

India–Singapore Comprehensive Economic Cooperation Agreement — Implications for Accountancy Sector

Mohit Bajjal* and Rajeev Jain**

(The authors are Sr. Technical Officer and Executive Officer** at ICAI. They can be reached at mohit_bajjal@yahoo.co.in and rajeev2120@yahoo.co.in, respectively.)*

With an intent to enhance bilateral ties and to reap benefits through increased trade, investment and economic co-operation, India and Singapore entered a strategic compact called India–Singapore Comprehensive Economic Cooperation Agreement. This landmark agreement between India and Singapore (hereinafter referred to as ‘Party/ies’) entered on 29th June 2005 is India’s first ever CECA and is also the first comprehensive economic pact between Singapore and a South Asian country. The article analyses the Agreement from professional angle.

The India–Singapore Comprehensive Economic Cooperation Agreement (hereinafter referred to as ‘CECA’) **has come into force w.e.f. August 1, 2005.** India was Singapore’s 14th largest trading partner in 2004. Bilateral trade between the two countries has nearly tripled within the past decade, from S\$4 billion in 1995 to S\$11.8 billion in 2004. Over the year, while negotiations were going on, bilateral trade with India increased by almost half, from S\$7.8 billion in 2003, making India the fastest growing trading partner of Singapore among the major economies.

Objectives of the CECA

- ❖ To strengthen and enhance the economic, trade and investment cooperation between the Parties;
- ❖ To liberalise and promote trade in goods in accordance with Article XXIV of the General Agreement on Trade and Tariffs;

- ❖ To liberalise and promote trade in services in accordance with Article V of the General Agreement on Trade in Services, including promotion of mutual recognition of professions;
- ❖ To establish a transparent, predictable and facilitative investment regime;
- ❖ To improve the efficiency and competitiveness of their manufacturing and services sectors and to expand trade and investment between the Parties, including joint exploitation of commercial and economic opportunities in non-Parties;
- ❖ To explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties;
- ❖ To facilitate and enhance regional economic cooperation and integration, in particular, to form a bridge between India and the Association of Southeast Asian Nations (“ASEAN”) region and serve as a pathfinder for the India-ASEAN free trade agreement; and to build upon their commitments at the World Trade Organisation.

Coverage of the CECA

The CECA encompasses trade in goods, trade in services and investment protection besides economic co-operation in areas like education, science, technology, air services and intellectual property. The CECA process has also encompassed a review of the existing Avoidance of Double Taxation Agreement between India and Singapore. The full text of India-Singapore CECA is available on the website of the Department of Commerce, Government of India at the link <http://commerce.nic.in/ceca/toc.htm>.

Services Sector

The CECA encompasses, *inter alia*, Trade in Services with a view to liberalising and promoting trade in services including promotion of mutual

recognition of professions and to improve the efficiency and competitiveness of the service sectors of both the countries. The chapter on Trade in Services of CECA covers various provisions regarding providing market access to the services and service suppliers of the other Party through the Four Modes of supply in accordance with the terms, limitations and conditions agreed and specified in the Schedule of specific commitments undertaken both by India and Singapore in respect of the sectors where commitments have been undertaken, which includes Accountancy Sector. How-

commitments regarding professional services are undertaken (which includes Accountancy Sector), each Party shall provide for adequate procedures to verify the competence of professionals of the other. The CECA also provides for a time limit of 12 months from the date of entry into force of CECA i.e. from August 1, 2005 for negotiation and conclusion by respective professional bodies of the two countries for agreements/arrangements providing for mutual recognition of education, experience, etc. in various service sectors which also includes accounting and auditing.

Modes of Supply	
Article 1 of the GATS sets out a comprehensive definition of trade in services in terms of the four different modes of supply of services: cross – border, consumption abroad, commercial presence in the consuming country, and temporary movement of natural persons.	
Cross border supply of services or ‘Mode 1’	It is supply of a service “from the territory of one Member into the territory of any other Member”. It corresponds with the normal form of trade in goods maintaining a clear geographical separation between seller and buyer; only the service itself crosses the national boundaries, e.g. provision of services through electronic mode, tele-medical services.
Consumption abroad or ‘Mode 2’	It is the supply of a service “in the territory of one Member to the service consumer of another Member”. Typically, this involves the consumer traveling to the supplying country, e.g. for tourism purposes. Another example of consumption abroad would be the repair of ship or aircraft outside the home country.
Commercial presence or ‘Mode 3’	It is the supply of a service “by a service supplier of one Member, through commercial presence in the territory of any other Member”. Examples are, the establishment of branch offices or agencies to deliver such services as banking, legal advice or communications. Mode 3 does not necessarily require the presence of foreigners (the foreign supplier’s office may be staffed entirely by local personnel). However, the supplier may well feel a need to employ some foreign managers or specialists.
Presence of natural persons or ‘Mode 4’	It is the supply of a service “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member”. In other words, it is the admission of foreign persons and nationals to another country to provide services there. Mode 4 may be found alone, with no commercial presence, and the visiting persons involved may be employees of a foreign service supplier, or may be providing services as independent individuals. Even if members undertake Mode 4 commitments to allow natural persons to provide services in their territories, they may still regulate the entry and stay of the persons concerned, for instance by requiring visas, as long as they do not prevent the commitments from being fulfilled.

