greater tolerance of Mode 4 supply. There are two models that have been expressly endorsed by the Malaysian Government. Both models involve some administrative complexity and the ability to practise Malaysian local law is constrained. Market feedback also suggests that Malaysian clients prefer using locally branded Malaysian law firms for advice on Malaysian local law, hence market practice is not conducive to entry by foreign law firms.

Kingdom of Thailand

Consultations conducted as part of this grant-funded activity indicate that Thailand is viewed by Australian lawyers and firms as the fourth most important country in Southeast Asia from a legal services perspective, however, it is also currently a closed jurisdiction in terms of trade in legal services.

The provision of international legal services via Mode 1 into Thailand is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Thai regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Thai local law, particularly domestic litigation, from outside Thailand. Complaints by local Thai lawyers could trigger investigations.

It is likely that the domestic profession in Thailand is reluctant to allow foreign lawyers to advise on local law in the interests of retaining this work for locals and safeguarding the domestic market.

Thailand expressly prohibits the temporary practice of foreign law by foreign lawyers on a FIFO basis. While foreign lawyers can operate as non-licensed workers who act as legal or business consultants or advisors, this may also raise concerns under visas and hence this may also be a legal grey area.

Work-arounds can generally be adopted for transactional services involving foreign law, therefore the risk of regulatory action may be relatively low. However, again, Thai regulatory authorities would be concerned by foreign lawyers advising on Thai local law, particularly Thai litigation, on a FIFO basis.

Thailand's legal services market is one of the least liberalised of the Southeast Asian jurisdictions. Thailand has a closed market for the provision of legal services that only enables the registration of lawyers with Thai nationality. The market is effectively closed to foreign lawyers in relation to domestic Thai litigation. Further, the establishment of a commercial presence in Thailand under Mode 3 is regulated and difficult, although several law firms have identified practical work-arounds.

That being said, if legal services are re-characterised as general transaction consultancy services, any services can potentially be structured in such a way that risks are reduced. However, care is required.

Socialist Republic of Vietnam

Consultations conducted as part of this grant-funded activity indicate that Vietnam is viewed by Australian lawyers and firms as the fifth most important of the Southeast Asian countries from a legal services perspective. Although it is also a closed jurisdiction from a legal services perspective, there is some indication that Vietnam may be intending to further liberalise its market.

The provision of international legal services via Mode 1 into Vietnam is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Vietnamese regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Vietnamese local law, particularly domestic litigation, from outside Vietnam. Complaints by local Vietnamese lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

Vietnam has requirements for practise of foreign law by foreign lawyers that likely preclude FIFO, thus foreign lawyers operating on a FIFO basis do so at their own risk. FIFO may also raise concerns under visas and hence this may also be a legal grey area.

Work-arounds can generally be adopted for transactional services involving foreign and/or international law, therefore the risk of regulatory action may be relatively low. However, Vietnamese regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Vietnamese local law, particularly domestic litigation, on a FIFO basis.

Beyond this, foreign lawyers are required to register as foreign lawyers at significant administrative complexity.

Vietnam's legal services market is more liberalised than that of Thailand, Indonesia and Philippines, but less liberalised than Singapore and Malaysia. However, the establishment of a commercial presence in Vietnam under Mode 3 is regulated and onerous.

To date, only a small handful of law firms have attempted to establish a commercial presence in Vietnam, partly because significant effort is required and some regulatory discretion is involved. That being said, Vietnam is continuing to liberalise its legal market and Vietnam's approach is materially driven by its trade commitments.

Australian citizens could potentially be admitted in Vietnam to provide full local law services, however, they would effectively be required to live in Vietnam to do so.

Republic of the Philippines

Consultations conducted as part of this grant-funded activity indicate that the Philippines is viewed by Australian lawyers and firms as the sixth most important country in Southeast Asia from a legal services perspective, however, it is also largely closed from a legal services perspective.

The provision of international legal services via Mode 1 into the Philippines is currently tolerated in practice for transactional services but could potentially be in a legal grey area. Regulatory authorities would likely be concerned by any evidence of foreign lawyers advising on Philippine local law, particularly domestic litigation, from outside the Philippines. Complaints by local Filipino lawyers could trigger investigations and could well be raised in court in the context of the local litigation in which the foreign lawyers were involved.

