UNDERSTANDING THE RCEP SERVICES, INVESTMENT, AND E-COMMERCE CHAPTERS: BENEFITS FOR BUSINESSES

MTI
MINISTRY OF TRADE AND INDUSTRY
SINGAPORE

CONTENTS

FOREWORD

The signing of the Regional Comprehensive Economic Partnership (RCEP) at the 4th RCEP Leaders' Summit on 15 November 2020 between the 10 ASEAN Member States and five ASEAN FTA Partners (Australia, China, Japan, New Zealand and the Republic of Korea) is a significant milestone. Amidst the COVID-19 pandemic, the 15 RCEP Participating Countries had persisted, remained steadfast and committed to deepen our economic integration in the region.

After eight years, the RCEP is today the world's largest FTA to-date, involving a diverse group of countries. As a modern, comprehensive, high-quality, and mutually beneficial economic partnership, it will facilitate the expansion of regional trade and investment and contribute to global economic growth and development. The RCEP will open up new opportunities and bolster the market and employment opportunities for businesses and people in the region.

Singapore looks forward to ratification by all RCEP Participating Countries so that the Agreement may enter into force as soon as possible.

It is our hope that this practical guide to utilising the RCEP will be helpful to Singapore businesses.

Ms Sulaimah Mahmood
Senior Director, ASEAN & South East Asia and Oceania, Ministry of Trade and Industry
Singapore's Chief Negotiator for RCEP

INTRODUCTION

The Regional Comprehensive Economic Partnership (RCEP) is a free trade agreement (FTA) among Singapore and 14 other countries, including all 10 Association of Southeast Asian Nation (ASEAN) member countries, as well as Australia, New Zealand, China, Japan, and South Korea. Together, these countries account for about 30 percent both global GDP and population. Negotiations were concluded in November 2019 and the RCEP was signed on 15 November 2020. RCEP will enter into force 60 days after ratification by six ASEAN Member States (AMS) and three ASEAN FTA Partners.

RCEP generates new and exciting prospects for businesses seeking to reach untapped markets abroad. In addition to ensuring that Singapore service providers, investors and investments are treated equitably and fairly, RCEP will provide greater transparency on the rules and regulations that apply to foreign investments and introduces new opportunities for businesses to engage in digital trade.

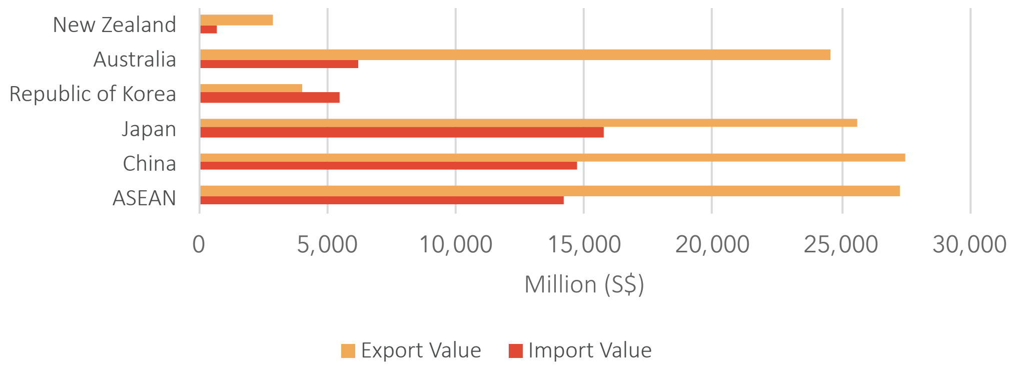
To help Singapore businesses leverage RCEP, this booklet provides an overview of trade in services, investment and e-commerce with RCEP countries, highlighting sectors where Singapore firms are already making headway into neighbouring markets and have the potential for further growth. Companies can often operate across borders even without a trade agreement, but RCEP will make it easier and more consistent for firms to deliver services across Asian markets. The booklet will also examine RCEP benefits and limitations, using relevant examples of Singapore firms operating and investing abroad. It will also compare RCEP with Singapore's network of pre-existing FTAs.

SINGAPORE'S TRADE IN SERVICES AND INVESTMENT WITH RCEP COUNTRIES

TRADE IN SERVICES

In 2019, Singapore firms provided S$111.7 billion in services to RCEP countries, representing 37.7% of global services exports.[1] Within RCEP, the share of Singapore's services exports to ASEAN countries, Japan and China each account for nearly a quarter of total exports to the bloc.[2] Australia accounts for just over one-fifth.

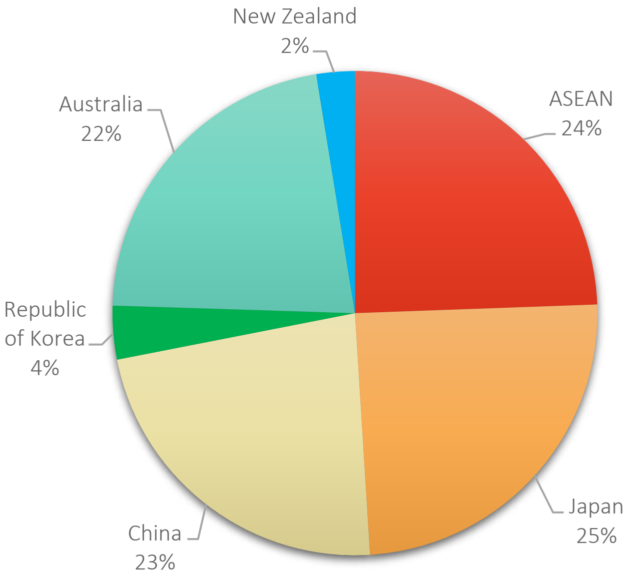
Import and Export of Services to RCEP Countries (2019)