ever, it shall not apply to measures affecting natural persons seeking access to employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. It also says that in sectors where specific

Major Implications of CECA for Indian Accountancy Sector

The following are salient features of the major implications arising out of the India-Singapore CECA for the Indian Accountancy Sector:

1. India has made specific commitments for Accounting and Book-keeping services (CPC 862) to Singapore (full commitments under Modes 1 & 2. Mode 4 subjected to horizontal commitments for independent professionals on the basis of contract subject to fulfillment of criterion of registration with relevant Accountancy body in India and obtaining of professional indemnity insurance from home country for a period of stay of up to 12 months). The commitments so made may be modified/withdrawn after 3 years from the date of coming into force i.e. **August 1, 2005**.
2. India has also made specific commitments for Advisory Taxation services excluding authentication of statutory audit reports (CPC 863) in Modes 1 & 2 except for the limitation that personal appearance before Indian Tax authorities is confined to Indian nationals receiving such services only. Further, specific commitments have been made for Management consulting services excluding all services relating to legal consultancy (CPC 865) and Services related to management consulting (CPC 86601) under Modes 1, 2 & 3 (full commitments) and Mode 4 subject to horizontal commitments for independent professionals on the basis of contract with a final client in India.
3. Singapore has made specific commitments in Accounting, auditing and bookkeeping services, except for Financial auditing services (CPC 862) in Modes 1, 2 & 3 (full commitments) and Mode 4 subjected to horizontal commitments. Commitments in Financial auditing services (CPC 86211) under Modes 1 and 3 have been subjected to National Treatment limitation that public accountants must be effectively resident in Singapore or at least one of the partners of the firm must be effectively resident in Singapore, Mode 2- full commitments and Mode 4 subject to horizontal commitments. Singapore's commitments for Taxation services except for other tax-related services (CPC 863) have been made under Modes 1, 2 & 3 (full commitments) and Mode 4 subjected to horizontal commitments. Other tax-related services (CPC 86309) under Modes 1 and 3 have also been subjected to National Treatment limitation that public accountants must be effectively resident in Singapore or at least one of the partners of the firm must be effectively resident in Singapore. Only public accountants registered with the Public Accountants Board can practise as tax consultants for local tax laws, Mode 2 full commitments and Mode 4 subject to horizontal commitments. In respect of Management Consulting Services, including office management and administrative services (CPC 865) and Services related to management consulting (CPC 866) full commitments made under Modes 1, 2 & 3 and Mode 4 subjected to horizontal commitments.
4. The Chapter on Movement of Natural Persons of CECA provides that each Party shall grant temporary entry and stay for up to one year or the duration of contract, whichever is less, to a natural person seeking to engage in a business activity as a professional, or to perform training functions related to a particular profession, including conducting seminars, if the professional otherwise complies with immigration measures applicable to temporary entry, on presentation by the natural person concerned of:
 - (a) Proof of nationality of the other Party;
 - (b) Documentation demonstrating that he or she will be so engaged and describing the purpose of entry, including the letter of contract from the party¹ engaging the services of the natural person in the host Party; and
 - (c) Documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

The term '**professional**' has been defined to mean a natural person of a Party who is employed in a specialised occupation as listed in Annex 9A of CECA (which includes, *inter alia*, Accountant, Taxation Professionals (who are accountants), Auditor (Accounting), Financial Analyst, Credit Analyst, Fund Manager, Treasury Manager) that requires theoretical and practical application of specialised knowledge; and

 - (i) attainment of a post secondary degree in the specialty requiring three or more years of study (or the equivalent of such a degree) as a minimum of entry into the occupation. Such degrees include Bachelors'

¹For the avoidance of doubt, "party" shall not mean the Republic of India or the Republic of Singapore ("Party").