It is likely that the domestic profession in the Philippines is reluctant to allow foreign lawyers to advise on local law in the interests of retaining this work for locals and safeguarding the domestic market.

The Philippines has requirements for practice of foreign law by foreign lawyers that likely preclude FIFO, so foreign lawyers operating on a FIFO basis do so at their own risk. FIFO may also raise concerns under visas and hence this may also be a legal grey area.

Work-arounds can generally be adopted for transactional services using FIFO involving foreign and/or international law, hence the risk of regulatory action may be relatively low. While foreign nationals

cannot obtain a full licence to practise law in the Philippines, there may be opportunities for them to engage in legal work in a more limited capacity. For example, foreign lawyers may be able to provide advisory services in foreign and international law, although they cannot obtain a limited licence to do so.

However, Philippine regulatory authorities would likely take enforcement action if they became aware of foreign lawyers advising on Philippine domestic litigation on a FIFO basis.

The Philippines' legal services market is the least liberalised of the Southeast Asian jurisdictions and this is currently reinforced in the Philippines Constitution. The Philippines market is effectively closed to foreign law firms under Mode 3, except on a limited basis. We are aware of some work-arounds used by some global firms, but generally all control of local firms rests in the Philippines.

While some global law firms may claim to have a 'Philippines desk', this often misrepresents Mode 1 services as Mode 3.

24.8 Summary of findings on trade agreements

Australia's FTAs with Southeast Asian jurisdictions currently include the following:

Bilateral FTAs

IA-CEPA

IA-CEPA complements Australia's arrangements with Indonesia under AANZFTA and RCEP. IA-CEPA builds on the benefits of AANZFTA by reducing non-tariff barriers to trade and simplifying paperwork. Importers and exporters have the option of selecting which agreement is best suited to them.

IA-CEPA seeks to improve access between Australia's and Indonesia's services markets and addresses impediments to increasing Australian investment in Indonesia and Indonesian investment in Australia.

In relation to Mode 1, Indonesia has committed to allow the supply of cross-border legal advisory services, such as advice provided via email, covering Australian law, third country law and international law on business and arbitration.

Indonesia has also undertaken to automatically lock in any future liberalisation that would allow Australian law firms to establish a commercial presence in Indonesia (Mode 3). It also permits entry and temporary stay for an Independent Profession For Legal Services for a period of one year (Mode 4).

However, Annex I (Services and Investment), Schedule of Indonesia, provides that Article 9.3 (National Treatment) and Article 9.5 (Market Access) do not apply to legal services. Annex I (Services and Investment), Schedule of Indonesia, also prohibits the commercial presence of foreign law firms (Mode 3).

SAFTA

Under SAFTA, any Singapore citizen or permanent resident who has undergone an undergraduate or a graduate course in law at any one of the Australian Universities listed in the Schedules to the Legal Profession (Qualified Persons) Rules, and who is subsequently conferred the corresponding Bachelor of Laws degree or the Doctor of Jurisprudence degree specified in the relevant Schedule for that university, shall be eligible to be a qualified person for the purposes of admission as an advocate and solicitor of the Supreme Court of Singapore.

Further, under SAFTA, Singapore has also established a dedicated help desk to assist Australian natural persons seeking temporary entry into Singapore.

Annex 4-I(B), Singapore's Reservations to Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment), outlines limitations in relation to the application of Articles 3 (Market Access), 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 6 (Local Presence) to legal services.

Australian lawyers must apply for registration as foreign lawyers for their practice of Australian law, international law and/or third country law with physical presence in Singapore in order to work in foreign law practices (either from Australia or any other jurisdiction) in Singapore.

In relation to Mode 3, Australian law practices must apply for licensing as foreign law practices (as defined under Singapore law) for their practice of Australian law, international law and/or third country law with offices in Singapore, and upon obtaining such licence, they can employ:

- qualified foreign lawyers (as defined under Singapore law) of any nationality to practise Australian law, international law and/or third country law;

- Singapore lawyers (as defined under Singapore law) to practise only Australian law, international law and/or third country law but not Singapore law; and

- non-legally trained local staff in their Singapore offices.

