CITY OF LONDON

Post FTA regulatory cooperation between the UK and Australia in financial and professional services

An opportunity for deeper dialogue

FEBRUARY 2023

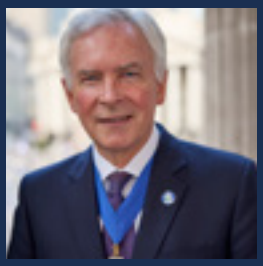
Contents

Foreword

The UK-Australia Free Trade Agreement is a pivotal first step in the pursuit of a truly global and independent trade agenda for Britain. A world leading text which breaks ground in digital trade and services, increases market access and contains strong mobility provisions. The City of London Corporation welcomed the conclusion of negotiations in December 2021 and looks forward to the agreement's ratification and implementation. It will provide exciting cross-border opportunities for the financial and professional services (FPS) sectors in both countries.

One of the most important parts of this agreement is that it is designed as a living document, one which encourages ongoing and regular dialogue to remove frictions and regulatory burdens between our two countries. In this spirit this paper looks ahead to the establishment of a permanent Regulatory Dialogue to address remaining regulatory frictions in the FPS sector. In consultation with business and departmental officials, we have identified seven policy areas we believe the new Regulatory Dialogue should focus on as a matter of priority. These have been chosen because of the significant economic opportunity and the comparative regulatory strengths of both countries.

Ultimately the success of this agreement depends upon the ongoing engagement of both sides, working together in good faith to address existing and new challenges as they occur. It is in this spirit that the City of London Corporation engages with business and regulators. The Corporation will continue this work and stands ready to provide whatever assistance is necessary to unlock the economic potential of this new agreement for both our countries.



Nicholas Lyons
Lord Mayor of the City of London

Chris Hayward
Policy Chairman, The City of London Corporation

Snapshot: Specific focus areas for UK-Australia Regulatory Dialogue

Cross-sectoral

Foreign licensing requirements

Issue: Proposed reforms to Australian Foreign Licensing requirements

Focus for regulatory cooperation:
- Upholding existing Sufficient Equivalence Relief or a comparable exemption

Digital trade

Issue: Barriers to the free flow of data
De-facto localisation in specific areas

Focus for regulatory cooperation:
- Developing shared understandings and specificity on when restrictions to data flows are legitimate
- Developing shared understandings and increasing transparency of when local data storage requirements are necessary
- Securing a UK-Australia adequacy agreement in personal data
- Aligning UK-Australia cooperation on digital trade and data issues at an international level, notably at the WTO
- Supporting development of business guidance for firms navigating different regulatory regimes e.g. in Operational Resilience

Emerging technologies

Issue: Risks of divergent approaches

Focus for regulatory cooperation:
- A standard agenda item addressing 'emerging technology' issues

Sustainable finance

Issue: The need for alignment

Focus for regulatory cooperation:
- Supporting alignment in climate-related disclosures
- Promoting UK-Australia collaboration in support of ISSB standards

Sector specific

Asset management

Issue: Lack of UK 'equivalence' determination in pensions
Lack of a funds passporting arrangement

Focus for regulatory cooperation:
- Moving towards 'mutual recognition' or 'deference'

Open banking regulation

Issue: Risk of divergent approaches

Focus for regulatory cooperation:
- Achieving interoperability through, for example, a mutual bilateral recognition regime for open banking accreditation
- Supporting UK-Australia collaboration on global standards

Payments

Issue: Lack of recognition

Focus for regulatory cooperation:
- Moving towards mutual recognition of payments regimes
- Aligning approaches to Buy Now Pay Later regulation