Source: Singapore Department of Statistics

[1] In 2019 the total export of services to the world was S$296.3 billion. Singapore's Export of Services, Trade in Services. Singapore Department of Statistics. Accessed from https://www.singstat.gov.sg/find-data/search-by-theme/trade-and-investment/trade-in-services/latest-data; and International Trade in Services, Exports Of Services By Major Trading Partner, Annual. Singapore Department of Statistics. Accessed from https://www.tablebuilder.singstat.gov.sg/publicfacing/createDataTable.action?refId=11848.
[2] Singapore's International Trade in Services, Singapore Department of Statistics, 2019. Accessed from https://www.singstat.gov.sg/-/media/files/publications/trade_and_investment/int-trade2019.pdf

Singapore's Export of Services to RCEP Countries

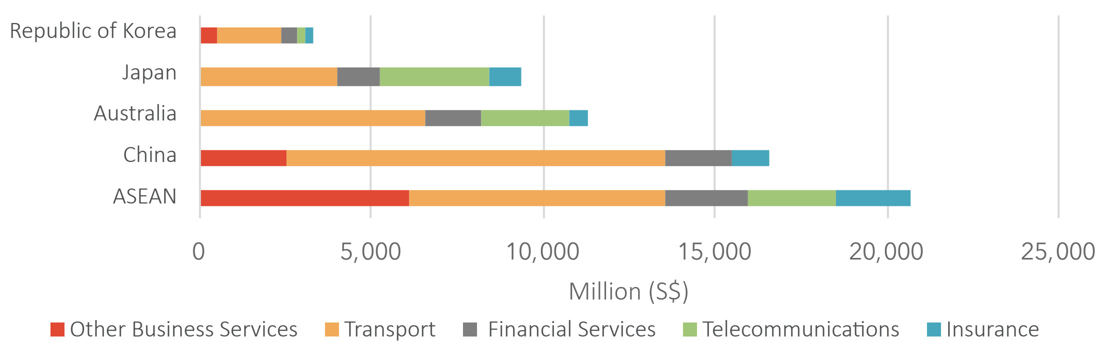


Source: Singapore Department of Statistics

RCEP markets are also home to some of Singapore's highest-grossing service sectors. The most exported services sectors from Singapore are 1) "other business services" which include business management and consultancy services, professional and management consulting services (e.g. accounting, advertising), research and development, and technical and trade-related services (e.g. engineering, trading and distribution of goods), 2) transport, 3) financial services, 4) telecommunication services and 5) insurance.[3]

In 2019, the five largest markets including ASEAN, spent S$30.9 billion on transportation services.[4] Singapore telecommunications firms also provided S$8.3 billion worth of service to consumers in Australia, Japan, and ASEAN countries, while Singapore firms providing professional services classified under the category of other business services exported S$9.2 billion in value of services to ASEAN, China and the Republic of Korea.

Singapore's Top Exports of Services to Five Largest RCEP Markets by Service Category (2019)



Source: Singapore Department of Statistics

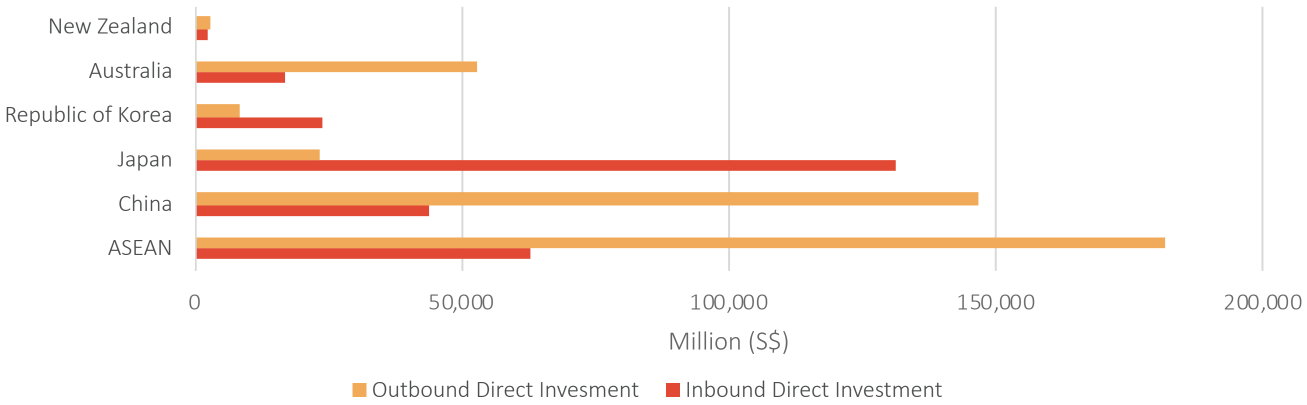
[3] Singapore's International Trade in Services 2019, Singapore Department of Statistics, 2019. Accessed from: https://www.singstat.gov.sg/-/media/files/publications/trade_and_investment/int-trade2019.pdf

[4] Transportation services include the carriage of passengers, the movement of goods, and related auxiliary services.