Australian law practices may provide legal services in relation to Singapore law through a JLV or Formal Law Alliance with a Singapore law practice, only to the extent allowed by the laws, rules and regulations concerning JLVs and Formal Law Alliances, and subject to the conditions and requirements relating to JVLs and Formal Law Alliances.

MAFTA

MAFTA is one of four FTAs Australian businesses can use to trade with Malaysia. In addition to MAFTA, Malaysia is also a party to AANZFTA, RCEP and CPTPP. While both Australia and Malaysia are parties to AANZFTA, MAFTA built on that agreement to further liberalise the commercial relationship between the two countries. MAFTA contains several 'AANZFTA-plus' elements that give Australian exporters, businesses and individuals greater flexibility and improved access to the Malaysian market.

Chapter 8 of MAFTA, which is based on the AANZFTA chapter on 'Trade in Services', provides a 'positive list' approach to scheduling market access and national treatment commitments, where each party identifies in its own schedule the services for which market access and national treatment apply, including the specification of any limitations to such access or national treatment. This approach is identical to that provided for under AANZFTA.

Unlike AANZFTA, Chapter 8 of MAFTA does not contain a provision for consultations on most-favoured-nation treatment, however, it does include most-favoured-nation treatment in the list of issues that the FTA Joint Commission may consider in its forward work program. Australian companies supplying services to Malaysia will continue to have access to AANZFTA consultations on most-favoured-nation treatment.

Malaysia's commitments under Chapter 10 (Movement of Natural Persons), and under Article 8.3 (National Treatment) and Article 8.5 (Market Access), in relation to the supply of legal services, are outlined in Annex 4 – Schedule of Movement of Natural Persons Commitments (Malaysia).

TAFTA

TAFTA is one of three FTAs that Australian businesses can use to trade with Thailand. As a member of ASEAN, Thailand is also part of AANZFTA and RCEP.

Annex 8: Thailand's Commitments on Services and Investments, does not contain any provisions relating to legal services. This means that Thailand's trade in legal services is not bound by Article 809 (Market Access) and Article 810 (National Treatment).

Further, Thailand's domestic laws prohibit foreigners from working in the legal profession. As such. the commitments outlined in Annex 8 in relation to Australian nationals and the movement of natural persons do not apply to legal or lawsuit services.

Annex 8 does, however, allow Australian businesspeople who hold the APEC Business Travel Card to attend business meetings/seminars or conduct business contacts without engaging in making direct sales of goods or services to the general public, supplying services, or acquiring remuneration in Thailand for up to 90 days.

Australian businesspeople who do not hold the APEC Business Travel Card will be permitted to perform the same activities for up to 15 days. Such businesspeople shall notify the Department of Employment before conducting business meetings or contacts in Thailand.

Plurilateral FTAs

AANZFTA

AANZFTA, through its chapter on Trade in Services, enhances the commitments and obligations made on services liberalisation under the WTO. For instance, under AANZFTA, Australia made GATS-plus and commercially meaningful commitments in a number of services sectors, including legal services.

Chapter 8 of AANZFTA outlines the parties' commitments to Trade in Services, including legal services, across Modes 1, 3 and 4. These commitments follow a positive-list approach to scheduling market access and national treatment commitments, under which each party specifies in its schedule any limitations that apply.

Nations are only bound by the obligations in AANZFTA for trade in legal services where they have explicitly established sector carve-outs for legal services within their SSCs for services. As such, Vietnam, Indonesia, Thailand, Lao PDR and Cambodia are the only Southeast Asian jurisdictions that are bound by AANZFTA obligations with respect to trade in legal services as they all have SSCs for services annexed to AANZFTA.

RCEP

RCEP unites 15 nation states and is the world's largest FTA by combined GDP, population and total export value of signatory parties. RCEP includes 20 chapters in total, covering commitments in areas such as trade in goods, trade in services, investments, intellectual property, e-commerce, competition, government procurement and dispute settlement.

Chapter 8 in RCEP makes commitments to trade in services in relation to national treatment and market access, including legal services

Relevantly, Cambodia, Lao PDR, the Philippines and Thailand are the Southeast Asian nations that have made commitments towards liberalisation of trade in legal services.

CPTPP

CPTPP does not cover the ASEAN countries Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Timor-Leste or Thailand.