Introduction

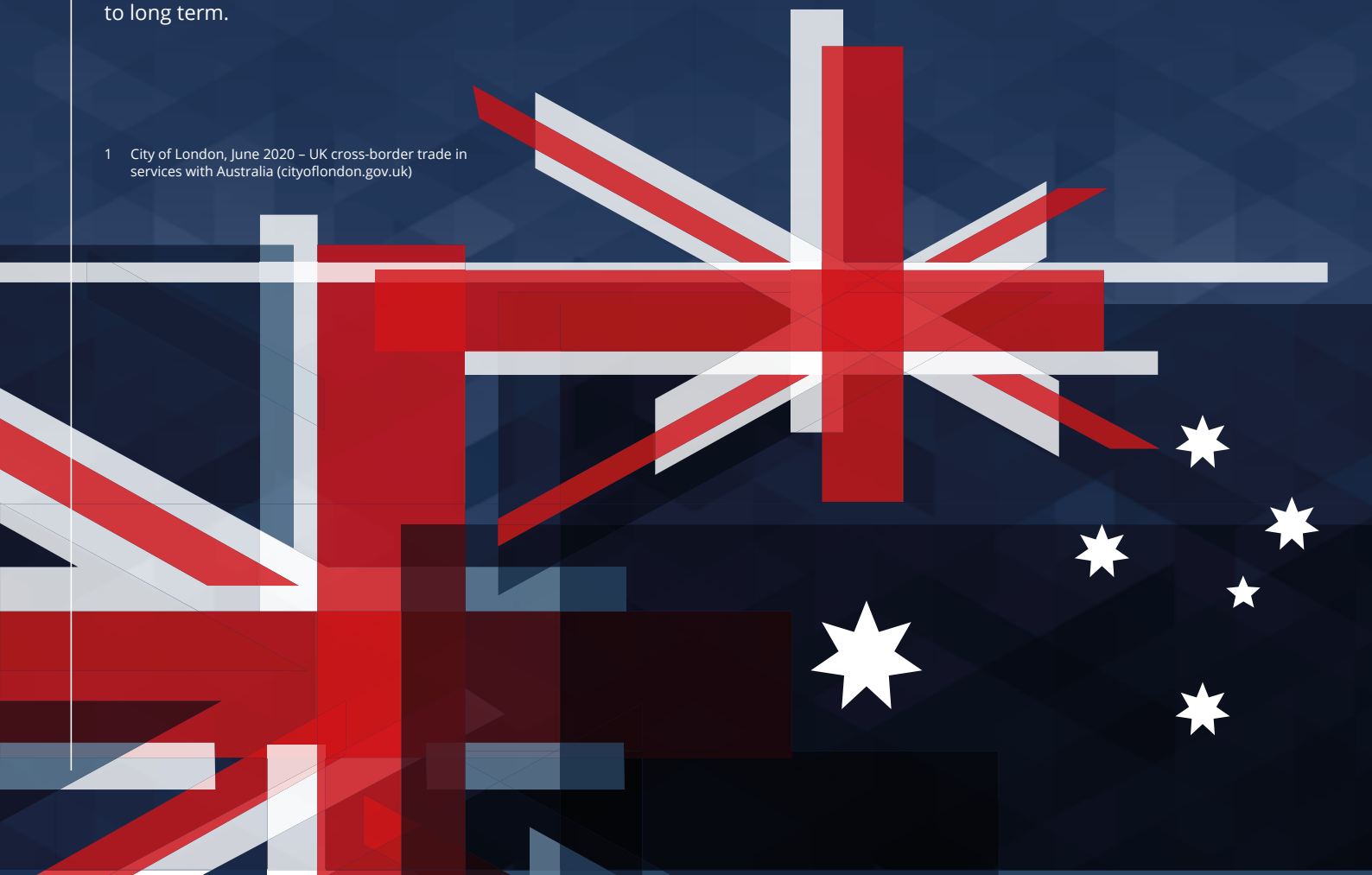
Deepening UK-Australia financial and professional services (FPS) trade is a priority for the sector. Signing the free trade agreement (FTA) – the UK's first new agreement after gaining an independent trade policy – provides an opportunity to deepen economic integration between two like-minded partners. The agreement will help to realise the UK Government's ambition for the UK to be the world's most innovative and competitive global financial centre.

In June 2020 the City of London Corporation published, *'UK cross-border trade in services with Australia. An analysis of market access for financial services firms'*[1] in the lead up to the UK-Australia FTA negotiations. This report highlighted policy areas where joint focus, through a range of trade policy tools, could address market access frictions for UK-based firms entering the Australian market. The report highlighted that many of the remaining barriers to cross border trade are regulatory in nature and will therefore be solved through greater regulatory cooperation in the medium to long term.

The UK-Australia FTA, signed in December 2021, is currently going through the UK ratification process. The FPS sector welcomed the FTA with its provisions on business mobility, a strong digital trade chapter as well as a chapter on innovation – the first of its kind. The long-term benefits of the agreement for the sector will come from the regulatory cooperation commitments which focus on cooperation 'wherever practicable'.

Building on our previous report, this paper calls for the UK and Australian governments to operationalise a Regulatory Dialogue as soon as possible to build on momentum. The paper underscores the value of regulatory cooperation. It recommends that the UK-Australia Regulatory Dialogue should follow best practice examples from other bilateral forums both in terms of the principles for dialogue and a long-term vision. Finally, it will underline several issues which could be addressed through the Regulatory Dialogue once established.

