



Law Council  
OF AUSTRALIA

# General review of the China–Australia Free Trade Agreement

Department of Foreign Affairs and Trade

1 April 2026

*Telephone* +61 2 6246 3788  
*Email* [mail@lawcouncil.au](mailto:mail@lawcouncil.au)  
PO Box 5350, Braddon ACT 2612  
Level 1, MODE3, 24 Lonsdale Street,  
Braddon ACT 2612  
Law Council of Australia Limited ABN 85 005 260 622  
[www.lawcouncil.au](http://www.lawcouncil.au)

# Contents

Acknowledgements	1
Introduction	2
Trade in Legal Services with China	3
Trade in Legal Services under ChAFTA .....	3
Representative offices .....	3
Shanghai Pilot Free Trade Zone (SFTZ) .....	4
Commercial associations and joint operations .....	4
Side letter on legal services .....	4
Removing barriers to trade in legal services .....	5
Residency requirements .....	5
Experience requirements .....	6
Establishment requirements .....	7
Structural and tax requirements .....	8
Joint law firms .....	9
Fly-in, fly-out legal services .....	9
Providing legal advice remotely .....	10
Other opportunities for update .....	10
Qianhai Cooperation Area .....	10
Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) .....	11
About the Law Council of Australia	12

## Acknowledgements

The Law Council of Australia thanks its International Law Section for their contribution to the preparation of this submission.

## Introduction

1. The Law Council of Australia welcomes the opportunity to provide a submission to the Department of Foreign Affairs and Trade (**DFAT**) to support the General Review of the China–Australia Free Trade Agreement (**ChAFTA**).
2. During the negotiation of the ChAFTA, the Law Council engaged closely with DFAT about priorities of the Australian legal profession. This engagement included the development of a discussion paper on *Key Issues Regarding Legal Practice in China for Australian Lawyers*.<sup>1</sup>
3. Following the conclusion of the negotiation of the ChAFTA in November 2014, the Law Council welcomed the Agreement on the basis that it included the strongest commitments made by China, at that time, on legal services under an FTA.<sup>2</sup>
4. The ChAFTA extends China’s commitments under the WTO, including by allowing Australian firms to form joint operations and exchange lawyers as legal consultants with Chinese law firms in the Shanghai Free Trade Zone (**SFTZ**).
5. While noting the positive elements of the Agreement, the Law Council has also previously highlighted its disappointment that many unnecessarily burdensome aspects of regulation affecting the Australian legal profession have not been eliminated in full or in part by the ChAFTA, even within the SFTZ.<sup>3</sup>
6. These include minimum residency and post-admission experience requirements, and lengthy prior establishment of offices in China as pre-requisites to qualify for the establishment of a ‘commercial association’ office in the SFTZ.<sup>4</sup>
7. The Law Council continues to seek rights for Australian lawyers to practise law in China that are no more burdensome or restrictive than the rights that Chinese lawyers currently have in Australia.
8. As noted by DFAT, Australia’s Free Trade Agreements are not static documents.<sup>5</sup> They are implemented over time and subject to review to maximise the benefits they deliver.<sup>6</sup>
9. The Law Council encourages the Australian Government to use the current Review of ChAFTA as an opportunity to consider practical measures to address the barriers identified in this submission.

---

<sup>1</sup> See Law Council of Australia, [Discussion Paper: The proposed China-Australia Free-Trade Agreement: Key Issues Regarding Legal Practice in China for Australian Lawyers](#) (Submission, 16 October 2013).

<sup>2</sup> Law Council of Australia, *Law Council welcomes the China–Australia Free Trade Agreement* (Media Release No. 1426, 18 November 2014).

<sup>3</sup> See Law Council of Australia, [China – Australia Free Trade Agreement \(ChAFTA\)](#) (Submission, 24 July 2015) 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> Department of Foreign Affairs and Trade, [Background Document: Free Trade Agreements as Living Agreements](#) (Fact Sheet, last updated on 8 October 2015).

