

Chapter 4

Free Flow of Skilled Labor in the AEC

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CHAPTER 4

Free Flow of Skilled Labor in the ASEAN Economic Community

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Skilled labor mobility is essential for effective implementation of services liberalization and FDI liberalization as well as a goal in itself for deeper economic integration in the AEC. Currently Singapore is the main recipient, while the Philippines and Malaysia are the main suppliers. However, as ASEAN countries move up the technology ladder, demand for skills will increase. Foreign talent is needed to augment the domestic pool, as well as to create the competitive synergy for domestic talents. Strategic actions on the free flow of skilled labor outlined in the AEC Blueprint include --- facilitate the issuance of visas and employment passes; mutual recognition arrangements (MRAs) for major professional services; core concordance of services skills and qualifications; and enhance cooperation among ASEAN universities to increase regional mobility for students and staff.

The MRA is a major instrument for skilled labor mobility in ASEAN. However, recognition of each other's qualifications and experience does not ensure market access. Policies and regulatory frameworks that constrain and impede skilled labor mobility include--- requirements and procedures for employment visas and employment passes; constitutional provisions reserving jobs for nationals; policies that close or impose numerical caps on foreign professionals and skills in sectors and occupations; economic and labor market tests that constrain employment of foreigners and requiring to have them replaced by locals within a stipulated period; licensing regulations of professional associations; and language proficiency requirements. Countries should cooperate to minimize the impediments. More information exchange and transparency and simplifying visa and employment pass applications would help.¹

¹ The author gratefully acknowledges the questionnaire responses and information on their respective countries supplied by the ERIA network of research institutions from Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

1. Introduction

The AEC Blueprint covers only “free flows of skilled labor” and is silent on flows of unskilled/semi-skilled labor. The free flow of skilled labor has important implications for services trade, FDI and productivity growth. In allowing for movement of skilled labor, according to the prevailing regulations of the receiving country, ASEAN is working to:

- Facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labor who are engaged in cross-border trade and investment related activities.
- Facilitate the free flow of services, particularly, develop core competencies and qualifications for job/occupational and trainers skills required in the priority service sectors by 2009 and in other services sectors by 2015.
- Enhance cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region.
- Strengthen the research capabilities of each ASEAN Member Country in terms of promoting skills, job placements and developing labor market information networks among ASEAN Member Countries

The time-lines are:

- Complete MRAs for major professional services, including Priority Integration Services (PIS) sectors of e-commerce, healthcare, air travel, tourism and logistics by 2008.
- Develop core competencies (concordance of skills and qualifications) for job/occupational skills required in PIS by 2009

- Develop core competencies (concordance of skills and qualifications) for job/occupational skills in all service sectors by 2015.

The AEC provides for market access for ASEAN professionals and skilled manpower. The main action is to implement Mutual Recognition Arrangements (MRAs) for major professional services. However, recognition is not enough to ensure market access. Hence this report focuses on the policies and regulatory frameworks on skilled labor mobility in ASEAN countries, highlighting the various policy and regulatory constraints and impediments. For comparison with the AEC, this report also includes a discussion of movement of natural persons provisions in the WTO and in selected ASEAN and bilateral FTAs.

2. Movement of Natural Persons or Skilled Labor Mobility -- Provisions in the WTO and in ASEAN FTAs and the Issue of Brain Drain

Movement of Natural Persons in the WTO

Cross-border mobility of unskilled labor is excluded from the WTO agenda, while cross-border mobility of skilled labor is covered under GATS Mode 4 on movement of natural persons (MNP). MNP refers to cross-border mobility of professionals and skilled individuals on a temporary basis either as self-employed individual service providers or as employees of foreign companies supplying services. MNPs cover:

- Business visitors: engage in business without seeking employment

- Traders and investors: natural persons carrying out specific trading and investment activities
- Intra-corporate transferees: employees of MNCs that move their staff across borders
- Professionals: include doctors and nurses, lawyers, accountants, engineers, IT personnel and other professions