1 City of London, June 2020 – UK cross-border trade in services with Australia (cityoflondon.gov.uk)



The value of regulatory cooperation

The value of regulatory cooperation as a route to liberalisation and defence against fragmentation is three-fold:

- It can identify and address existing regulatory barriers. Business input is invaluable to outline the issues, with regulators coming together to scrutinise and streamline processes.
- It promotes alignment in evolving regulation and helps avoid duplication. This is particularly useful in areas of emerging regulation such as open banking, payments and sustainable finance.
- It underpins cooperation in global institutions such as the G20 and the World Trade Organisation (WTO).

Ongoing formal and informal dialogues between regulators are an important part of building more integrated and stable markets. The process of sharing information around common interests builds trust and delivers a more efficient regulatory environment for business. This in turn lends momentum to more regulatory cooperation. While such regulatory relationships exist already their formalisation helps to ensure regular and robust policy review. With a clear forward-looking agenda, the optimum regulatory environment is achievable through increased regulatory cooperation leading to better outcomes for business and consumers.

Regulatory cooperation plays a key underpinning role for stable policy environments. It provides the certainty required for business of all sizes to make long-term decisions. Anecdotal research suggests that such cooperation may bring greatest benefits to small and median sized enterprises which often lack the resources to navigate complexity enjoyed by larger players.

The new UK-Australia Free Trade Agreement builds on an already strong investment relationship and offers new opportunities.

The principles of regulatory cooperation

The UK-Australia FTA has made significant headway in providing a framework for ongoing regulatory dialogue. It commits to the creation of a regulatory financial forum which will meet once a year at a minimum and can be called more frequently should either party wish to. This forum includes HM Treasury, the Bank of England, the Financial Conduct Authority, and their Australian counterparts.

> **"The Parties shall, wherever practicable, work to achieve mutual compatibility of their respective regulatory and supervisory frameworks for financial services in areas of common interest in a way that supports the objectives set out in Article 9C.1 (Objectives of Regulatory Cooperation). That work may include developing consistent regulatory approaches on an outcomes basis and reducing unnecessarily burdensome, duplicative or divergent regulatory requirements."[2]**

The sector supports specific reference to the work of the forum encouraging policymakers to avoid duplicative, unnecessarily burdensome, and divergent regulation. The sector is also encouraged to see commitments for discussions on emerging issues such as diversity in finance, and cooperation on developing regulation and standards for open banking.

To make the most of the new UK-Australia Free Trade Agreement we must make sure we get the details right.

2 Chapter 9: Financial Services (Including Annex 9A, 9B and 9C) (web version) – GOV.UK (www.gov.uk)

The value of 'deference'

Regulatory Annex 9C details the objectives, scope, principles and framework for UK-Australia regulatory cooperation. Of particular importance is Article 9C.3.2 which commits both parties to establishing 'deference'.

> **"The Parties shall, wherever agreeable and in accordance with their respective regulatory and supervisory frameworks, defer to the regulatory and supervisory frameworks of the other Party. The foregoing shall be without prejudice to each Party's legislative and regulatory autonomy and right to assess, on the basis of its own frameworks, the frameworks of the other Party, including the effective enforcement of those frameworks, with a view to establishing deference. For the purposes of any such assessment, a Party shall not require that the other Party's regulatory and supervisory frameworks are identical to its own frameworks but shall base its assessment on regulatory outcomes."**[3]

The FPS sector welcomes Article 9C.3.2 and supports steps towards developing cross-border access arrangements which operate on the basis of 'deference' by each supervisory authority to the rules and supervision of the other. Such deference should be based on an assessment of regulatory outcomes rather than a more line-by-line approach aimed at ensuring harmonisation as favoured by other jurisdictions (e.g. the EU's equivalence framework).

The result should be a trust-based relationship which allows cross-border access between two parties whilst protecting the rights of independent regulators to make market-specific policy. This should be the basis for reducing duplicative requirements and relaxing local authorisation and operational requirements while encouraging openness, convergence and best practice in regulation.[4]

The City of London Corporation encourages the UK Government to use its independent trade policy to develop cross-border relationships in FPS based on 'deference' or 'mutual recognition' wherever possible. The costs of regulatory divergence have never been higher. In a sector where cross border trade is increasingly becoming the norm for firms of all sizes across all sub-sectors, increasing fragmentation not only places regulatory burdens on firms, but also introduces frictions into the system which can affect the overall financial stability of markets. Effective bilateral regulatory relationships are the building blocks to establishing high standards and in turn a more coherent global financial services system.

The Regulatory Dialogue will play an important part in ensuring businesses from both countries make the most of this new opportunity.