INVESTMENTS

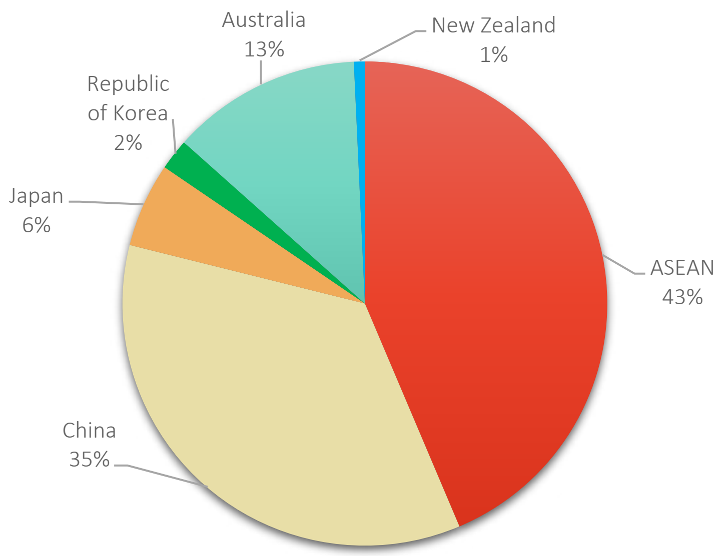
Singapore's investors have made substantial investments in neighbouring Asian countries. As of 2019, Singapore invested S$ 416.7 billion into RCEP countries. This represents 45.6% of its total direct investments abroad. The top investment destinations were China (S$ 147 billion), Indonesia (S$ 64.5 billion), and Malaysia (S$ 54.4 billion).

Singapore's Inbound and Outbound Direct Investment with RCEP Countries



Source: Singapore Department of Statistics

Singapore's Direct Invesment in RCEP Countries



Source: Singapore Department of Statistics

BENEFITS OF THE TRADE IN SERVICES, INVESTMENT AND E-COMMERCE CHAPTERS FOR SINGAPORE-BASED BUSINESSES

Singapore service providers and investors are eligible for benefits related to trade in services, investment and the temporary movement of persons. These new rules are set out in Chapters 8, 9 and 10 of RCEP.[5]

National Treatment

Singapore service providers, investors and investments benefit from the equivalent treatment that RCEP countries will provide to their own domestic counterparts in every committed or scheduled sector and subsector.

Market Access

RCEP countries may not cap the number of businesses or branches or specify total numbers of national citizens working in a particular service in sectors in which they have committed to liberalise.

Most-Favoured-Nation Treatment

Service providers, investors and investments will be treated as favourably as service providers, investors and investments from other RCEP members in sectors which they have committed to liberalise.

Fair and Equitable Treatment

Service providers, investors, and investments will get fair and equitable treatment, full protection and security in accordance with the minimum standard of treatment for foreign countries as outlined by customary international law.[6]

Greater Transparency

Singapore firms will have public access to key information on sectors affected by existing and proposed regulatory measures, the source of authority of for regulatory measures, and conditions under which measures apply.[7]

No Local Presence Necessary

Singapore businesses are not required to establish or maintain a local representative office within an RCEP country where services are delivered for sectors which have been committed for liberalisation. This is especially important for services firms working on digital trade, as they do not need to have a local office in each potential RCEP market.

Recognise Licensing and Qualifications

RCEP facilitates dialogue and MRA arrangements between 2 or more parties.[8] The Annex on Professional Services encourages parties to work towards developing mutually acceptable professional standards to recognise professional service providers' education, experiences, licenses and certifications etc.

[5] Benefits apply under certain conditions to particular sectors. Firms are encouraged to determine whether their services are eligible for benefits by reviewing the respective Chapters of the RCEP agreement. The text can be accessed at: https://rcepsec.org/legal-text/

[6] Investors should not be denied justice in any legal or administrative proceeding, or be charged unreasonable authorisation fees for the provision of a service.

[7] These apply to measures that contradict each country's national treatment and market access commitments.

[8] No MRA arrangements are currently in place under the RCEP. However, under the RCEP, countries shall encourage relevant bodies to negotiate with one another for the mutual recognition of professional qualifications, licensing or registration in professional services.

No Performance Requirements

RCEP prohibits its members from imposing eight types of business performance requirements as a condition for the establishment and operation of investments unless otherwise stipulated in their schedules. In addition to the list of prohibited performance requirements in the ASEAN Comprehensive Investment Agreement (ACIA), RCEP limits transfer of a particular technology and the imposition of a given rate or amount of royalty under a licence contract as conditions for an investment to take place.

Free Transfer Without Delay

Singapore investors are permitted to make all transfers relating to their investment in and out of other RCEP countries freely and without delay. This includes profits, capital gains, dividends, interests, and proceeds from the sale of any part of the investment.

No Demands for Local Nationals to Serve in Senior Management

Singapore businesses operating within RCEP territories are not required to appoint individuals of any particular nationality to senior management or board of director positions unless noted in RCEP.[9]

Protection and Security for Investments

Singapore investors can be assured that any losses suffered by investments in another RCEP country owing to armed conflict, civil strife, or state of emergency will be redressed using the same measures that country applies to its domestic investments. Expropriation without due process of law and compensation is prohibited. Note, however, that settlement of investment disputes (in the form of an RCEP-specific investment mechanism) is not yet included in RCEP.[10]

Ratchet Mechanism for Both Services and Investment Commitments

The ratchet mechanism ensures that future liberalisation by RCEP members are locked in and member countries may not backtrack or reverse any future liberalisation made. This is an enhancement over all the existing ASEAN+1 FTAs which do not have such a mechanism in place for their services and investment schedules.

[9] Some RCEP members may still require that a majority of the board of directors be of a particular nationality or resident in their territory, provided that this requirement does not impair the ability of the investor to exercise control over the investment (Article 10.7: Senior Management and Board of Directors).

[10] Within 2 years of the RCEP Agreement's entry into force, parties will begin discussions on how to settle investment disputes with the target of completing discussions within 3 years.