Barriers to MNP include:

- Restrictive immigration visa requirements and employment passes and work permits, other administrative constraints and processing costs
- Quality assurance: pre-employment requirements, health and security clearance, personal and professional references
- Educational and professional qualifications and regulations and licensing requirements by receiving country professional associations
- National treatment limitations: qualifications and restrictions based on nationality; economic needs test; numerical quotas for each profession; ethnic preferences; and language requirements
- Measures to discourage and prevent brain drain

GATS commitments represent the lower bound of the actual degree of liberalization of immigration policy. Most of the existing GATS commitments in Mode 4 pertain to executives,

managers and professional employees of the foreign companies supplying services through Mode 3.

Movement of Natural Persons in ASEAN's Regional and Bilateral FTAs

FTAs do not all have provisions to facilitate movement of natural persons (MNP), reflecting the difficulties in addressing them even at the regional and bilateral levels. FTAs tend to replicate GATS in favouring only mobility of highly skilled and professional workers, and closely linking them to investment requirements. Some ASEAN regional and bilateral FTAs deal with issues relating to Movement of Persons in separate chapters. Such FTAs provide the platform for bargaining across issues and the greater probability of achieving results. FTAs that do not provide for full labor or service supplier mobility tend to use GATS type carve-outs and generally exclude permanent migration and access to the labor market and also do not impinge on the sovereign rights of countries to regulate entry and stay of individuals.

ASEAN-Australia-New Zealand FTA (AANZFTA):

This is the only ASEAN+1 agreement that has been comprehensively completed and implemented to date.

- Movement of natural persons (MNP) is contained in Chapter 9 of the Agreement, which complements the chapters on services and investment. It established streamlined and

transparent procedures for applications of immigration formalities for MNPs. Temporary entry of natural persons include business visitors; installers and servicers; executives of a business headquartered in the FTA partner by establishing a branch or subsidiary or other commercial presence of that business in another FTA partner; intra-corporate transferees; and contractual service suppliers. Temporary entry means entry without the intent to establish permanent residence. Such natural persons must follow prescribed application procedures for the immigration formality sought and meet all relevant eligibility requirements for entry to the granting partner country. The chapter does not apply to measures affecting natural persons seeking access to the employment market of FTA partner, nor to measures regulating citizenship, residence, or employment on a permanent basis.

- Nothing in the chapters of movement of natural persons, services and investment, shall prevent an FTA partner from applying measures to regulate entry of natural persons or their temporary stay, including those measures necessary to protect the integrity of and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to another FTA partner under the chapter or to unduly impair or delay trade in services and goods and investment

- Annex 4 of chapter 9 contains the schedule of commitments for the temporary entry and stay of natural persons of the country signatories. These schedules specify the conditions and limitations governing those commitments, including the length of stay for each category of natural persons. The schedules of most ASEAN countries in the

AANZFTA improve on their WTO commitments--- with new categories of service suppliers; lengthening of stay for various categories; and increased in number of sectors covered by commitments;

- This FTA also contains regulatory disciplines which help facilitate freer and more efficient movement of Australians seeking to travel to ASEAN countries for temporary business purposes. The disciplines include obligations of FTA partners to process completed applications for temporary entry and stay promptly; notify applicants, on request, about the status or outcome of the application; and ensure that fees for visas and entry permits are reasonable.

Japan's EPAs with ASEAN countries:

Japan's bilateral EPAs with selected individual ASEAN countries have specific provisions on labor mobility into Japan. The over-arching ASEAN-Japan EPA has no similar provisions, probably reflecting the difficulties of negotiating trade-offs for the diverse ASEAN countries.