<sup>6</sup> *Ibid.*

## Trade in Legal Services with China

### Trade in Legal Services under ChAFTA

#### *Representative offices*

10. Under ChAFTA, Australian law firms can provide legal services only in the form of 'representative offices' in China.
11. The permitted business scope for Australian firms aligns with China's WTO accession commitments. Representative offices can:
  - (a) provide clients with consultancy on the legislation of the country/region where the lawyers of the law firm are permitted to engage in lawyer's professional work, and on international conventions and practices;
  - (b) handle, when entrusted by clients or Chinese law firms, legal affairs of the country/region where the lawyers of the law firm are permitted to engage in lawyer's professional work;
  - (c) entrust, on behalf of foreign clients, Chinese law firms to deal with the Chinese legal affairs;
  - (d) enter into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs; and
  - (e) provide information on the impact of the Chinese legal environment.<sup>7</sup>
12. Essentially Australian firms are restricted to providing advice on foreign law or international law, and are explicitly prohibited from practising Chinese law. Foreign firms are instead required to engage Chinese firms to deal with matters relating to Chinese law.
13. Representative offices are not allowed to employ Chinese national registered lawyers. Chinese citizens including Chinese lawyers may be employed by representative offices as non-legal supporting staff provided that they suspend their practising certificate and do not provide legal services to clients during the employment.<sup>8</sup>
14. Representatives of foreign law firms are required to have practised outside of China for at least two years. 'Chief representatives' are required to have practised for at least three years outside of China.

---

<sup>7</sup> The commitment to allow foreign firms to 'provide information on the foreign legal environment' as part of China's WTO commitments has been contentious and appears to have been the result of compromise between China and the EU. EU negotiators appeared to have believed that this commitment would have allowed foreign law firms to offer services on Chinese law, however this is expressly contradicted by current rules. See Andrew Godwin, '[The Professional 'Tug of War': The Regulation of Foreign Lawyers in China, Business Scope Issues and Some Suggestions for Reform](#)' (2009) 33 *Melbourne University Law Review* 136

<sup>8</sup> Weihuan Zhou and Junfang Xi, 'Breakthrough or Standstill? China's Liberalisation of Legal Services under ChAFTA' in Colin B. Picker, Heng Wang, and Weihuan Zhou (eds) *China-Australia Free Trade Agreement: A 21st-Century Model* 147, 164.

15. Representatives are required to be resident in China no less than six months each year.

### **Shanghai Pilot Free Trade Zone (SFTZ)**

16. On 29 September 2013, China launched its first free trade zone—the SFTZ.
17. ChAFTA confirms that Australian law firms that have established representative offices in the China may enter into contracts with Chinese law firms in the SFTZ. Based on such contracts, these Australian and Chinese law firms may dispatch their lawyers to each other to act as legal counsel.
18. This means Chinese law firms may dispatch their lawyers to Australian law firms to act as legal counsel on Chinese law and international law, and Australian law firms may dispatch their lawyers to the Chinese law firms to act as legal counsel on foreign law and international law.

### **Commercial associations and joint operations**

19. ChAFTA allows Australian law firms to establish commercial associations with Chinese law firms in the SFTZ.
20. The two firms forming a joint venture operate as separate entities under different names and remain financially independent. They have independent legal status and bear civil liabilities independently.
21. The ChAFTA reiterates that Australian lawyers in this type of commercial association are not permitted to practise Chinese law.

### **Side letter on legal services**

22. In addition to the commitments contained within the text of the ChAFTA, the Australian and Chinese Governments signed a side letter in connection to the FTA on legal services.<sup>9</sup>
23. This side letter notes the vital role legal services play in facilitating bilateral trade and investment, as well as regional and global trade and investment flows.
24. The Australian and Chinese Governments committed to meet following the entry into force of the ChAFTA with a view to developing measures to enhance and support:
  - (a) strengthened cooperation between lawyers registered in Australia and China, including with respect to trade, investment and other cross-border commercial projects;
  - (b) increased mobility for Australian and Chinese lawyers, including through temporary entry measures to facilitate professional secondments and exchanges between each country; and

---

<sup>9</sup> Letter from Andrew Robb to Gao Hucheng, 17 June 2015  
<<https://www.dfat.gov.au/sites/default/files/chafta-side-letter-on-legal-services.pdf>>.

- (c) closer cooperation between commercial law firms from Australia and China in the effective provision of transnational legal services.
- 25. The side letter states that this cooperation would occur through peak legal professional bodies in both countries, namely the Law Council of Australia and the All-China Lawyers Association (**ACLA**).
- 26. Following the conclusion of ChAFTA, engagement between both professional bodies eventuated in an Australia China Legal Services Roundtable event held in Sydney in October 2017. The event brought together about 30 Australian and Chinese lawyers, including the Presidents of both the Law Council and ACLA, to discuss topics including arbitration, labour law, intellectual property law, and meeting the needs of cross-border clients.