Of the various FTAs concluded to date, CPTPP likely provides the 'gold standard' for obligations relating to trade in legal services as it provides the most granular and greatest range of commitments. CPTPP explicitly recognises the essential role played by transnational legal services in facilitating trade and economic growth, and outlines that the manner in which foreign lawyers are permitted to practise foreign law shall be no more burdensome than the requirements imposed on domestic lawyers. It also accommodates for the use of FIFO, technology, commercial presences, or a combination of these modes to provide for transnational legal services. As only a small subset of Southeast Asian nations is party to CPTPP, the CPTPP may provide a useful precedent for other FTAs.

Recommendations on upgrading FTAs

This Report suggests that the upgrading of plurilateral agreements be prioritised in comparison to Australia's bilateral FTAs with Southeast Asian jurisdictions. Doing so is advantageous as ASEAN often operates and undertakes negotiations as a unified bloc rather than bilaterally. Plurilateral upgrades therefore better stimulate regulatory cooperation, transparency, common commitments across the region and address regulatory barriers to trade in legal services.

However, this strategy is contingent on all parties to the plurilateral agreement agreeing to implement the relevant terms. In practice, any commitments remain subject to, and constrained by, domestic regulatory frameworks and the oversight of legal professional bodies within each party's jurisdiction.

Further, the upgrading of bilateral FTAs with our key trading partners including Indonesia, Singapore, Malaysia and Vietnam is still critical. These jurisdictions have highly idiosyncratic legal licensing rules that require country-specific negotiation. Such negotiations also provide Australia with an opportunity to capacity-build, and strategically invest resources into FTA upgrades with valuable economic partners.

Moreover, there are several FTAs that were either never concluded, or other FTAs that are still under negotiation such as TiSA. To the extent that commitments were offered (or even negotiated to an outcome), but never formally locked in via a ratified FTA, there should be scope to leverage from those commitments.

24.8 Strategies to improve market access

This Report identifies the following 10 strategies for consideration by the Law Council:

- Deepen commitments and upgrade existing FTAs to the 'gold standard';
- Strengthen rules on digital trade to adapt to the digital shift;
- Promote Best Practice Principles to address domestic regulatory frameworks;
- Adopt Best Practice Principles in FTAs, including as a 'Regulatory Reference Paper';
- Refine a generic legal services market access request for Southeast Asia;
- Seek greater regional alignment of professional standards;
- Build trust and cooperation via multiple paths for regional stakeholder engagement;
- Promote non-governmental regulatory dialogue via obligations in FTAs;
- Integrate capacity building as a key element, but without a colonial mentality; and
- Adopt innovative approaches – a 'whole of value chain' or 'projects based' approach.

Finally, liberalisation of the legal services markets in Southeast Asia will require a long-term view with a high degree of ambition. The legal services sector is one of the least liberalised of the various services sectors globally and Southeast Asia contains some jurisdictions that are at the least liberalised end of the continuum and without any current appetite to change this. As such, any reforms are likely to be incremental over a significant period.

24.9 Recommendations for the Australian Government

This Report notes seven matters for the Australian Government to bear in mind when seeking to upgrade the existing FTAs, noting many of these points are self-evident and build upon the strategies proposed for consideration by the Law Council:

1. Focus efforts where economic activity (and barriers to it) matter most;

2. Engage with those stakeholders that are most willing to engage;

3. Build on existing arrangements and initiatives;

4. Build on progress over time;

5. Deepen bilateral and regional cooperation;

6. Build understanding and trust with stakeholders; and

7. Undertake capacity building.

Bearing this in mind, the Report makes the following recommendations for the Australian Government in the context of each of the three Modes most relevant to this Report:

Mode 1 (Cross-border supply)

(a) Seek to build upon any Mode 1 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.

(b) Seek to promote the benefits of Mode 1 supply by building understanding and trust, including via soft law initiatives at the Law Council level.

(c) Seek full Mode 1 commitments for legal services for foreign law services in a transactional or project context.

(d) Do not seek Mode 1 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations.

(e) Indirectly address Mode 1 commitments through the current focus on electronic commerce in FTAs and greater 'soft law' initiatives. As part of this seek to strengthen rules on digital trade to adapt to the digital shift.

Mode 4 (Presence of persons / FIFO)

(f) Seek to build upon any Mode 4 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.