- ***Japan-Singapore EPA*** includes the movement of natural persons, specifically for business purposes, that is, business visitors, intra-corporate transferees, and certain categories of investors and professionals. Chapter 9 on Movement of Persons contains specific commitments set out in an Annex for short term visitors and intra-corporate transfers. There are also provisions on a joint committee devoted to mutual recognition of professional qualifications. A separate chapter on mutual recognition effectively takes the form of a bilateral mutual recognition treaty.

- *Japan's bilateral EPAs with Philippines, Thailand and Indonesia* include provisions on the movement of natural persons, in particular for entry and employment in Japan of limited numbers of Filipino nurses and caregivers; Thai cooks, care workers, spa therapists and instructors of Thai dance, music and cuisine, language and boxing; and Indonesian healthcare givers. There are no MRAs. In particular, the Japan-Philippines EPA provides for easier entry of qualified Filipino nurses and certified care workers through language training, clear guidelines on exercise of profession/occupation and streamlined processing of application. It was reported that 281 health workers (93 nurses, 190 caregivers) were dispatched to Japan in May 2009 to undergo onsite language and culture training for 6 months before starting to work and acquire necessary knowledge and skills at hospitals or care facilities in Japan. Another group of 10 workers who were exempted from the 6-month Japanese language training because of their language proficiency, were sent on 31 May 2009, while a third batch of 30 qualified Filipino students were sent to study care giving for 2 years on 27 September 2009.

Singapore-US FTA:

Among the bilateral FTAs signed by ASEAN countries, the most interesting from the perspective of MNP is the Singapore-US FTA. Chapter 11 deals with Movement of Persons and contains 11 pages of text and annexes.

- There are provisions on information exchange, transparency criteria and an agreement to appoint temporary entry coordinators in each country. It provides for mutual

consultation on acceptable standards and criteria for licensing and certification of professional service providers.

- For professional services: Singapore will ease conditions on US firms creating joint law ventures to practice Singapore law; recognize degrees earned from 4 US law schools for admission to the Singapore bar; reduce board of director requirements for architectural and engineering firms; phase out capital ownership requirements for land surveying firms; both sides will engage in consultation to develop mutually acceptable standards and criteria for licensing and certification of professional service providers, especially with regard to architects and engineers.
- Annex 11A sets out details of arrangements under 4 section headings, with the following conditions applying to Singapore citizens ---business visitors, 90 days; intra-corporate transferees with L1A and L1B visas are allowed up to an initial period of 1-3 years, extendable for a maximum stay period of 7 years; traders with E1 or E2 visa are allowed a 2-year maximum stay period with indefinite extension allowed; professionals with H1B visas are allowed to stay for a maximum period of up to 18 months, with indefinite extension allowed, but subject to an annual numerical cap of 5,400 visas for Singaporeans.
- The issue of recognition is dealt with in Chapter 8 on Services, indicating that recognition of education or experience obtained, or licenses or certificates may be achieved by harmonization and provides general principle as to how such harmonization may be negotiated. An annex to the chapter sets out more details on how professional standards should develop on a mutually acceptable basis in more

detail. Recognition issues are also covered in Chapter 12 on Temporary Entry of Business Persons; Section IV is on short term entry arrangements for professionals and commits each party to grant entry to professionals in categories entered in an Appendix, provided that the person involved possess appropriate credentials.

Issue of Brain Gain and Brain Drain

Skilled labor mobility is a growing issue of debate in recent years, reflecting the impact of globalization and explosive growth of ICT. Globally, there has been a net flow of highly skilled professionals and executives or “brains” from the less developed countries to the more developed countries and this phenomenon has gained importance in the past two decades, although their numbers are still small relative to the large flows semi-skilled and unskilled foreign workers. Many developed countries as well as advanced developing countries now have deliberate policies of attracting “brains”.