## Removing barriers to trade in legal services

- 27. ChAFTA contains some useful commitments: for example, a commitment to consolidating a pathway for Australian lawyers to practice foreign and international law in China, and for firms to form commercial arrangements. Nonetheless, China continues to maintain unnecessarily burdensome conditions on the practise of foreign law by foreign lawyers, including in the SFTZ.
- 28. These conditions and barriers include:
  - (a) minimum residency requirements;
  - (b) minimum experience requirements;
  - (c) required lengthy prior establishment of offices in China; and
  - (d) differentiated tax treatment of domestic and foreign firms.
- 29. These barriers are explored further below along with proposed recommendations grounded in the Law Council's *Best Practice Principles for Regulation of Foreign Lawyers and Transnational Law Practice*.<sup>10</sup>

### *Residency requirements*

- 30. As noted above, foreign representatives are subject to a residency requirement to be in the country for 'no less than six months' each year. This requirement is contained in China's regulations and reiterated in the ChAFTA.<sup>11</sup>
- 31. Transnational legal practice relies on the ability to flexibly move specialist and experienced lawyers to work on various projects internationally. In the Law Council's view, minimum residency requirements act as an unnecessary restriction on the availability of international legal services.<sup>12</sup>

---

<sup>10</sup> Law Council of Australia, [Best Practice Principles for Regulation of Foreign Lawyers and Transnational Law Practice](#) (Policy Statement, November 2015).

<sup>11</sup> *Regulations on the Administration of Representative Offices of Foreign Law Firms in China* (People's Republic of China) State Council, Decree No 338, 22 December 2001 art 19.

<sup>12</sup> See Law Council of Australia, [Discussion Paper](#) (n 1) and Law Council of Australia, *Best Practice Principles for Regulation of Foreign Lawyers* (n 10).

32. The experience in Australia and other jurisdictions is that residency requirements do not provide any significant measure of protection for consumers. Consumer protection and maintenance of standards can be more appropriately ensured through other less restrictive measures: for example, a requirement that a registered foreign lawyer disclose to clients their status as a foreign lawyer, as well as their professional indemnity insurance arrangements.
33. The Law Council notes that China has removed the residency requirement for representatives of Hong Kong law firms in mainland China as a result of updates to the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA).<sup>13</sup> This has been done explicitly to enable lawyers to have greater flexibility in attending to practices in both jurisdictions.<sup>14</sup>

### Recommendation

**Encourage China to remove the residency requirement for Australian lawyers acting as foreign representatives.**

### Experience requirements

34. As in the case of residency requirements, the ChAFTA reiterates experience requirements contained in domestic regulations. Foreign representatives in China are required to have two years of experience practising outside of China,<sup>15</sup> and ‘Chief representatives’ are required to have at least three years’ experience.<sup>16</sup>
35. The Law Council assumes that the intention of this restriction is to protect Chinese clients from receiving advice from an inexperienced lawyer. Under Australian legal profession rules, a lawyer with less than two years’ experience would typically be unable to provide advice to clients in any jurisdiction without supervision.
36. Feedback from Australian law practices in China has indicated that the two-year requirement is not a significant barrier to legal practice in China because any lawyers with less experience than this can be given ‘paralegal’ or a similar non-lawyer designation.<sup>17</sup>
37. With the increasing internationalisation of legal services, it is common for lawyers—particularly those practising in multi-national firms—to practise the law of their home jurisdiction in several offices within and beyond Australia, including in offices in China.

---

<sup>13</sup> Department of Justice, Hong Kong, ‘Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) Frequently Asked Questions Sector-specific: Legal Services Sector’ *Closer Economic Partnership Arrangement* (FAQ, last updated December 2025) <[https://www.doj.gov.hk/en/mainland\\_and\\_macao/pdf/faq\\_e.pdf](https://www.doj.gov.hk/en/mainland_and_macao/pdf/faq_e.pdf)>.

<sup>14</sup> *Ibid.*, 5.

<sup>15</sup> *Regulations on the Administration of Representative Offices of Foreign Law Firms in China* (People’s Republic of China) State Council, Decree No 797, 12 June 2024, art 7(a)(ii).

<sup>16</sup> *Ibid.*

<sup>17</sup> Law Council of Australia, *Discussion Paper* (n 1) 23.

38. The Law Council would welcome a blanket removal or reduction of the number of years of experience required to register as a representative in China.
39. If a minimum number of years is to be maintained, the Australian Government should encourage China to consider allowing for experience to be obtained within China.
40. By way of comparison, Japan currently maintains a similar three-year requirement of post qualification experience for foreign lawyers seeking to be admitted as *gaikokuho-jimu-bengoshi* (registered foreign lawyers), however Japan's regulatory regime allows for up to two years of experience to be obtained in Japan.<sup>18</sup>

### **Recommendation**

**Encourage China to remove the requirement that foreign representatives undertake a minimum number of years of practice outside of China.**