(g) Seek to promote the benefits of Mode 4 supply by building understanding and trust, including via soft law initiatives at the Law Council level and by building on existing initiatives.

(h) Seek full Mode 4 commitments for legal services for foreign law services in a transactional or project context, potentially supported by an express statutory permission and/or project-specific exemptions.

(i) Do not seek Mode 4 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations.

(j) Seek to ensure that Mode 4 commitments are reflected into business visas, potentially via modifications to visa conditions or the use of project-specific exemptions.

Mode 3 (Commercial presence)

(k) Seek to build upon any Mode 3 commitments already made by the relevant jurisdiction in the GATS or any previous FTAs.

(l) Seek to promote the benefits of Mode 3 supply by building understanding and trust, including via soft law initiatives at the Law Council level and by building on existing initiatives. As part of this, build trust and cooperation via multiple paths for regional stakeholder engagement.

(m) Generally seek to incrementally deepen commitments and upgrade any existing FTAs to the 'gold standard', with a focus on Indonesia and Singapore, and to a lesser extent Malaysia and Vietnam.

(n) Seek Mode 3 commitments for legal services for foreign law services in a transactional or project context, potentially supported by project-specific exemptions and with an emphasis on capacity building.

(o) Do not seek Mode 3 commitments for legal services for domestic litigation or advocacy services, except for international arbitrations and mediations and except to address specific regulatory issues.

(p) Promote non-governmental regulatory dialogue via obligations in FTAs. As part of this, seek greater regional alignment of professional standards.

(q) Promote Best Practice Principles to address domestic regulatory frameworks. Ultimately look to move such Best Practice Principles into FTAs, including as a 'Regulatory Reference Paper'.

Annexures



Annexure A
Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Practice (2015)

The Law Council has developed the *Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Law Practice* (the **Principles**) to provide a neutral, principles-based framework for the regulation of foreign lawyers and transnational law practice.[73]

- The principles are consistent with the IBA's 1998 resolution on the regulation of foreign lawyers and are informed by extensive research by the Law Council on regulatory systems as well as input from both law firms and their clients.
- Specifically, the Principles reflect the long-standing approaches of the IBA (*IBA Statement of General Principles for the Establishment and Regulation of Foreign Lawyers, 6 June 1998*) and discussions held at the APEC Legal Services Workshop in Singapore (30-31 July 2009).
- The initial version of these Principles was developed in 2012 with input from the Law Council of Australia and the legal profession by ILSAC, a high-level public-private sector consultative forum established by the Australian Government to provide advice on international legal and related services issues.

The Principles are as follows:

Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Legal Practice

Recalling the International Bar Association's resolution on the general principles for the establishment and regulation of foreign lawyers (June 1998); the International Legal Services Advisory Council's six guiding principles for achieving the liberalisation of international trade in legal services (July 1998); and the important role these principles continue to have on influencing the liberalisation of transnational trade in legal services;

Recognising that the availability of fully integrated transnational legal services covering the laws of multiple jurisdictions play an essential role in facilitating trade and investment across national borders and promoting economic growth and business confidence;

Recognising the requirement for domestic (host country) and foreign lawyers to work together to provide fully integrated transnational legal services;

Acknowledging that there are mutual benefits for both foreign lawyers and the domestic legal profession through knowledge and expertise transfer and exposure to international best practice, and that regulation should be sufficiently flexible to permit the free flow of knowledge and expertise between foreign lawyers and the domestic profession;

Recognising that transnational legal services invariably involve a complex mix of local and foreign law with the extent of that mix subject to constant change during a transaction, and that it is unrealistic to identify and define a boundary between local and foreign law in such transactions;

Accepting that demand for transnational commercial and business legal services is client driven and such clients are invariably well-informed and sophisticated international and domestic corporations and that foreign lawyers providing these legal services do not seek to provide domestic consumer legal services in areas such as family law, wills and probate, personal injury or criminal law;

[73] Law Council of Australia, *Best Practice Principles for the Regulation of Foreign Lawyers and Transnational Law Practice* (Policy Statement, November 2015).

Recognising that the extent of consumer protection measures imposed on foreign lawyers engaged in providing fully integrated transnational legal services should therefore be appropriately tempered; and

Recognising that countries will progressively adopt foreign lawyer regulatory systems that are suitable to their individual circumstances.

