
Union Internationale des Architectes - International Union of Architects

A Recommendation on Mutual Recognition Agreements

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International Union of Architects

A Recommendation on Mutual Recognition Agreements

The UIA is committed to the encouragement of bilateral or multilateral Mutual Recognition Agreements in order to facilitate architect's practice in a jurisdiction different to the one in which the architect is originally registered/certified/licensed. The UIA Accord on Recommended International Standards of Professionalism in Architectural Practice should be the basis for those Agreements.

Preamble

The purpose of the *UIA Accord on Recommended International Standards of Professionalism in Architectural Practice* and its Guidelines is to define best professional practice for architects and the standards to which the profession aspires.

The Accord acknowledges however that there are differences in the standards, practices and conditions among the UIA sections¹. These differences reflect the diversity of cultures of the countries of the UIA member sections, and the Accord is a first step in efforts by representatives of the international community of architects to reach consensus on standards and practices that will best serve community interests.

Several international trade agreements contain provisions for mutual recognition of professional services. Article VII of the General Agreement on Trade in Services (GATS) permits bilateral and regional recognition agreements, although such agreements represent a departure from the most-favoured-nation (MFN) principle. Under the GATS, recognition can also be conferred unilaterally or through a harmonization of rules. However the parties to such an arrangement must give other members of the World Trade Organization (WTO) an opportunity to reach a similar agreement, and no recognition agreement may be applied in a discriminatory or trade-restricting manner. The WTO has adopted voluntary, non-binding guidelines for the negotiation of Mutual Recognition Agreements for the accounting profession, which could be useful for other professions².

The UIA is committed to the encouragement of bilateral or multilateral recognition agreements within the context of the General Agreement on Tariffs and Trade (GATT), the General Agreements on Trade in Services (GATS) and the World Trade Organization (WTO). Experience in the development of such agreements for the

¹ The web site of Professional Standards that the Col.legi d'Arquitectes de Catalunya (COAC) has developed for the UIA Professional Practice Commission (www.coac.net/internacional/praprof_w.htm) and the National Council of Architectural Registration Boards (NCARB) Directory on Practice Standards (www.ncarb.org/overseas/index.htm) are good references to understand these differences

² See www.wto.org, press release of May 1997

architectural profession suggests that the process requires the identification of gaps between elements of foreign professional qualification standards and those of local qualification standards, and the negotiation of means to bridge these gaps through establishment of equivalencies.

This Recommendation is intended to provide some basic pointers to enable those interested organisations to begin negotiating Mutual Recognition Agreements which maintain the International Standards established by the UIA Accord and Guidelines.

Definitions

The way in which architects can provide their services in a different jurisdiction to the one in which they usually practise depends on the possible existence of agreements between governments or professional or registration bodies. For full awareness of the context in which this practice is to take place, some basic concepts need to be clarified.

Free Trade Agreements (FTA) are bilateral or multilateral agreements between jurisdictions to remove trade barriers between them. They are usually negotiated between governments and often have to be ratified by their respective legislative bodies. They may include provisions concerning both trade in goods and trade in services and may sometimes also include specific agreements for the provision of professional services. If this is not the case, they often set a timeframe to negotiate specific agreements on mutual recognition of professionals.

Mutual Recognition Agreements (MRA) are bilateral or multilateral agreements between jurisdictions to establish mechanisms of equivalency that recognise architects from any of the jurisdictions involved as similar professionals to those in any of the other jurisdictions. As these agreements necessarily deal with the specificities of a given profession, the professional and registration bodies representing the latter tend to play an important role in the negotiation process. It is important to stress that the recognition of equivalency between a foreign professional and a domestic one under a Mutual Recognition Agreement does not automatically entitle the foreign national to practice in the domestic jurisdiction. For this to happen, governments must have eliminated restrictive business regulations, such as nationality or residency requirements, that would prevent the foreign professional from applying for the necessary licenses and business permits that would allow the foreign individual to practice the profession. This is why Mutual Recognition Agreements often form part of (or are associated with) Free Trade Agreements or are related to other agreements dealing with this matter.

Practice in a Host Nation (PHN) is the expression used in the *UIA Accord on Recommended Standards of Professionalism in Architectural Practice* to identify the situation in which individual architects or corporate entities of architects have been commissioned to design projects in a jurisdiction which has no Free Trade Agreement

or Mutual Recognition Agreement with the jurisdiction in which they are registered, licensed or certified. In this case, to be able to carry out their tasks, foreign architects enter into a fair and equitable agreement with a local architect of similar expertise and experience.³

Recommendations

A. Negotiation of Agreements

A.1. Participants

Depending on the specific circumstances of a given country, the initiative to enter into the negotiation of Mutual Recognition Agreements with some other jurisdiction may come either from representatives of the government or from the professional, registration or accreditation bodies. In any case, given the specificity of the issues involved, the UIA considers it most important that the professional and the registration or accreditation bodies should have leading roles in the process and wholeheartedly encourages the involvement of governmental bodies. It is important to be aware that, from a practical point of view, no agreement can come into effect if all these parties are not involved.