UNDERSTANDING POSITIVE AND NEGATIVE LIST APPROACHES TO LIBERALISATION OF SERVICES AND INVESTMENT

There are two parts to the services and investment commitments in RCEP. First, the chapters provide consistent rules that apply to all RCEP countries. Second, the chapters provide specific commitments that apply to individual sectors or subsectors, including new market access or exceptions to the overall levels of treatment that are provided to RCEP companies relative to domestic firms. Companies need to examine both the chapter texts and the specific lists of commitments to determine what sort of new benefits may be available in individual markets for their services or investments.

The benefits granted to service providers in RCEP are limited in scope and can differ from one member to another. Singapore-based businesses are therefore urged to review the applicable terms, limitations and conditions before supplying services or investing in another RCEP country. To do this, businesses must understand where to find the relevant information on benefits and limitations, and how to interpret other RCEP members' service "schedules" and may also choose to seek advice from trade and legal specialists or contact Enterprise Singapore (ESG).

Overview of Positive and Negative Lists' Approaches

RCEP employs a hybrid model for organising which service sectors will – and will not – receive new benefits. Commitments are found in schedules (i.e. tables) that list the sectors or subsectors and conditions under which new Market Access, National Treatment, Most-Favoured Nation Treatment obligations, and other RCEP rules apply. There are two basic approaches that RCEP countries use to schedule services: positive list and negative lists. For investment, all RCEP members have opted to use negative lists.

Under a positive list, each country indicates the sectors where they have committed to new market openings for foreign RCEP competition. Any unlisted sector or subsector is not eligible for new benefits under RCEP. Positive lists can be found in RCEP's Schedules of Specific Commitments for Services, in Annex II. Conversely, a negative list indicates that all sectors are open to foreign competition unless a country explicitly specifies otherwise. The exceptions or limitations addressed by the negative list can be found in RCEP's Schedules of Reservations and Non-Conforming Measures for Services and Investment, in Annex III.

The RCEP countries can adopt either a positive or negative list approach for scheduling their services liberalisation commitments but eventually, all RCEP countries using a positive list approach are required to transit to a negative list approach for services commitments.[11]

Positive List Approach

Cambodia, China, Laos, Myanmar, New Zealand, Philippines, Thailand and Vietnam

Negative List Approach

Australia, Brunei, Indonesia, Japan, Korea, Malaysia and Singapore

[11] The transition to a negative list must occur within six years of that member's RCEP implementation. Developing ASEAN countries (i.e. Cambodia, Laos and Myanmar) are given 15 years to make the transition. See Article 8.12: Transition. RCEP Chapter 8, Trade in Services.

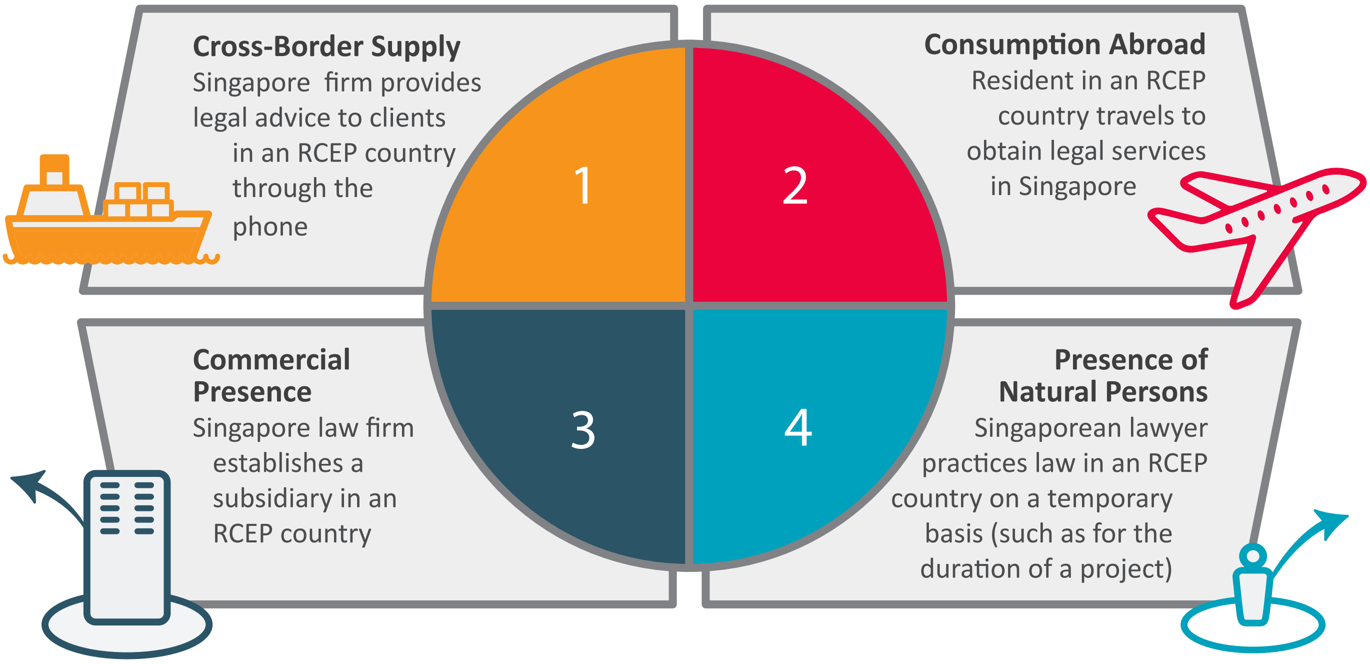
Reading a Positive List Schedule

Positive lists lay down the services sectors where RCEP members have agreed to grant **Market Access, National Treatment**, and **Most-Favoured-Nation (MFN) Treatment** to foreign companies. Market access, as the name implies, tells firms what sort of new access they can expect from an RCEP country. National treatment is the obligation to treat foreign firms the same as domestic firms in the market. MFN treatment says that RCEP services suppliers will be granted similar treatment to all other foreign firms under different FTAs. Such commitments help Singapore-based firms avoid discrimination in the RCEP market.