At the same time, liberalization of the “movement of natural persons” in GATS and growing FDI presence have resulted in significant labor mobility of the professionals and skilled from developed to developing countries as well as flows among developing countries

Receiving countries of skilled labor are generally regarded as enjoying “brain gain”, as inflows augmented and supplemented domestic supplies, removing domestic shortages, improving economic competitiveness and productivity and facilitating structural transformation and industrial upgrading. Yet not all countries, whether developed or developing, are unreservedly open to skilled labour inflows. While some countries have put in

place policies and measures to attract “foreign talent”, most countries have introduced measures to manage and even restrict such inflows. Motivations include the political, economic and social pressures to “reserve” jobs for nationals, the “closed shop” licensing practices of professional bodies, and the security dimensions when critical and sensitive jobs are held by foreigners.

Brain drain occurs when professionals and skilled manpower emigrate because some countries have been unable to efficiently employ them because of sluggish economic growth and high unemployment. Also, many of these skilled emigrants started the migration process when they left for the OECD countries to pursue tertiary education and then stayed on to gain work experience and were attracted by the job opportunities, better remuneration and working conditions and quality of life.

The developing countries generally have a scarcity of skills and a sizeable brain drain would adversely affect the development potential of sending countries. At the least, the brain drain represents losses to past educational investments. In most cases these human resources would have been trained at great public expense and emigration often leads to the loss of a country’s “best and brightest”. Some of the negative effects of skills depletion are seen in the Philippines, where success in sending nurses abroad has depleted its healthcare services of experienced nurses. Some developing countries have restrictive emigration policies that make it difficult for their nationals to take jobs abroad. Many governments in developing countries have bonded scholars on government scholarships that ensure their return to serve their country. A proposal to impose a brain drain tax on receiving countries to compensate the sending country for the brain drain has failed to take off, as it present problems of estimating the

appropriate amount of such a tax, who should pay the tax (the receiving country, the employer or the migrant professional himself), who should benefit from the tax (sending country government and how should the tax revenue be used. Many developed countries have tried to mitigate the developing countries problem with temporary entry programs that require workers or students to return to their source country after a period of time

It is also increasingly recognised that the brain drain could also have positive effects on the sending countries, as emigrants can make a greater contribution to development of their home countries through their remittances. Prospects of emigration for work can also lead to a higher level of human capital formation in the sending country. For example, more Filipinos seek education and training as nurses to facilitate their employability abroad. Also, there are significant gains when the “brains” eventually return. Returnees bring with them greater experience, knowledge, savings and business and social networks. For those who stay abroad, they send back remittances; transfer technology and knowledge; and provide crucial networks for trade and investment. Thus an initial brain drain may become a long term brain gain.

The Asian diaspora is increasingly viewed by their countries of origin as a valuable resource to be tapped for national economic development --- for their remittances and investments, entrepreneurial and professional skills, and business and social networks. For example, returnees have contributed much to the technological development and industrial upgrading of South Korea and Taiwan. The “overseas Chinese” communities in Hong Kong and Taiwan and to a lesser extent in Southeast Asia have been major foreign investors in China, particularly in the first decade of China’s open-door policy. In its current phase of development India is also trying to tap its diaspora for their investments and expertise.

3. *Recognition of Professional Qualifications in the WTO and ASEAN FTAs*

This section is based largely on Nielson (OECD 2004)

Nielson noted that there is a growing demand for greater recognition of foreign qualifications arising from the following:

- Universities assessing students to admit for further study.
- Employers, professional associations and licensing bodies and migration authorities increasingly require information on recognition of foreign qualifications.
- Liberalization of trade in services in the WTO and in FTAs which led to an increased demand for recognition of professional qualifications. International trade in a range of services such as health and education and professional services such as accounting and engineering is often conducted via Mode 4 or temporary movement of individuals to supply these services. For example, trade in health services occur when a nurse from one country moves to another for a limited period to work; and trade in engineering services take place when a company with a contract to build a bridge in another sends its engineer to supervise the project.