- degree, Masters' degree and Doctoral degree conferred by institutions in India and Singapore; and
- (ii) in the case of regulated professions, registration, license or credentials, as specified by the relevant authorities of a Party, if applicable, to engage in a business activity as a professional in one of the professions listed in Annex 9A, and for which specific commitments for that services sector have been undertaken by that Party.
5. The services and service suppliers from Singapore shall, in terms of Market Access, be provided treatment no less favourable than that specified in 1 & 2 above w.e.f. August 1, 2005. Similarly, the services and service suppliers from India shall, in terms of Market Access, be provided treatment no less favourable than that specified in 3 above w.e.f. August 1, 2005.
 6. The services and service suppliers from Singapore, w.e.f. August 1, 2005, in respect of all measures affecting the supply of services under 1 & 2 above, shall be accorded treatment no less favourable than that is accorded to our own like services and service suppliers. Similarly, the services and service suppliers from India, w.e.f. August 1, 2005, in respect of all measures affecting the supply of services under 3 above, shall be accorded treatment no less favourable than that is accorded to Singapore's own like services and service suppliers.
 7. If, after the coming into force of CECA, any agreement on trade in services is entered into with any other third country, then any such request by the other Party of CECA (i.e. Singapore) for incorporation herein of treatment no less favourable than that provided under the aforesaid agreement, shall have to be considered.
 8. The commitments so made shall be endeavoured to be reviewed at least once every 3 years, or earlier at the request of either Party of CECA, with a view to facilitating the elimination of substantially all remaining discrimination between the two countries with regard to trade in services.
 9. It shall be required to be ensured that all measures of general application affecting trade in Accounting and Book-keeping services are administered in a reasonable, objective and impartial manner.
 10. It shall be required by both the Parties to CECA (i.e., India and Singapore) to maintain or institute, as soon as practicable, Judicial arbitral or administrative tribunals or procedures which would provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.
 11. Temporary access to independent professionals (from Singapore) in Accounting and Book-Keeping services, is to be allowed on the basis of contract subject to fulfillment of criterion of registration with relevant Accountancy body in India.
 12. In view of 11 above, the competent authorities (in India) in Accounting and Book-keeping services shall also be required to inform the applicant (from the other Party), within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, of the decision concerning his/her application.
 13. It is required that all relevant measures of general application, which pertain to or affect the operation of trade in services under CECA, shall be published promptly or be made otherwise publicly available. Any other international agreements pertaining to or affecting trade in services, to which either Party to CECA is a signatory, shall also be published. Each Party is also required to establish one or more enquiry points to provide specific information to other Party, upon request, on all such matters.
 14. Both the Parties shall be required to provide for adequate procedures to verify the competence of professionals of the other.
 15. Pending the incorporation of Disciplines on Domestic Regulations under Article VI.4 of the GATS and with a view to ensuring that domestic regulations, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, it is required not to apply licensing and qualification requirements and technical standards that nullify or impair specific commitments made (as per 1 & 2 above), in a manner which :-
 - (a) does not comply with the following criteria:
 - based on objective and transparent criteria, such as competence and the ability to supply the service;

- not more burdensome than necessary to ensure the quality of the service;
 - in the case of licensing procedures, not in themselves a restriction on the supply of the service.
- and;
- (b) could not reasonably have been expected at the time the specific commitments were made.
- Further, in order to determine conformity with these obligations, account shall be taken of international standards of relevant international organizations applied. The term “relevant international organizations” refers to international bodies whose membership is open to the relevant bodies of both Parties.
16. The specific professional bodies of both the countries in the service sector of accounting and auditing have been required to negotiate and conclude, by 31st July, 2006, any agreement or arrangement providing for mutual recognition of the education or experience obtained, requirements met, or licenses or certifications in the service sector, the details of such agreements or arrangements, including the exact extent and scope of recognition. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreements or arrangements shall not be regarded as a breach of a Party’s (India’s or Singapore’s) obligations and shall not be subject to the Dispute Settlement Chapter of the CECA. Progress in this regard will be continually reviewed in the course of the review of CECA pursuant to its Article 16.3.
17. Both India and Singapore have agreed not to take safeguard action against services and service suppliers of the other Party from the date of entry into force of CECA. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.
18. Both India and Singapore have also agreed that in the event that either Party considers that its interests have been adversely affected by a subsidy or grant provided by the other Party, upon request, the other Party shall enter into consultations with a view to resolving the matter and the subsidising Party may, as it deems fit, consider a request of the other Party for information relating to the subsidy scheme or programme such as:
- (a) domestic laws or regulations under which the measure is introduced;
 - (b) form of the measure (e.g. grant, loan, tax concession);
 - (c) policy objective and/or purpose of the measure;
 - (d) dates and duration of the programme or subsidy and any other time limits attached to it; and
 - (e) eligibility requirements of the measure (e.g. criteria applied with respect to the potential population of beneficiaries).
19. Both India and Singapore have also agreed not to apply restrictions on international transfers and payments for current transactions relating to its specific commitments, as specified in 1, 2 & 3 above, except under the circumstances envisaged in Article 7.17 of CECA for safeguarding the Balance of Payments.
20. Neither Party (India or Singapore) is required to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Conclusion

One of the benefits of CECA to India was that Singapore could serve as the gateway to East Asia and was also expected to help both the countries integrate with other countries in the South East Asia region and improve both efficiency and competitiveness of manufacturing and services. As a result, Investment flows (in the form of Singapore companies investing in the country and expanding their presence) had increased since the CECA was signed in June 2005, however, the investments are not coming as was envisaged originally. Further, CECA was also expected to provide liberal market access to Indian professionals in various areas, including IT, medicine, finance, engineering, accountancy, pharma, nursing and teaching.

With the first review of the CECA also expected shortly aimed at identifying areas whereby the two countries can improve bilateral trade and investment, the focus of review could be on implementation of CECA and a critical analysis on how to facilitate and diversify trade in various areas that have been identified in the agreement. It remains to be seen, what would be the final outcome of the review and what would be the resultant effect on the services sector, in particular. □