3 Chapter 9: Financial Services (Including Annex 9A, 9B and 9C) (web version) – GOV.UK (www.gov.uk)

4 UK Finance, February 2021 – International Trade in Financial Services: defining trade policy for banking, payments and related financial services | Policy and Guidance | UK Finance

The UK-Australia regulatory dialogue in practice

The UK and Australia Regulatory Dialogue should prioritise the following areas.

Cross-Sectoral Issues

Foreign licensing requirements

Proposed licensing reforms

As highlighted in our previous report[5], the Australia Securities and Investment Commission (ASIC) has sought to repeal the Sufficient Equivalence Relief which allowed UK financial services firms to service wholesale clients in Australia on the basis that they were regulated by the Financial Conduct Authority (FCA). The proposed licensing regime would significantly increase the cost of providing financial services for UK firms through imposing new compliance burdens.

Since its initial proposals in 2020, ASIC has consulted with the industry on the proposed licensing regime and in response has included a comparable regulator exemption within the Treasury Amendment Bill, currently going through the Australian Parliament. This builds on the sufficient equivalence relief and enables Australian Treasury to determine which foreign regulators have a comparable regime. In the meantime, ASIC has extended the transitional relief for foreign financial services suppliers until 31 March 2024.[6]

When making the initial changes ASIC cited concerns that jurisdictions which were deemed to be sufficiently equivalent did not adopt a reciprocal approach to its equivalence exemption. ASIC argued that the FCA exemption applies only when the nature of the regulated activity requires the direct involvement of another party that is FCA authorised or the provision of the financial service is as a result of 'reverse solicitation'.[7] This interpretation does not account for the fact that the UK's current 'overseas persons regime' allows non-UK persons that do not have a place of business to conduct securities and derivatives business with a broad class of UK authorised and other institutional clients without authorisation or registration in the UK.

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Extending comparable relief

UK firms benefited from the Sufficient Equivalence Relief and, therefore, a comparable regulatory exemption which upholds this equivalence would be welcomed. As ASIC considers which foreign regulatory regimes to include within this, an open dialogue with UK regulators would ensure adequate outcomes. This open dialogue would also be beneficial to both countries' regulators, as it can help them understand their respective counterpart's financial services regimes, therefore further enabling them to make informed decisions.

For the UK and Australia these kinds of interactions likely predate the FTA negotiations and will continue going forward but the formal mechanisms of the Regulatory Dialogue, along with input from industry, should serve to enhance the existing informal dialogues.

5 City of London, June 2020 – UK cross-border trade in services with Australia (cityoflondon.gov.uk)

6 ASIC Media Release, 2 August 2022 – 22-203MR ASIC extends transitional relief for foreign financial services providers | ASIC

7 ASIC RG 176 Foreign Financial Services Providers, March 2020 – Regulatory Guide RG 176 Foreign financial services providers (asic.gov.au)

Digital trade

Barriers to the free flow of data

The UK-Australia FTA has a comparatively strong chapter on digital trade. There are provisions for the free flow of trusted data and a ban on data localisation. There are also provisions around trade facilitation measures such as the recognition of e-signatures. These lock in best practice and highlight the UK's pivot towards leading the development of modern digital trade rules.

However, as is often the case with FTAs, the UK-Australia agreement contains many carve outs and exceptions. Historically the provisions of the digital trade chapter do not apply to financial institutions. This is no different for this FTA and any provisions which apply to financial institutions are instead contained within the dedicated financial services chapter.

The movement of financial data is included although caveated with a carve out for 'legitimate public policy objectives.' This provision is broad and covers interventions to uphold privacy and data protection, the protection of public health, the defence of public morals and the protection of cultural diversity. This provision can, therefore, be utilised as a barrier to the free flow of data.

The concern for many businesses is that financial data is often captured by the rules that govern personal data. UK firms in Australia have reported difficulties in transferring financial data back to their domestic headquarters in the UK. This has led to specific issues regarding transaction reporting. While this is usually done via the use of Standard Contractual Clauses (SCCs) these are also subject to regulatory changes with new templates being published in both the UK and the EU. This lack of regulatory coherence is both time-consuming and precludes the number of suppliers which firms can engage, restricting their agility.

De facto localisation within cloud computing

Australia's domestic financial regulatory regime regarding outsourcing and cloud services provisions can, under certain circumstances, operate as a de facto localisation requirement which prevents UK financial services firms from accessing the Australian market. Financial companies that are regulated by the Australian Prudential Regulation Authority (APRA) are required to consult with APRA before entering an offshoring agreement with a non-Australian company. When APRA considers an arrangement to be of extreme inherent risk, the companies must demonstrate that their risk management and mitigation techniques are sufficiently strong to counter any threat.