### **Recommendation**

**Alternatively, encourage China to allow for experience to be obtained within China for the purposes of meeting minimum experience thresholds.**

### **Establishment requirements**

41. To establish an office in China, firms require approval from the Chinese Ministry of Justice and must demonstrate an 'actual/genuine need' for establishing the office.<sup>19</sup> The broad test allows Chinese authorities discretion to determine the number and location of representative offices.
42. A foreign firm can open more than one office in China, however it must wait three years between opening offices.
43. The Law Council is concerned that onerous registration requirements create additional barriers for foreign lawyers to establish registered offices and provide legal services in foreign law. These include requiring a range of certified and translated documents to be provided in applications to establish a registered office, significant waiting periods for the outcomes of applications, a lack of guidance on the reasons for rejection of the application, and requiring annual re-registration in order to continue providing these services.
44. Although large legal practices generally have the financial resources to work around the kinds of barriers in place in China, this is not generally the case for small and medium-sized legal practices and newly established firms. For example, a large legal practice can take the approach that losses incurred while obtaining registration, and in the course of establishing a physical presence and building a local client base in China, are an initial investment made as part of a long-term, profit-generating strategy.

---

<sup>18</sup> Ministry of Justice (Japan), '[Registered Foreign Lawyer \(Gaikokuho-Jimu-Bengoshi\) Manual on Application for Approval and Designation](#)' *Manual on Application for Approval and Designation and Application Forms* (Manual, November 2022) 6-7.

<sup>19</sup> *Regulations on the Administration of Representative Offices of Foreign Law Firms in China*, art 7(3).

45. Small and medium-sized legal practices are less likely to have the financial depth required to make this investment, and will face more difficulties in terms of increasing client numbers and billings to ensure that the venture becomes profitable in the medium to long term.
46. For small and medium-sized legal practices, it is much more likely that their presence in a foreign legal services market will be established one client and one matter at a time. This means that measures such as lengthy minimum residency requirements and periods of prior establishment before entering partnerships with local lawyers are inherently more burdensome for small and medium-sized legal practices.

### **Recommendation**

**Encourage China to streamline registration processes for foreign firms and remove or reduce waiting requirements.**

### **Structural and tax requirements**

47. The Law Council has been advised that issues relating to different tax rules for foreign and Chinese lawyers and law practices have previously been raised by firms directly with DFAT.<sup>20</sup>
48. The British Chamber of Commerce has highlighted how the structure of foreign firms as representative offices can place firms at a disadvantage relative to their domestic counterparts:

*Foreign law firms in China operate as representative offices, which by law subjects them to two layers of taxation, one on the office's profits and another on the individual income of their representatives and employees. In contrast, domestic law firms are permitted to structure as partnerships and are therefore only taxed on partnership income, which is subject to a much lower marginal rate than the individual income tax foreign firms must pay. As a result, since foreign firms cannot access this partnership tax advantages, Chinese law firm firms can offer lower fees to clients while generating similar levels of net income. This put foreign firms at a significant competitive disadvantage, especially when it comes to attracting and retaining Chinese legal talent.<sup>21</sup>*

49. The Law Council would welcome greater flexibility for foreign firms in how they can structure themselves.

### **Recommendation**

**Encourage China to allow foreign firms to structure as partnerships to align tax treatment of foreign and domestic firms.**

<sup>20</sup> Law Council of Australia, [Discussion Paper](#): (n 1) 16.

<sup>21</sup> British Chamber of Commerce, [British Business in China: Position Paper 2025](#) (2025) 87.

### Joint law firms

50. Despite initial aspirations that the creation of the SFTZ in 2013 would result in further liberalisation of China's legal services market in the years to follow, there has been little movement in liberalising local regulations.
51. Various requirements apply to Chinese law firms wishing to enter into such an arrangement. The Chinese law firm must have been established for at least three years and employ at least 20 full-time licensed lawyers.<sup>22</sup>
52. Chinese lawyers assigned to serve as legal counsel for representative officers are required to have more than 5 years of full-time experience in China.<sup>23</sup> Foreign lawyers seeking to serve as foreign counsel are required to have more than 5 years of experience practising overseas.<sup>24</sup>

### Recommendation

**Encourage China to ease requirements to form a commercial association between foreign and local partner firms, including by:**

- **reducing the required number of full-time licensed lawyers that a partner firm must employ;**
- **reducing the amount of time a partner firm must have been established; and**
- **reducing the experience requirements for foreign and domestic lawyers working in commercial associations.**

### Fly-in, fly-out legal services

53. In Australia, foreign lawyers working on a fly-in, fly-out (**FIFO**) basis may come to Australia and act for their clients and provide legal services (for example in commercial negotiations, on transnational contracts, or international arbitrations) for a maximum of 90 days in any 12-month period without registration.
54. A foreign lawyer who wishes to practise foreign law in Australia for a longer period, or establish a commercial presence, may register as an Australian-registered foreign lawyer via a simple process.<sup>25</sup>
55. Globally, almost all jurisdictions tolerate the practice of foreign lawyers travelling to accompany or meet with clients on a short-term basis, usually providing foreign law advice on a transactional matter, without establishing a commercial presence.