In terms of professional qualifications, recognition usually refers to both the recognition of the equivalence of the content of the training and to the recognition of the home country's authority to certify such training through the granting of diplomas and other qualifications. The principle of equivalence is generally understood to mean that where the host country's regulatory goal is addressed by home country regulation, the host country should accept the

home country's regulation as equivalent. But where aspects of the host country's regulatory goals are not met, for example, with regard to required local knowledge or where there are differences in the scope of the licensed activities between jurisdictions, the host country is permitted to set additional requirements for recognition. Most recognition agreements require considerable cooperation in adaptation of their respective regulatory regimes. Also, many recognition agreements include a general safeguard, in addition to the specific rules of recognition, enabling the authorities to re-assert regulatory jurisdiction in order to protect national interests.

Recognition requires or assumes that a country has in place a system for regulating a given profession, but in some countries such systems are either poorly developed or non-existent. Development of a domestic regulatory framework for a profession requires well-developed and competent institutions such as ensuring the quality and adequate supply of the profession. Recognition also requires a complex comparison between frameworks established to meet different sets of economic, social and cultural circumstances to determine whether the standards set are actually equivalent. Recognition also involves a number of stages --- information exchange, analysis of the other party's regulatory regime, assessment of whether there are gaps and, if so, what might be appropriate compensatory measures, whether some aspects should be excluded from recognition altogether, and whether any adaptation of the home country regulatory framework is required. The speed and efficacy with which these processes can be undertaken will vary with the degree of differences between the parties in education system, standards, approaches to regulation and level of development, and also with the number of parties involved. Once agreed, recognition agreements also require ongoing resources for monitoring and assessment.

It should be noted that, while the quality of a professional qualification is clearly an important factor in whether a professional from one jurisdiction will be permitted to practice in another, it is not the only factor. To practice in a given jurisdiction, governments or professional bodies may impose additional requirements related to local ethics laws and membership of national professional bodies. It should also be noted that recognition of qualifications and other requirements does not automatically confer the right to exercise a profession, as market access must be granted. In many countries, certain professions are restricted to nationals.

Recognition of Qualifications in GATS

GATS does not require members to recognize the professional qualifications of other members nor does it require any particular standards to be applied in considering recognition. *Article VII* simply allows members to recognize the education or experience obtained, requirements met, or licenses or certification granted in some WTO members and not others, as given the range of regulatory differences, recognition is most likely to be agreed bilaterally or plurilaterally. The main requirement of Article VII is that members entering into recognition arrangements amongst themselves must afford adequate *opportunity* to other interested members to negotiate their accession to the agreement or to negotiate a comparable agreement. Article VII states that a member may recognize “education or experience obtained, requirements met, or licenses or certification granted” and that recognition may be achieved “through harmonization or otherwise”. Countries are not required to use international standards.

GATS Article VI.6 states that where a country chooses to make a commitment to allow access for a particular type of foreign professional, that country is required to have adequate procedures in place to verify the competence of those professionals from all other WTO members. A country has to have actually chosen to make a GATS commitment on market access for a particular professional service for the obligation to apply. A market access commitment to allow foreign professionals does not mean that the country is obliged to accept all foreign professionals; whether an individual professional is actually permitted to practice will depend on whether the requirements of the domestic regulatory framework regarding who is competent to practice are met.

Recognition of Qualifications in FTAs

FTAs generally do not provide for recognition, but simply include general language that recognition should be pursued between the parties. Recognition in FTAs typically involves both mutual agreement to accept agreed competent authorities for the mutual determination of standards, and agreements on the mutual recognition of more narrowly specified items such as notarial attestations or certificates. Some agreements leave recognition agreements to be concluded subsequent to the FTA agreement, often identifying those services where market access has been granted under the agreement as a priority. On the other hand, recognition agreements concluded pursuant to FTAs are often delegated to and take the form of agreements between industry associations such as in architecture, engineering and accountancy. Some FTAs do not even formally envisage the development of recognition agreements. The Japan-Singapore EPA uses the language of GATS Article VII, and simply permits the development of

recognition agreements but does not specify any professions for which agreements should be negotiated.