Companies that utilise public cloud arrangements for biometric identity data fall within APRA's definition of extreme inherent risk. This creates a significant burden for companies using this service as they would have to sufficiently convince APRA that this operation was a risk they could manage, creating a timely and costly set of regulatory hurdles for the company to navigate. As a result, cloud providers servicing Australian financial services firms tend to host financial data on local servers. [8]

8 City of London Corporation, 2022 – The Practical Implications of Digital FTA Provision on the UK Financial Services Sector

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Develop shared understandings of key issues: Data flows

As part of the Regulatory Dialogue, it would be useful for regulators to consider the possibility of limiting the scope of exceptions within the UK-Australia FTA in future iterations. The UK-New Zealand FTA [Article 8.63] has constructive language limiting the exceptions on the free flow of financial data, placing a set of obligations on the party to undertake when looking to impose data localisation measures on a financial services supplier. It would be useful to extend these to the UK-Australia case. However, for the terms to be meaningful and achieve their intended purpose, it is essential that both sides and their respective regulators develop a shared understanding of what the various commitments mean in practice.[9]

The Regulatory Dialogue should look to international best practice examples in collaboration or indeed, best practice from the UK. Data connectivity agreements between regulators from both countries may help to define and build on digital provisions in the FTA. As highlighted in a recent TheCityUK paper[10], the U.S.-Singapore Joint Statement on Data Connectivity includes commitments that authorities would work to ensure that financial service suppliers could transfer data, including financial data, across borders by electronic means and oppose the localisation of financial data. The premise of these commitments is to ensure that financial data is treated in the same way as other kinds of data. Although regulators should be able to secure access to financial data when needed, this does not mean that financial data should be prohibited from flowing freely across borders in the same way as other data.

The Regulatory Dialogue can also build on commitments with memorandums of understanding (MoUs). The UK and Singapore agreed a number of these MoUs to build on the provisions agreed within the UK-Singapore Digital Economy Agreement. These are focused specifically on digital trade facilitation, cyber security cooperation and digital identities. They also define the scope of collaboration to focus on specific issues. The UK-Australia FTA has made a good start with a commitment to collaboration on Open Banking. Other such areas should be identified as part of the Dialogue and both sides should focus on these going forward.

Develop shared understandings of key issues: Data storage

Another area of particular focus should be data storage. Australia's onshore data requirements and exemptions are at times opaque, placing a large compliance and regulatory burden on business which particularly negatively affects smaller firms. These businesses often do not have the institutional capacity to set up a local data storage arrangement if it is required and can therefore not enter the Australian market. This issue should be a priority in discussions with businesses and regulators to ensure adequate regulatory supervision is maintained while increasing new economic opportunities.

9 City of London Corporation, 2022 – The Practical Implications of Digital FTA Provision on the UK Financial Services Sector

10 TheCityUK, 2022 – Digital trade: a commercially viable approach | TheCityUK

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Adequacy

Financial data is increasingly caught up in the rules governing, and restricting, the cross-border transfer of personal data. As per the recent International Regulatory Strategy Group report *'The future of international data transfers'*[11], the ideal solution would be a global set of mutually acceptable principles that would underpin an international outcomes-based approach to privacy and the free flow of personal data.

In lieu of this longer-term solution, the UK should seek to continue its exploration of adequacy with Australia through the Regulatory Dialogue and ensure any arrangement between the UK and Australia is mutual. The UK is currently looking at regulations around data protection in its Data Protection and Digital Information Bill and should ensure that any changes made at the national level align with a forward-looking digital trade agenda. It is vital to ensure any agreement reached by the UK and Australia on data adequacy would not jeopardise any agreement between the UK and the EU.

Aligning global cooperation on data

As well as cooperating bilaterally on frictions in digital trade and data transfers, UK and Australian regulators should work together to move towards greater cooperation at the multilateral level. Although this is by no means an easy task, there are a number of opportunities available.

The WTO's Joint Statement Initiative (JSI) on E-commerce provides the most promising forum for securing global agreement in which bilateral FTA rules can be scaled globally.[12]

The UK and Australia should use their positions in negotiations to secure ground rules which limit unjustified data localisation in the final WTO agreement. Australia is well placed to lead on this work as they are co-convenor along with Japan and Singapore.

Global principles should be based on the recognition of other jurisdictions' data standards. Regulators must work together to agree on some common terms for cooperation and standards to assess whether countries regulatory regimes attain those standards. Using bilateral relationships to build a more regulatory coherent global digital economy should be the goal of these dialogues.