There are three types of obligations:

1. **Horizontal Commitments**, which refer to the general Market Access and National Treatment commitments and exemptions that an RCEP member applies to <u>all sectors;</u>
2. **Specific Commitments**, which refer to the particular Market Access and National Treatment commitments and exceptions that an RCEP member applies to <u>certain sectors; and</u>
3. **Commitments and Limitations** in the **Most-Favoured-Nation Sectoral Coverage Appendix** that affect sectors that are **not** listed.

The conditions under which Horizontal and Specific Commitments apply are determined for each foreign service provider's particular **mode of supply.** These modes correspond to how a service is delivered across international boundaries and are represented using the numbers 1-4.



Each schedule describes the limitations applied to Market Access and National Treatment when delivering services through a particular mode of supply. "None" means that no limitations apply. The market is opened for foreign firm access for the particular mode of delivery. "Unbound" means that no commitment has been made – i.e. firms cannot expect to receive new benefits from the RCEP agreement for the mode of delivery or are not granted national treatment or MFN.

Because a country's obligations and exemptions differ according to a foreign service provider's mode of supply, businesses should identify the benefits and limitations of RCEP for the mode through which they plan to deliver services. To help understand these concepts, businesses should review the following example:

Positive List Example: Storage and Warehousing Service Provider in China

A Singapore warehousing company, *X*, wants to provide merchandise storage services in China. As China makes its existing services commitments via ASEAN-China Free Trade Area (ACFTA) and China-Singapore Free Trade Agreement (CSFTA) under a positive list similar to how it was done in RCEP, by inspecting China's Horizontal and Specific Commitments in Annex II, *X* discovers that it will face certain Market Access and National Treatment limitations in the Chinese market. For instance, Mode 3 permits the commercial presence of wholly foreign-owned subsidiaries; and Mode 4 is "unbound" except as indicated in horizontal commitments.[12] Similar National Treatment limitations apply for all modes of supply except Mode 3, where no limitations apply. Finally, the absence of storage and warehousing services in the MFN Treatment Sectoral Coverage Appendix indicates that these services are not guaranteed MFN privileges.[13]

China's Specific Commitments for Storage and Warehousing Services

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
H. Services Auxiliary to all Modes of Transport - Storage and warehousing services (CPC 742)	1. Unbound 2. None 3. Wholly foreign-owned subsidiaries are permitted. 4. Unbound except as indicated in horizontal commitments.	1. Unbound 2. None 3. None 4. Unbound except as indicated in horizontal commitments.

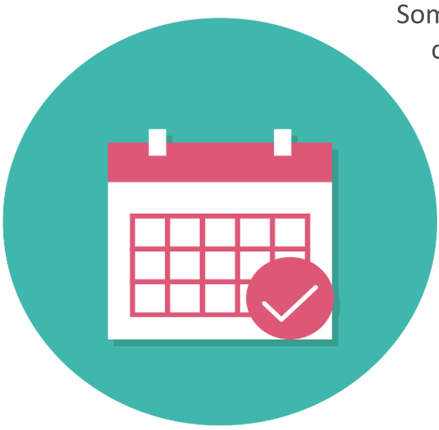
Source: RCEP Legal Text, China's Schedule of Specific Commitments for Service

A careful review of China's positive list obligations and exemptions reveals that foreign ownership of companies providing storage and warehousing services like *X* are permitted under RCEP. The firm may establish a commercial presence in China that can be wholly owned by foreign shareholders. *X*'s investors should be mindful that the government may adopt any measure it considers necessary to protect essential security interests, and that land use will be granted up to a maximum term of 40 years.[14] Also note that, like any service, it may be the case that domestic level regulations require specific licenses or certifications that are not listed in the RCEP documentation.

Under RCEP, countries such as Brunei and Thailand have committed to further liberalise foreign market access for storage and warehousing services relative to their commitments in the ASEAN Framework Agreement on Services (AFAS). Brunei allows greater foreign equity participation and Thailand expands access to warehousing and storage to cover all modes of transportation.

[12] This indication states that natural persons must fall into one of the following categories referred to in China's Schedule of Specific Commitments on Temporary Movement of Natural Persons (Annex IV): business visitors, intra-corporate transferees, contractual service suppliers, installers or servicers, or accompanying spouses and dependents.
[13] China reserves the right to accord more favourable treatment to service providers from other trade partners under pre-existing bilateral or multilateral international agreement in force or those signed prior to RCEP's date of entry into force.
[14] These terms and conditions are listed in the Horizontal Commitments.

Reading a Negative List Schedule



Some RCEP countries use an alternative approach to managing services commitments called a negative list. All 15 members have scheduled investment commitments using negative lists. The default position under negative listing is that all sectors and subsectors are automatically opened unless otherwise noted.

Negative lists stipulate the sectors and commitments which RCEP countries have excluded from certain obligations such as National Treatment and Most-Favoured Nation.

Unless a particular service is listed in an RCEP country's schedule, businesses may assume that the member has committed to liberalising the service. Each RCEP member's exempted sectors can be found under two lists: List A and List B.