<sup>22</sup> Shanghai Municipality, Implementing Measures for Associations between Chinese and Foreign Law Firms in China (Shanghai) Pilot Free Trade Zone, *Hu Fu Ban Fa* [2014] No.63 art 3.

<sup>23</sup> *Ibid*, art 5(a).

<sup>24</sup> *Ibid*, art 6(a).

<sup>25</sup> See for example, Australian Business and Licence Service, *Registration as a Foreign Lawyer - New South Wales* (Webpage) <<https://ablis.business.gov.au/service/nsw/registration-as-a-foreign-lawyer/16869>>.

56. The Law Council would welcome efforts from China to align domestic regulation and commitments under ChAFTA to reflect this practical reality. This could be done in a number of ways, including by:
- (a) the introduction of a rule similar to Australia's 90-day rule;
  - (b) the creation of a new visa class to enable foreign lawyers to attend meetings or negotiations in circumstances where they do not have a representative office; and/or
  - (c) the introduction of a visa class for short-term intra-corporate transferees of existing partners or employees of foreign law practices that have a representative office.<sup>26</sup>

### **Recommendation**

**Encourage China to update ChAFTA to reflect existing tolerance of FIFO practice in China.**

**Encourage China to consider domestic reform to explicitly permit FIFO practice by foreign lawyers.**

### ***Providing legal advice remotely***

57. Providing cross-border legal services remotely (i.e. providing foreign law advice via email or video conference to a client in another jurisdiction) is increasingly common in the supply of legal services by Australian lawyers internationally.
58. The provision of legal services through this mode of supply is not always expressly permitted under domestic law or regulations, and can pose some level of risk to foreign lawyers advising clients across jurisdictions.
59. Annex III of ChAFTA provides that cross-border supply of legal services is not limited. However, the Law Council would welcome additional clarity that the provision of remote foreign law advice by an Australian lawyer to a client located in China would not result in regulatory action.

## **Other opportunities for update**

### ***Qianhai Cooperation Area***

60. In the intervening period since the last Review of the ChAFTA, China has established the Qianhai Cooperation Area (**QCA**) in Guangdong Province.

---

<sup>26</sup> Law Council of Australia, [Discussion Paper](#): (n 1) 28.

61. As of March 2023, foreign law firms may also form joint ventures with local firms in the QCA in addition to the SFTZ.<sup>27</sup>
62. To date there has been limited uptake of this opportunity. On 9 March 2026, global law firm Pinsent Masons announced it had received government approval to enter a joint venture with China Commercial Law Firm in the QCA, becoming the first joint venture of its kind in the new Free Trade Zone.<sup>28</sup>

### Recommendation

**Update ChAFTA to incorporate reference to new free trade areas that have been established in the period since the last Review.**

### *Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)*

63. Since the negotiation of the ChAFTA, China has continued to liberalise trade in legal services with Hong Kong, particularly through the CEPA.
64. China has excluded legal services from its Most-Favoured Nations obligations and so is not obliged to provide Australia better access to its legal services market. Nevertheless, it remains open to Australia to seek similar levels of access to China that is provided under the other agreements such as the CEPA.

### Recommendation

**Australia should seek to build on legal service commitments in ChAFTA by reference to other agreements China has entered into with other jurisdictions, including Hong Kong.**

---

<sup>27</sup> «广东省司法厅关于印发在前海深港现代 服务业合作区开展中外律师事务所 联营试点实施办法的通知» Notice from the Guangdong Provincial Department of Justice on Issuing the Implementation Measures for the Pilot Program of Joint Ventures of Chinese and Foreign Law Firms in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone, Guangdong Judicial Regulations [2023] No. 1 <[http://www.gd.gov.cn/zwgk/gongbao/2023/6/content/post\\_4117478.html](http://www.gd.gov.cn/zwgk/gongbao/2023/6/content/post_4117478.html)>.

<sup>28</sup> Pinsent Masons, [Pinsent Masons enters joint venture with China Commercial Law Firm](#) (Media Release, 9 March 2026).

## About the Law Council of Australia

The Law Council of Australia 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](http://www.lawcouncil.au).