Regulator-firm dialogue building on APRA consultations

The Regulatory Dialogue should provide guidance to UK firms trying to navigate the Australian regulatory system when it comes to issues of compliance. This would help to create transparency and reduce burdens on businesses when operating in the Australian market. Additionally, an exploration of how to mitigate some of the issues arising from high levels of compliance would be useful.

An area where greater clarity would be beneficial is in operational resilience following APRA's consultation on CPS 230. APRA is examining minimum standards for managing operational risk, including updated requirements for business continuity and service provider management.[13] This should bring Australian regulation closer to the UK standard. Engagement between regulators from both sides to ensure the greatest possible regulatory alignment would be welcomed.

11 International Regulatory Strategy Group, April 2022 – The future of international data transfers

12 TheCityUK, 2022 – Digital trade: a commercially viable approach | TheCityUK

13 APRA Media Release, July 2022 – APRA consults on new prudential standard to strengthen operational resilience | APRA

Emerging technologies

Regulatory divergence

As the UK and Australian economies continue to grow it is vital that emerging technologies are supported. The two countries have already embarked on some initiatives to ensure greater collaboration across emerging technologies. Programmes like the FinTech Bridge have been implemented however this must be viewed as a starting point.

The UK is the world's most global financial centre and the hub of emerging FPS technology. With access to capital, clients, and collaborators, the UK is leading the way in policy and business development by providing a world class ecosystem. Known for a culture of openness, global connections and collaboration, advancements in fintech and digital assets are just two exciting new market opportunities. As these industries mature and develop it's important that they do so in a regulatory environment which is as consistent as possible.

Success for Australian FinTech companies like Clearpay, Airwallex and InDebted which have launched in the UK provide good examples of the opportunity for greater collaboration in emerging technologies. Likewise, UK based fintech firms like Revolut and TrueLayer have found success in Australia. Emerging technology industries can only benefit from greater regulatory coherence between markets. The potential of these industries will be capped if they do not operate in the best regulatory environment possible.

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Regulatory dialogue to address 'emerging technologies' as a standing item

The Regulatory Dialogue should establish a standing item focusing on emerging technologies. Australia has a proven history of innovation, having most recently led the creation of the 'buy now pay later' sector, and the UK provides the best ecosystem for new technologies to access the world market. Only consistent dialogue between the two countries' regulators will maximise the potential of emerging technologies.

While the success of these technologies is not solely dependent on the work of the Regulatory Dialogue, it is important to recognise the important role it can play. Consistent engagement with companies about the ongoing challenges they are facing will help ensure the work of the Regulatory Dialogue is relevant and encourage further economic growth. Such engagement will also encourage business to business dialogue and facilitate new investment opportunities. Taking this approach to regulation, forward-looking and engaged with cutting edge technology, it is hoped that the Regulatory Dialogue itself can be a source of greater cross-border innovation and growth.

Sustainable finance

Sustainable finance taxonomy

The success of sustainable finance depends upon a convergent regulatory framework as international markets continue to grow. The UK-Australia FTA acknowledges this and makes commitments to recognise the importance of international cooperation and increase investment in sustainable activities. Both sides also recognise the importance of encouraging the uptake of climate-related financial disclosures for financial services suppliers with material exposure to climate change. This includes forward-looking information, informed by initiatives in international fora such as the Task Force on Climate-Related Financial Disclosures.

The Regulatory Dialogue provides an ideal forum to ensure complementary regulation in both countries as new products develop. It also provides an opportunity for both countries to work together to influence global institutions. This will be particularly important to ensure the stability of the growing global market.

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Alignment across approaches

There is a unique opportunity for collaboration between the UK and Australia in sustainable finance. With the Australian Federal Government announcing in December 2022 the beginning of a consultation process that should lead to mandatory climate-related disclosures, it is clear the new government is intent on introducing economy wide reforms. As part of this process the Regulatory Dialogue has an important role to play to ensure any new Australian regime is complementary with the existing market offerings in the UK. This will help to ensure both countries meet their Net Zero Emissions carbon targets.

The Regulatory Dialogue also poses an opportunity for the two countries to work together to support the work of the International Sustainability Standards Board (ISSB). With work being done by the ISSB to move towards a globally consistent baseline standard for sustainability disclosures, the Regulatory Dialogue provides the perfect complementary forum. Ensuring a global baseline and metrics which countries can use to confidently share information and compare standards is vital to reaching global climate targets.

