

ANNEX 11-A

GUIDELINES FOR MRAs

Introduction

This Annex contains guidelines to provide practical guidance to facilitate the negotiation of MRAs with respect to regulated professions. These guidelines are non-binding and they do not modify or affect the rights and obligations of a Party under this Agreement.

Definitions

For the purposes of this Annex:

adaptation period means a period of supervised practice, possibly accompanied by further training, of a regulated profession in the host jurisdiction under the responsibility of a qualified person. This period of supervised practice shall be subject to an assessment. The detailed rules governing the adaptation period, its assessment and the professional status of the person under supervision shall be set out, as appropriate, in the host jurisdiction's law;

aptitude test means a test limited to the professional knowledge of applicants, made by the relevant authorities of the host jurisdiction with the aim of assessing the ability of applicants to pursue a regulated profession in that jurisdiction; and

scope of practice means an activity or group of activities covered by a regulated profession.

Form and Content of the MRA

This Section sets out various issues that may be addressed in a negotiation and, if so agreed, included in final MRAs. It outlines elements that might be required of foreign professionals seeking to benefit from an MRA.

1. Participants

The parties to the MRA should be clearly stated.

2. Purpose of the MRA

The purpose of the MRA should be clearly stated.

3. Scope of the MRA

The MRA should set out clearly:

- (a) the scope of the MRA, in terms of the specific professional titles and activities which it covers;
- (b) who is entitled to use the professional titles concerned;
- (c) whether the recognition mechanism is based on formal qualifications, a licence obtained in the jurisdiction of origin, or on some other requirement; and
- (d) whether the MRA allows temporary or permanent access to the profession concerned.

4. Mutual Recognition Provisions

The MRA should clearly specify the conditions to be met for the recognition of qualifications in each jurisdiction and the level of equivalence agreed.

The following four-step process should be considered to simplify and facilitate the recognition of the qualifications.

Four-Step Process for the Recognition of Qualifications

Step One: Verification of Equivalency

The negotiating entities should verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in their respective jurisdictions.

The examination of qualifications should include the collection of all relevant information pertaining to the scope of practice rights related to a legal competency to practice or to the qualifications required for a specific regulated profession in the respective jurisdictions.

Consequently, the negotiating entities should:

- (a) identify activities or groups of activities covered by the scope of practice rights of the regulated profession; and
- (b) identify the qualifications required in each jurisdiction. These may include the following elements:
 - (i) the minimum level of education required, for example, entry requirements, length of study and subjects studied;
 - (ii) the minimum level of experience required, for example, location, length and conditions of practical training or supervised professional practice prior to licensing, or the framework of ethical and disciplinary standards;
 - (iii) examinations passed, especially examinations of professional competency;
 - (iv) the extent to which qualifications from one jurisdiction are recognised in the other jurisdiction; and
 - (v) the qualifications which the relevant authorities in each jurisdiction are prepared to recognise, for instance, by listing particular diplomas or certificates issued, or by reference to particular minimum requirements to be certified by the relevant authorities of the jurisdiction of origin, including whether the possession of a certain level of qualification would allow recognition for some activities of the scope of practice but not others (level and length of education, major educational focuses, overall subjects and areas).

There is an overall equivalence between the scope of practice rights or the qualifications of the regulated profession if there are no substantial differences in this regard between jurisdictions.

Step Two: Evaluation of Substantial Differences

There exists a substantial difference in the scope of qualifications required to practice a regulated profession, in cases of:

- (a) important differences in the essential knowledge; or
- (b) significant differences in the duration or content of the training between the jurisdictions.

There exists a substantial difference in the scope of practice if:

- (a) one or more professional activities do not form part of the corresponding profession in the jurisdiction of origin;
- (b) these activities are subject to specific training in the host jurisdiction; and,
- (c) the training for these activities in the host jurisdiction covers substantially different matters from those covered by the applicant's qualification.

Step Three: Compensatory Measures

If the negotiating entities determine that there is a substantial difference in the scope of practice rights or of qualifications between the jurisdictions, they may determine compensatory measures to bridge the gap.

A compensatory measure may take the form of, among other things, an adaptation period or, if required, an aptitude test.

Compensatory measures should be proportionate to the substantial difference which they seek to address. The negotiating entities should also evaluate any practical professional experience obtained in the jurisdiction of origin to see whether this experience is sufficient to remedy, in whole or in part, the substantial difference in the scope of practice rights or qualifications between the jurisdictions, prior to determining a compensatory measure.

Step Four: Identification of the Conditions for Recognition

Once the assessment of the overall equivalency of the scopes of practice rights or qualifications of the regulated profession is completed, the negotiating entities should specify in the MRA:

- (a) the legal competency required to practice the regulated profession;
- (b) the qualifications for the regulated profession;
- (c) whether compensatory measures are necessary;
- (d) the extent to which professional experience may compensate for substantial differences;
- (e) a description of any compensatory measure, including the use of any adaptation period or aptitude test.

5. Mechanisms for Implementation

The MRA should state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the agreement;
- (b) the mechanisms for dialogue and administrative co-operation between the parties to the MRA; and
- (c) the means for individual applicants to address any matters arising from the interpretation or implementation of the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

- (a) the point of contact for information on all issues relevant to the application, for example, the name and address of the relevant authorities, licensing formalities, information on additional requirements which need to be met in the host jurisdiction;
- (b) the duration of the procedures for the processing of applications by the relevant authorities of the host jurisdiction;
- (c) the documentation required of applicants and the form in which it should be presented;
- (d) acceptance of documents and certificates issued in the host jurisdiction in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the relevant authorities.

The MRA should also include the following commitments by the relevant authorities:

- (a) requests about the licensing and qualification requirements and procedures will be promptly dealt with;
- (b) adequate time will be provided for applicants to complete the requirements of the application process and of any appeal to or review by the relevant authorities;
- (c) exams or tests will be arranged with reasonable frequency;

- (d) fees for applicants seeking to take advantage of the terms of the MRA will be commensurate with the costs incurred by the host jurisdiction; and
- (e) information will be supplied on any assistance programmes in the host jurisdiction for practical training, and any commitments of the host jurisdiction in that context.

6. Licensing and Other Provisions in the Host Jurisdiction

If applicable, the MRA should also set out the means by which, and the conditions under which, a licence is obtained following the determination of eligibility, and what a licence entails, for example, a licence and its contents, membership of a professional body, use of professional or academic titles. Any licensing requirements other than qualifications should be explained, including requirements relating to:

- (a) having an office address, maintaining an establishment or being a resident;
- (b) language skills;
- (c) proof of good character;
- (d) professional indemnity insurance;
- (e) compliance with host jurisdiction's requirements for use of trade or firm names; and
- (f) compliance with host jurisdiction ethics, for example, independence and good conduct.

To ensure transparency, the MRA should include the following details for each host jurisdiction:

- (a) the relevant law to be applied, for example, regarding disciplinary action, financial responsibility or liability;
- (b) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential effects on practicing professional activities;
- (c) the means for the ongoing verification of competence; and
- (d) the criteria for, and procedures relating to, revocation of the registration.

7. Revision of the MRA

If the MRA includes terms under which the MRA can be reviewed or revoked, the details should be clearly stated.

8. Transparency

The Parties should:

- (a) make publicly available the text of MRAs which have been concluded; and,
 - (b) notify each other of any modifications to qualifications that may affect the application or implementation of an MRA. If possible, a Party should be given an opportunity to comment on the modifications of the other Party.
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