To save multiplication of efforts and avoid misunderstandings it is recommended that a single negotiating entity be established, including all these bodies. This does not necessarily mean that all of them have to take part in negotiations in the same way, but it does involve all of them sharing information and agreeing on procedures. An adequate internal methodology has to be established in order to ensure that this happens.

When there are other authorities or organizations in the jurisdiction that may have a say on specific issues concerning mutual recognition, it is recommended that adequate means of involvement be established to ensure that the MRA receives full support.

In countries where architects have no professional body to represent them the UIA may provide assistance.

³ See *Recommended Guidelines for the UIA Accord on Recommended International Standards of Professionalism in Architectural Practice Police on Practice in a Host Nation* (www.aia.org/institute/uia/hostnation-en.pdf)

A.2. Principles of Professionalism on which the Agreement is Based

The *UIA Accord on Recommended International Standards of Professionalism in Architectural Practice* is the document considered by the International Union of Architects to best define the standards architects should meet. The UIA certainly advocates the use of the Accord as the basis for Mutual Recognition Agreements and no UIA section should undertake this kind of arrangements unless the Accord is respected.

It is recommended that the Accord's main principles of professionalism be reproduced in the text of the Mutual Recognition Agreement and that those policy issues of the Accord that might be most relevant to an understanding of the agreements reached in the MRA be highlighted (i.e. Practice of Architecture, Education, Accreditation/Validation /Recognition, Practical experience/Training/ Internship or other).

A3. Principle of Equivalency

The UIA is aware that the process of negotiation of Mutual Recognition Agreements must recognize the sovereign right of every jurisdiction to establish its professional standards at whatever level it deems appropriate for the environmental, social, cultural, public health, safety and welfare interests of its citizens, and to establish the necessary procedures to guarantee these standards.

To bridge the gaps between the elements of professional qualification standards in all the jurisdictions involved in the negotiation of a Mutual Recognition Agreement it is necessary to establish a principle of equivalency between them. In this way, the UIA advocates the need to avoid trying to establish identical procedures in all the jurisdictions involved, but to find the means to guarantee the equivalency of the architectural standards that are to be recognised through respect for the specific procedures of the jurisdictions involved.

A reasonable period of professional practice in their home jurisdiction under defined conditions after their education and registration may be a tool for equivalency within a Mutual Recognition Agreement. This element for equivalency is currently being discussed in some of the on-going negotiations for MRAs for the architectural profession.

A.4. Procedures

Some of the basic principles valid for any kind of negotiation also apply for the negotiation of Mutual Recognition Agreements. These would include:

- to exchange as much information as possible before meetings

- to write a clear agenda before meetings so that the focus is evident to all parties
- to write minutes of the agreements reached in a meeting and distribute them among the participants
- to maintain consistency of involvement to prevent different people attending different meetings and thereby losing the necessary continuity

A.5. Letters of Intent or Accords on Co-operation and Professionalism

During the process of negotiation of Mutual Recognition Agreements, it may be desirable to reach an intermediate stage where the parties have agreed on some basic principles. This is what is often known as *Letters of Intent or Accords on Co-operation and Professionalism*. They usually deal with the issues listed below from B1 to B6 (Background, Representatives, Objective of the Agreement, Scope of the Agreement, Principle on which the Agreement is Based, Current Standards in the Participating Jurisdictions) and can be a good basis for the extension of discussion beyond the individuals taking part in the negotiations, thus obtaining broad-based support from all the institutions involved in the process.

B. Form and Content of the Agreement

B.1. Background

The MRA should state:

- the reasons that have led to the Mutual Recognition Agreement
- the relationship to a possible Free Trade Agreement, with clear indications as to whether the Mutual Recognition Agreement develops a provision in an existing Free Trade Agreement or is a proposal to be included in a Free Trade Agreement yet to be negotiated
- the nationals to which the Mutual Recognition Agreement is applicable

B.2. Representatives

The MRA should identify:

- the parties to the agreement
- their status and area of competence
- the competent authorities or organizations other than the parties relevant to the agreement
- their position in relation to it.

B.3. Goal of the Agreement

The MRA should state that its purpose is the mutual recognition of architects' credentials in the signatory jurisdictions in order to facilitate practice in a jurisdiction different to the one in which the architect is originally registered/certified/licensed.

B.4. Scope of the Agreement

The MRA should state:

- the range of professionals eligible for mutual recognition under the terms of the Agreement
- the credentials or qualifications that architects from each of the signatory jurisdictions must hold to be recognised in the rest of the jurisdictions
- whether the agreement covers temporary or permanent access to the profession

B.5. Principles on which the Agreement is Based

The MRA should include a list of the principles that the parties consider should be the basis for mutual recognition of architects. (See A2)

B.6. Current Standards in the Participating Jurisdictions

The MRA should indicate the current standards and procedures in each of the jurisdictions involved with regard to the above-mentioned principles and particularly to those that will constitute the basis for mutual recognition under B7.