The UK is a world leader when it comes to green finance and the Regulatory Dialogue should be used to leverage this expertise. London is the only financial centre that leads both conventional and green financial centre rankings. With access to capital and world class expertise, the UK is uniquely placed to provide regulatory assistance and financial investment as Australia undergoes an economy wide transformation. With such opportunity, and with clear political intent from both countries for green investment to drive future economic growth, the opportunity is unparalleled.

Sector specific issues

Asset management

Pensions funds

There is an opportunity for the UK to support Australian pension funds to establish EMEA time zone investment offices, attracting inward investment (e.g. UK infrastructure) and to support UK asset managers, banks and other professional services.

A possible first step would be for the UK to find the Australian pension regime equivalent. Whereas Australia allows for the early release of pensions in special circumstances, the UK does not. A qualified recognised overseas pension scheme (QROPS) is a scheme recognised by HMRC as eligible to receive transfers from registered pension schemes in the UK. Australian superannuation schemes allow people to have early access to their pension, which is not permitted under QROPS rules. This means workers in both countries cannot consolidate their pensions.

Mutual recognition of funds

In our 2020 report[14] we highlighted that the mutual recognition of funds between the UK and Australia would be useful for asset management firms. A funds passporting arrangement would reduce the need to launch a new fund in Australia where demand from investors could be fulfilled by distributing an existing UK fund directly into Australia.

The UK currently has such an agreement with Hong Kong however there has been limited take up of this from UK and Hong Kong fund managers. This could be due to tax considerations or perhaps not enough awareness and promotion of the scheme.

Australia is part of the Asia Region Funds Passport (ARFP). The ARFP is a multilateral framework intended to support the development of an Asia-region funds management industry through improved market access and regulatory harmonisation. It allows collective investment products offered in one participating economy to be sold to retail investors in another participating economy. The Australian Securities and Investments Commission (ASIC) are currently surveying firms on their interest and/or preparedness to use the ARFP.[15]

Some Australian firms have highlighted that the AFRP also has limited up-take due to the fact it includes several countries with vastly different regulatory regimes. Negotiations at the multilateral level with multiple stakeholders meant the resulting mechanisms became narrow and restrictive. Australian firms also have domestic tax challenges with high levels of withholding tax as well as limited harmonisation of tax between offshore and onshore vehicles.

14 City of London, June 2020 – UK cross-border trade in services with Australia (cityoflondon.gov.uk)

15 ASIC Media Release, October 2022 – 22-286MR Managed funds industry invited to provide feedback on the Asia Region Funds Passport | ASIC

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Moving towards 'mutual recognition' or 'deference'

The UK-Australia Regulatory Dialogue should explore the establishment of a mutual funds regime which benefits both jurisdictions. However, it is important that both sides identify the reasons why there is limited up-take of existing passporting regimes to design a framework which will provide tangible benefits to firms. The European model for funds passporting appears to work well and should provide examples of best practice to UK regulators.

The UK's new Overseas Funds Regime (OFR) aims to streamline the regime for overseas investment funds to market to UK retail investors. There are two equivalence regimes based on the principle of 'outcomes-based equivalence': one for retail investment funds and one for money market funds. HM Treasury will assess different overseas regulatory regimes applicable to particular types of funds and determine whether they are "equivalent" to comparable UK authorised funds and hence benefit from the OFR recognition process.[16]

The OFR could be extended to Australia which would enable Australian funds to benefit from a fast-track process to be recognised and registered for marketing to retail investors in the UK. The UK-Australia dialogue should consider, with industry input, whether this is appropriate.

16 Linklaters, October 2020 – The UK Overseas Funds Regime | Linklaters

Open banking regulation

Regulatory divergence

The main goal of open banking for both the UK and Australia is to improve efficiency, encourage competition and drive innovation. Ultimately this will enhance the consumer experience.

The UK and Australia set up their respective open banking systems to address slightly different issues. In the UK, open banking was set up by the Competition and Markets Authority (CMA) to enhance competition in the banking sector. Open banking in the UK is currently governed by the CMA, but it is expected a future entity, jointly with CMA, will take over oversight in 2023. Any third-party providers who wish to participate are also required to be authorised by the FCA.

Open banking in Australia, also known as consumer data right (CDR), was set up by Australian Treasury to give consumers greater access and control over their data. While the UK open banking regulation focuses specifically on payments and financial services, the Australian regulations are broader, covering non-financial services. This is because the focus is on data rather than the sector.