List A	List B
All existing measures (e.g. laws, regulations) applied to sectors that do not conform with RCEP obligations	All sectors, subsectors, or activities on which a country reserves the right to apply new, more restrictive measures (e.g. laws, regulations) that do not conform with RCEP obligations

Entries in List A set out the **sector** for which the exemption is made, the **type of obligation** that does not apply to the sector in discussion, the **description** and **source of authority** from which the measure stems. Countries may not apply new measures that are more restrictive than what has already been listed in List A.

Similarly, entries in List B set out the sector for which the exemption is made, the **type of obligation** that does not apply to the sector in discussion, the **scope of the exemption**, and the **existing measures** that already apply to the sector. Countries however, reserve the right to apply new or more restrictive measures that do not conform with these obligations in the future.

Businesses should note that even if a service is not included in Lists A or B, any regulations that govern domestic firms still apply to foreign firms and must be managed in a non-discriminatory manner.

Negative List Example: Telecommunications Service Provider in Japan

A Singapore telecommunications company, *Y*, wants to provide mobile telecommunications services in Japan.[15] By inspecting Japan's non-conforming measures in Lists A and B, company *Y* discovers that it will face certain limitations in the Japanese market.

List A, Japan's Schedule of Reservations and Non-Conforming Measures for Services and Investment

12	Sector:	:	Information and Communications
	Subsector:	:	Telecommunications and Internet Based Services
	Industry Classification:	:	JSIC 3711 Regional telecommunications, except wired broadcast telephones JSIC 3712 Long-distance telecommunications JSIC 3713 Wired broadcast telephones JSIC 3719 Miscellaneous fixed telecommunications JSIC 3721 Mobile telecommunications JSIC 4011* Web portal providers JSIC 4012* Application services providers JSIC 4013 Internet support services
	Level of Government:	:	Central Government
	Type of Obligation:	:	National Treatment (Articles 8.4 and 10.3)
	Description:	:	Trade in Services and Investment 1. The prior notification requirement and screening procedures under the *Foreign Exchange and Foreign Trade Law* apply to foreign investors who intend to make investments in telecommunications business and internet based services in Japan. 2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered. 3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.
	Measures	:	*Foreign Exchange and Foreign Trade Law* (Law No. 228 of 1949), Articles 27 and 28 *Cabinet Order on Foreign Direct Investment* (Cabinet Order No. 261 of 1980), Articles 3 and 4

Specific type of telecommunication services that are affected by regulatory measures imposed

The type of obligation that is violated

Description of applied measures that violates the obligation

Laws and regulations that violates the type of obligation mentioned

Source: RCEP Legal Text, Japan's Schedule of Reservations and Non-Conforming Measures for Services and Investment

For instance, List A indicates that Japan presently reserves the right to withhold the provision of national treatment to foreign telecommunications service providers by subjecting all their investments to screening. The screening of investment was part of a 1949 law in place in Japan as well as another measure from 1980. These Japanese laws will not be adjusted in the wake of RCEP commitments.

List B states that Japan reserves the right to adopt or maintain any measure in the future relating to the "investment or supply of telegraph services."

[15] Since Japan schedules its services using a negative list, businesses should review Japan's Schedule of Reservations and Non-Conforming Measures for Services and Investment in Annex III.

List B, Japan's Schedule of Reservations and Non-Conforming Measures for Services and Investment

2.	Sector	:	All Sectors
	Type of Obligation	:	National Treatment (Articles 8.4 and 10.3) Market Access (Article 8.5) Most-Favoured-Nation Treatment (Articles 8.6 and 10.4) Local Presence (Article 8.11) Prohibition of Performance Requirements (Article 10.6) Senior Management and Board of Directors (Article 10.7)
	Description	:	Trade in Services and Investment Japan reserves the right to adopt or maintain any measure relating to investment in or the supply of telegraph services, betting and gambling services, manufacture of tobacco products, manufacture of Bank of Japan notes, minting and sale of coinage, and postal services in Japan.
	Existing Measures	:	*Telecommunications Business Law* (Law No. 86 of 1984) Supplementary Provisions, Article 5

Source: RCEP Legal Text, Japan's Schedule of Reservations and Non-Conforming Measures for Services and Investment

In the end, a careful review of Japan's negative list reveals that foreign telecommunications companies like *Y* are permitted to provide services, establish a commercial presence, and make investments in Japan. However, *Y's* investors should be mindful that its investments are subject to screening and the government may adopt any measure it considers necessary to maintain national security, public order and public safety.

Positive List vs. Negative Lists' Approach

While RCEP countries can use either a positive or negative lists' approach to schedule service commitments, the latter yields more benefits for service providers in the long-term. Negative lists anticipate that new services will be created in the future, especially those that may not be in existence at the time of signing (e.g. new digital services, artificial intelligence applications (AI), blockchain or distributed ledger technologies, etc.). As long as service providers heed information provided about RCEP members' reservations and non-conforming measures, the new services will automatically be opened to foreign competition.

By contrast, positive lists are static. Service providers of new types of services cannot be assured that RCEP's benefits are guaranteed unless positive list members agree to regularly update their Schedules of Specific Commitments. Thus, new services are automatically precluded from opening to foreign competition.[16]

[16] It is possible, however, that new services could still be allowed to enter RCEP countries without an explicit reference that appears in the services positive list, but the certainty for market access will be missing and firms could face discrimination in the market-place by government regulations.