B.7. Mutual Recognition Provisions

As regards eligibility for recognition the MRA should specify:

- the basis on which the Mutual Recognition Agreement is founded (i.e. academic qualifications, registration, practical experience, etc.)
- the conditions to be met for recognition in the jurisdictions of each party and the level of equivalence agreed between the parties

If eligibility for recognition is based on qualifications, the MRA should, as applicable, state:

- the minimum level of education required (entry requirements, length of studies, subjects studied)⁴
- the minimum level of experience required (location, length and conditions of Practical experience/Training/Internship prior to Registration/Licensing/Certification)
- how professional knowledge and ability are demonstrated in the home jurisdiction
- the possible listing of particular degrees, diplomas or certificates that are eligible for recognition
- an indication as to whether the possession of a certain qualification allows for recognition of all or just some of the activities that architects are entitled to practise in the guest jurisdiction

If eligibility for recognition is based on Registration/Licensing/Certification, the MRA should indicate the authorities whose Registration/License/Certificate is accepted.

Additional requirements for recognition in the host jurisdiction should only apply when no mechanism of equivalency can be found and in the event of clear shortcomings in relation to qualifications in the host jurisdiction or a lack of knowledge of local law, practice, standards and regulations. This knowledge should be essential for practice in the host jurisdiction or required because there are differences in the scope of licensed practice.

As indicated on A3 Principle of Equivalency, a reasonable period of professional practice in their home jurisdiction under defined conditions after their education and registration may be in many cases a tool for equivalency avoiding the need of additional requirements. If additional requirements are deemed necessary, the MRA should set out in detail what they entail (for example, examination, aptitude test, additional practice in the host country or in the country of origin)

- the possible differences in the requirements from various sub-central jurisdictions of a party if they are not identical
- the extent to which recognition granted by one sub-central jurisdiction of a party is applicable or not in the other sub-central jurisdictions of it

As far as procedures for recognition are concerned, the MRA should specify:

- the documents that architects must provide to the host jurisdiction authorities to prove the above-mentioned conditions for recognition
- the authorities that are entitled to provide these documents in the home jurisdiction
- the authorities that are to receive these documents in the host jurisdiction
- the documents that the host jurisdiction authorities must provide to architects to entitle them to practice

⁴ *Altogether with the UIA Accord on Recommended International Standards of Professionalism in Architectural Practice (www.uia-architectes.org/image/PDF/Pro_Pra/ACCORD.pdf), the UIA-Unesco Charter for Architectural Education (www.uia-architectes.org/texte/england/Education/2Charte.htm) and the Unesco-UIA Validation System for Architectural Education contain further information related to UIA standards concerning this issue*

If Registration/Licensing/Certification is compulsory in the host jurisdiction, the MRA should also:

- establish the means by which, and the conditions under which, registration/license/certificate is actually obtained following the establishment of eligibility
- indicate what this license entails (content, membership of a professional body, use of professional or academic titles, etc.)
- any licensing requirements other than qualifications

B.8. Mechanisms for Implementation

The MRA should state:

- the rules and procedures to be used to monitor and enforce the provisions of the agreement
- the mechanism for dialogue and administrative co-operation between the parties
- the means of arbitration for disputes under the MRA

As regards this issue, the following commitments should be adopted:

- to promptly answer questions about the measures
- to provide adequate preparation time when necessary
- to arrange exams or tests with reasonable regularity
- to ensure that fees for applicants seeking to take advantage of the terms of the MRA are in proportion to the cost to the host jurisdiction organisation and do not become a dissuasive element for application
- to supply information about assistance programmes in the host jurisdiction for Practical Experience/Training/Internship and any associated commitments of the host country

B.9. Revision of the Agreement

The MRA may include terms under which it can be reviewed or revoked.

B.10. Ratification of the Agreement

The MRA should indicate the political processes under which it will be approved in the participating jurisdictions.

C. Further information related to MRA provisions

A Mutual Recognition Agreement does not necessarily contain all the information necessary for the practical development of its provisions. In order to ensure transparency and to help both the authorities that will have to implement its content and the architects wishing to be recognised by a foreign jurisdiction, either the necessary information should be provided or the provisions of the Agreement should be developed further. This may take the form of an appendix to the MRA or of a separate, related publication. If this additional information is too extensive, clear indications on where to find it should be given. As outlined above, if the MRA relates to a Free Trade Agreement that might cover some of these additional issues, it should be clearly stated.

The additional information may refer to obligations related to establishment in the host jurisdiction:

- regulations relating to requirements of nationality or residency
- requirements relating to office address or establishment
- language requirements
- host jurisdiction's requirements for use of trade/firm names
- proof of good conduct and financial standing
- compliance with host jurisdiction's ethics (e.g. independence and incompatibility)

It may also refer to the regulations concerning the practice of architecture in the host jurisdiction:

- relevant laws and regulations concerning disciplinary action, financial responsibility, liability, etc.
- the principles of discipline and enforcement of professional standards
- the means for ongoing verification of competence
- the criteria and procedures for revocation of the registration of professionals

Other information may be related to practical details for the applicant wishing to set up practice in the host jurisdiction:

- the address of the competent authorities
- the length of the procedure to process an application
- the procedure for presentation of documentation and deadlines
- any fees that might be reasonably required