Both the UK and Australia are moving forward in developing their respective open banking regimes. Australia is expanding into 'action initiation' which provides consumers with the ability to instruct accredited organisations to initiate actions on their behalf beyond requests for data sharing. This could involve third parties switching accounts or products, making payments, or updating contact details across multiple accounts. In parallel, the UK is implementing an open finance regime. Similarly to open banking, open finance seeks to put control of financial data in the hands of customers. Open finance could allow third parties to access a broader range of customer data from investments, savings accounts, pensions, mortgages and insurance. As the UK open banking programme matures, the Open Banking Implementation Entity is evolving from a singularly focussed programme delivery entity, into a broader ecosystem enabler and services provider.

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Alignment in emerging regulation

As these schemes develop it is imperative that we see an alignment of approaches. Firms have spoken to us about a mutual bilateral recognition regime for Open Banking accreditation. This may already be difficult given the differences in regimes which is already problematic. However, regulators on both sides should take steps to move towards interoperability.

The Australia CDR standards are relatively bespoke however they provide a useful reference point as the industry develops. Given that around 50 countries now have some sort of Open Banking system, alignment around some global standard and principles would be beneficial.

The UK's Data and Digital Information Bill highlights the introduction of a Smart Data Regime. The Smart Data Regime creates a framework for sharing customer and business data, extending the existing General Data Protection Regulation concept of data portability. The Regime would provide businesses with opportunities to improve user experience but jeopardises data exclusivity. There are questions around whether this will go down the route of the CDR and if this is what the sector requires. Greater dialogue on this with Australian counterparts would assist UK regulators in making this decision.

Payments

Lack of recognition

In our 2020 report[17], we highlighted areas of friction in payments regulation between the UK and Australia. Given the further increase in cross border payments in recent years, it is important that regulation in areas where payments are evolving is aligned.

Australian banks in the UK tend to be relatively small operations that focus on wholesale market activity, lending and trading. They do not focus on retail issues or payments however some are considering entering the payments space. The problem is that the UK and Australia have different payment regulations and there is no equivalence, meaning banks would need to set up an entirely new process for what would at first be non-core business.

For UK payments firms in Australia the FTA allows certain liberalisation, but direct participation is still required as there are certain requirements that must be fulfilled onshore. The fact that payments firms operate in a particularly regulated sector means a physical presence is still necessary. UK firms in Australia are required to have a banking license which is difficult to maintain and requires a great deal of auditing. However, firms have reported that the benefits derived from this – i.e., the ability to provide instantaneous payments and retain oversight of end-to-end transactions – means that their competitive advantage relies on this.

PROPOSED SOLUTIONS THROUGH REGULATORY COOPERATION

Moving towards 'mutual recognition' or 'deference'

For banks that want to enter the payments space, the vastly different regulatory frameworks create a resource intensive exercise for what initially would constitute as non-core business. The recognition of, or deference to, the standards or supervisory actions of peer jurisdictions might change this calculation. A UK-Australia equivalence declaration around payments could be a first step. It is recognised that the UK would need to expand the scope of the onshore EU equivalence regime to achieve this.

Alignment of approaches to Buy Now Pay Later regulation

As payments regulation develops to keep pace with technology and demand, it is imperative that there is alignment across approaches. An example is the Buy Now Pay Later (BNPL) sector which Australia is in some ways the pioneer market. UK firms have stated they would encourage UK regulators to leverage work already done in Australia in this market.

Regulation around BNPL is currently being developed in the UK and the Australian Government is also undergoing similar consultation. Given the concurrent development of this regulation, regulators on both sides should ensure that regulatory frameworks align. Due to the prevalence of payments firms which operate in both the UK and Australia, this would be of benefit to the payments subsector.

17 City of London, June 2020 – UK cross-border trade in services with Australia (cityoflondon.gov.uk)

Conclusion

The finalisation of the UK-Australia FTA is the first step. It is the opening of a door which business must walk through to maximise the new economic opportunities afforded to it. UK businesses are excited at this challenge, but they cannot do it alone. The Regulatory Dialogue offers the tool to truly unlock the potential of the agreement. It will help to facilitate more frictionless trade and build on the two countries shared historical linkages. We hope this paper helps to ensure the success of the Regulatory Dialogue and we look forward to its establishment.

About the City of London Corporation:

The City of London Corporation is the governing body of the Square Mile dedicated to a vibrant and thriving City, supporting a diverse and sustainable London within a globally successful UK.

We aim to:

- Contribute to a flourishing society
- Support a thriving economy
- Shape outstanding environments by strengthening the connections, capacity and character of the City, London and the UK for the benefit of people who live, work and visit here.

Acknowledgements

The City of London Corporation would like to thank everyone who has given their time during the production of this piece of work and contributed to this report.

CITY OF LONDON

cityoflondon.gov.uk