It is proposed that the following regulatory principles are used to guide the implementation of viable and hospitable systems for the regulation of foreign lawyers and transnational law practice:

1. Regulation of foreign lawyers and transnational law practice should be based on the following overarching objectives:

    (a) **Quality assurance**: foreign lawyers may be required to submit to the local ethical, conduct and disciplinary standards that are no more burdensome than requirements on domestic lawyers;

    (b) **Public interest – consumer protection:** rather than minimum residency requirements, foreign lawyers may be required to disclose to clients their status as a foreign lawyer and may also be required to maintain professional indemnity insurance or, alternatively, disclose to clients that they do not have such insurance;

    (c) **Public interest – consumer service:** regulations and processes should be designed to encourage and facilitate the efficient and effective availability of fully integrated transnational commercial legal services;

    (d) **Transparency**: foreign lawyer regulations should be clear and publicly available; and

    (e) **Fairness:** regulations should be fair, uniformly applied, no more burdensome than requirements on domestic lawyers and based on objective criteria where restrictions, if any, are justifiable for quality assurance and in the public interest.

2. Regulatory framework should provide flexibility to permit foreign lawyers and domestic (host country) lawyers to work together by entering fee-sharing arrangements or other forms of professional or commercial association.

3. Formal recognition of an entitlement by foreign lawyers to practise the law of their home jurisdiction should be based on and to the extent that they are entitled to practise law in their home jurisdiction.

4. Regulatory framework should accommodate the relevant professional mobility and modes of service delivery requirements – transnational legal services are provided on a temporary fly-in, fly-out basis; through the use of telecommunications technology (telephone, video conference etc); by establishing a commercial presence; and, in most instances, through a combination of fly-in/fly-out and one or both of the other modes.

5. Foreign lawyers should have the right to prepare and appear in commercial arbitration, conciliation and mediation proceedings and provide services as Arbitrators, Conciliators and Mediators where qualified to do so.

6. Respecting host country customs or general usage conventions, foreign lawyers should be permitted to use the firm name of their choice.

Annexure B
Generic Legal Services Market Access Request (2016)

As part of the Law Council's confidential submission to DFAT regarding legal services market access between Indonesia and Australia, the Law Council created a document to identify the market access priorities of Australia's legal and related service suppliers internationally. The information sought to:

i. Assist trade negotiators and others engaged in advancing the market access interests of Australia's legal and related service suppliers; and

ii. Assist the legal profession and its representative bodies across Australia develop and promote an 'Australia Inc' approach through a shared understanding of the profession's international market access interests.

Further, the Law Council noted that Australian legal and related services suppliers seek a right to:

i. Establish a commercial presence (through branch office or other legal presence with a right to establish one or more commercial presences as provided to local lawyers) and, where a commercial presence has been established, the option to use the firm name used in Australia respecting local customs or usage in the host country;

ii. Provide legal services covering the laws of multiple jurisdictions in respect of which the Australian legal service provider or employees of the Australian legal service provider are qualified to advise;

iii. Have the option of entering commercial association with local lawyers and law firms, with the freedom to negotiate fee and profit-sharing arrangements;

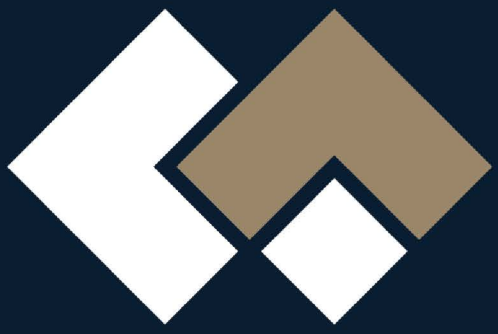
iv. Provide legal services on a fly-in/fly-out basis, without mandatory: residency or registration requirements;

v. Include secondments and similar exchange programs to and from the host country;

vi. Prepare and appear in arbitrations, conciliations and mediations as well as provide services as Arbitrators, Conciliators and Mediators; and

vii. Free movement of professionals (non-burdensome visa conditions and processes) to work as independent service providers and intra-corporate transferees, and entry/work rights for their partners (spouse/de facto) and dependents.

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