IMPACT OF RCEP SERVICES AND INVESTMENT COMMITMENTS ON SINGAPORE BUSINESSESS

New Services Liberalisation in RCEP

RCEP provides new benefits for services and investment activities, especially when compared to existing FTA arrangements. The Table shows RCEP services liberalisation provided by ASEAN countries compared with the ASEAN's Framework Agreement on Services (AFAS); by China, Japan and Korea as compared to their respective ASEAN+1 FTAs Schedules of Specific Commitments; and with Australia and New Zealand through AANZFTA.

New RCEP Services and Investment Access Beyond Existing FTA Commitments

	Services Type	RCEP Additional Liberalization Possible*
Professional Services	Legal	China, Korea
	Accounting	Indonesia
	Architectire	China
	Engineering	China
Computer and Related Services	Data processing services	Japan, Indonesia, Laos
	Other computer services	Japan, Australia, Laos
Telecommunications Services	Value-Added Services[17]	Indonesia
	Mobile voice and data services	Indonesia
Logistics and Distribution Services	Wholesale trade	Philippines, Brunei, Laos
	Freight transportation by road	China, Korea
	Storage and warehousing services	Brunei, Thailand
	Freight forwarding agency services	Japan
Financial Services	Insurance	China, Korea, Indonesia, Laos, Myanmar
	Securities	China, Australia, Laos

**Countries listed in the column denote greater services liberalization by the RCEP country relative to existing ASEAN FTAs*

[17] Value-added services may include provision of electronic mail, voice mail, on-line information and database retrieval, electronic data interchange, enhanced or value-added facsimile services, code and protocol conversion and online information or data processing. Country commitments may differ for varying type of services.

Investment Benefits in RCEP

Singapore businesses can expect greater market access benefits and more business-friendly regulations that generates greater certainty for businesses intending to expand their regional outreach. Business and individual investors could also benefit from a more transparent regulatory regime under a negative approach to listing exceptions provided for investment.

Comparison of RCEP Investment Benefits with Existing FTAs (CSFTA, JSEPA, KSFTA, AANZFTA, SAFTA, ANZCEP)

RCEP Benefits / Limitations		
Ratchet Mechanism for future liberalisation		RCEP countries are not able to increase the restrictiveness of measures to investments covered in List A
Investment Commitments		For sectors/sub-sectors that are not in List A and B, investors will receive benefits in national treatment, prohibition of performance requirements and no limitations on nationality of senior management and board of directors. The obligations under RCEP are enhanced, compared to AANZFTA, ANZSCEP, JSEPA, CSFTA.
Transfer of Payments		Also cover transfer of earnings and other remuneration of personnel engaged from abroad in connection with the covered investment; not just limited to RCEP investors
Compensation for Expropriation		Include interest payable in the event of delay; enhances KSFTA investment provision
Facilitating investments		RCEP investment chapter include additional commitments to promote simplification of investment application and approval procedures, dissemination of investment information and establishment of contact points to assist and advise investors
Compensation for loses due to strife		Similar to existing FTAs
Investment Dispute Settlement Mechanism		RCEP has yet to include any dispute settlement mechanism for investment

indicate additional commitments made in RCEP relative to existing FTAs

indicate status quo is maintained in RCEP relative to existing FTAs

indicate that RCEP commitments are less comprehensive than existing FTAs

Improved Labour Mobility

Services and investment often requires the movement of people across borders to deliver services or manage investments. Individuals and firms are not permanently moving, which is governed by relevant immigration rules, but may temporarily move to provide services.

To help facilitate the process, RCEP Chapter 9 allows cross border movement for temporary delivery of services. All RCEP countries will have to provide, at least business visitors and intra-corporate transferees with a specified duration of stay to conduct business activities and meetings and/or supply services domestically.

To see how this works in practice, the following table highlights commitments by six RCEP members. For more information on other RCEP mobility commitments, firms should consult the relevant country schedules and commitments.

Temporary Entry and Stay Provided to RCEP Member's Services Suppliers

	Business Visitor	Intra-corporate transferees	Contractual Service Suppliers	Independent Professionals	Installers and Servicers	Accompanying Spouses and Dependants
Australia	Up to 3 months for business meetings, investment, and negotiating the sale of goods; up to 12 months for negotiating the sale of services or entering into agreements	Up to 4 years for Executives and Senior Managers; up to 2 years for specialists	Up to 12 months	Up to 2 years		Same as granted to the entrant
China	Up to 90 days ⊕	Up to 3 years	Up to 1 year		Up to 3 months	Up to 1 year ⊕
Japan	Up to 90 days	Up to 5 years	Up to 5 years ⊕	Up to 5 years ⊕		Same as granted to the entrant
Korea	Up to 90 days	Up to 3 years	Up to 1 year			
Indonesia	Up to 60 days	Up to 2 years				
Malaysia	Up to 90 days	Up to 2 years			Up to 3 months ⊕	

⊕ *indicate additional commitments made in RCEP relative to existing AFAS MNP commitments and ASEAN+1 agreements*

- In addition to ACFTA, China grants business visitors and accompanying spouses and dependants of these temporary service providers a specified period of stay in China under its RCEP commitments.
- Additional categories of independent professionals and contractual service suppliers are included in Japan's RCEP commitments allowing these services supply to be eligible for temporary stay of up to 5 years.
- Malaysia further permits installers or maintainers of machinery or equipment from RCEP countries to enter Malaysia to provide temporary services.

CASE STUDIES: INVESTMENT AND SUPPLY OF SERVICES TO RCEP COUNTRIES

The case studies illustrate a Singapore firm in the following scenarios showing what the firm would need to look out for in the RCEP chapters and the benefits and any limitations provided.

1 A Singapore IT firm wishes to invest and set up an office in Indonesia to deliver software implementation services.

To begin with, the firm will need to understand the eligibility of Singapore investors to invest in the Indonesian sector to deliver computer related services. The firm referred to the **Schedule of Reservations and Non-Conforming Measures for Services and Investment for Indonesia** found in Annex III of the RCEP text and realized that to set up an office to deliver software implementation services in Indonesia, the firm is subjected to the following criteria:

Supply through commercial presence is subject to the following conditions:
(a) only through a locally incorporated joint venture corporation in the form of Limited Liability Enterprise (Perseroan Terbatas) with Indonesian individuals or Indonesian-controlled corporations or both;
(b) shall apply to foreign services supplier with capital value above IDR 100 billion, and investment value above IDR 15 billion; and
(c) the domestic partner must be member of Indonesian consultant association.

As the Singapore IT firm is not able to set up a firm that is wholly owned by Singapore shareholders, the firm will need to identify partners in Indonesia which must be a member of the Indonesian consultant association to enter a **joint venture**. The firm must also ensure that it meets the required capital value of IDR 100 billion and investment value of IDR 15 billion.

2

A Singapore accounting firm providing services overseas through
i) temporary transfer of employees and
ii) contractual supply of services (no commercial presence)

Accounting firm transfer a Singaporean employee to its New Zealand subsidiary	Accounting firm supplies accounting services to a client in China through a contractual agreement
The firm owns a subsidiary in New Zealand and wishes to transfer an employee to head a department to offer cloud accounting solutions in the subsidiary. The firm would need to identify the conditions in which the particular employee could be transferred to New Zealand by referring to New Zealand's **Schedule of Specific Commitments on Temporary Movement of Natural Persons**. As the employee possesses the knowledge and skills to implement and supply cloud accounting services, he/she is considered as a specialist and is eligible for stay in New Zealand for up to a maximum duration of **3 years**.	The Singapore accounting firm does not have an office, branch or subsidiary in China and would like to provide auditing services for a corporate client located in China. As the supply of auditing services will require accounting professionals to gain access to financial information and statements that are to be kept confidential, the client requests for accounting professionals to be dispatched. By reviewing China's **Schedule of Specific Commitments on Temporary Movement of Natural Persons**, the accounting firm confirms that it would be able to send employees to China to work on this temporary assignment for a duration that does not exceed **1 year**. The firm also finds out that certain restrictions including labour market testing and numerical restrictions may be applied by China. Hence, the firm will need to take note of these limitations and ensure that the services could be provided under the stipulated contractual period under these potential constraints.

ENHANCED E-COMMERCE CHAPTER

RCEP also provides enhanced benefits to support cross-border trade in goods and services compared with the existing AANZFTA. This includes the following:

1. Improved legal recognition of electronic authentication and electronic signature for cross-border electronic transactions[18]

2. Strengthened consumer trust in the e-commerce and the digital economy

3. Maintenance of the practice of not imposing customs duities on electronic transmissions[19]

4. Removal of the need to localize computing facilities for the conduct of businesses with some exceptions[20]

5. Support of cross-border electronic transfer of information to facilitate the conduct of businesses with some exceptions[21]

6. Provide a modality to address differences through consultations and allow the RCEP Joint Committee to step in and help resolve the matter if required[22]

Businesses should note that countries including Cambodia, Lao PDR, Myanmar and Vietnam may not be required to apply certain commitments in the RCEP e-commerce chapter upon entry into force. These countries are provided extra time for implementation. In addition, the supply of cross-border financial services is not covered under the e-commerce chapter.

Although the breadth and coverage of the RCEP e-commerce chapter differs from a digital economy agreement such as the Digital Economy Partnership Agreement (DEPA) that Singapore has signed with New Zealand and Chile or the Digital Economy Agreement (DEA) with Australia that covers a wider range of emerging digital issues, not strictly trade-related, RCEP e-commerce chapter benefits are provided to a larger set of countries, promoting greater digital trade connectivity within the region.

[18] More robust Article 12.6 on Electronic Authentication and Electronic Signature

[19] Addition of Article 12.11 on Customs Duties

[20] Addition of Article 12.14 on Location of Computing Facilities

[21] Addition of Article 12.15 on Cross-border Transfer of Information by Electronic Means. Do note, however, that important limitations may apply.

[22] Introduction of consultations as a mode to address issues between parties where dispute resolution is not applicable (Article 12.17: Settlement of Disputes)

What does the E-Commerce Chapter mean for a Singapore Company?

For a Singapore business that conducts data processing and analysis, the RCEP e-commerce chapter has largely expanded the potential of such businesses to supply services to its overseas clients. As Malaysia, for instance, permits RCEP members to supply data analytics services to businesses in Malaysia through cross-border means, the Singapore firm could stand to benefit from the e-commerce chapter that facilitates cross-border transactions.

The Singapore firm should not be subjected to data localisation requirements for processing of personal information of Malaysian citizens, meaning that there is no need to locate its data in Malaysia just to deliver this service. Cross-border transfer of information by electronic means is permitted to take place for business reasons unless there is a legitimate public policy reason or for protection of its key security interest.[23]

Small businesses in the services sector, especially, stand to benefit as there is no need for further investment to locate their data in Malaysia when such services could be delivered digitally and across the border.

RESOURCES

The Legal text of the RCEP can be found on the RCEP Secretariat website:
https://rcepsec.org/legal-text/

More information on Singapore's Free Trade Agreements can be found on the Enterprise Singapore website:
www.fta.gov.sg

[23] Given Singapore's extensive existing network of FTAs, Singapore-based firms might also find additional benefits or access to other RCEP countries through other agreements. Singapore firms might also examine the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) which provides additional protections for cross-border data flows and limits local hosting requirements.