Many recognition agreements do not provide for automatic recognition of qualifications. Coverage varies widely ---some are far-reaching; others provide for reduced requirements or procedures; some provide a degree of facilitation; others are limited to broader types of cooperation or dialogue. While some agreements relate to specific sectors (such as accountants, architects, engineers), many agreements are based on a general recognition of diplomas in partner countries, on the basis of mutual trust and judgement of the equivalence of educational institutions and study programs. Agreements limited to specific professions are often agreements initiated and negotiated by industry or professional bodies themselves. The content of these agreements varies considerably and includes automatic membership of counterpart organizations.

Nielson highlighted the experience with recognition in various FTAs. For example:

- Some agreements such as within *EU* and the *Trans-Tasman MRA* have gone far in establishing recognition, resulting more or less in the ability of professionals licensed in their home country to practice in other parties to the agreement. However, this level of recognition is rare, being largely limited to regional trade agreements aimed at deep integration.
- Some FTAs encourage development of recognition agreements between the parties to facilitate trade in professional services. These specify priority professions and delegate negotiation of such agreements to the relevant professional bodies.

- In the *New Zealand-Singapore CEP*: Part 5 (Services) Article 22 (Professional Qualifications and Registration) states that “with a view to ensuring that measures relating to professional qualification and registration requirements and procedures do not constitute unnecessary barriers to trade in services between them, the Parties agree to have identified by the date of entry into force of this Agreement priority areas to address with respect to the recognition of professional qualifications or registration. The parties further agree to facilitate the establishment of dialogue between experts in these priority areas with a view to the achievement of early outcomes on recognition of professional qualifications or registration in these areas. Such recognition may be achieved through recognition of regulatory outcomes, recognition of professional qualifications awarded by one Party as a means of complying with regulatory requirements of the other Party or by other recognition arrangements which might be agreed between the Parties. The parties have agreed to facilitate dialogue between experts in 10 priority sectors (engineers, planners, architects, landscape architects, registered valuers, dentists, dental technicians, doctors, nurses, midwives).
- In the *Japan-Singapore EPA*, Chapter 9 Article 93 Movement of Natural Persons covers mutual recognition of professional qualifications. It is closely based on GATS Article VII, in that it permits but does not require recognition. Where a Party grants recognition to a non-Party, the other Party must be given an adequate opportunity to demonstrate that they should be accorded similar recognition.

Nielson found that recognition made limited progress for several reasons. First, is the wide range of practices among WTO members in relation to education and training of

professionals and the wide range of cultural influences and assumptions that lie behind these. Second is the fear of loss of regulatory sovereignty or that recognition will lead to harmonization of standards or practices, including at the lowest common denominator. Many professional or other regulatory bodies at the national level pride themselves on their high standards and would be reluctant to adopt or recognize others' standards or equivalent. In some cases, there is concern that particular local knowledge will not be adequately reflected in a recognition agreement. Third, is the absence of licensing systems for some professions or of formal qualification mechanisms in some countries, against which equivalence could be judged. The promise of access for their professionals to other countries under an FTA has spurred some developing countries to introduce more formal licensing or other requirements for its own professionals to ensure that they will be more easily able to meet the standards in other countries and therefore be able to use the access granted.

Fourth is the difficulty of calculating the equivalence of on-the-job and formal training, where formal training may be less important than practical and up-to-date experience as with the ICT profession. Fifth, many recognition initiatives are led by, or require the close involvement of, professional associations and organized, well-resourced and representative associations may be lacking in some countries, or else may not be interested in facilitating the access of foreign suppliers. Sixth is the lack of awareness at the professional level of the possibilities provided by recognition agreements for high quality professionals to become more mobile. Seventh are the resource-intensive and highly complex processes involved in establishing recognition and hence the need for the advantages of such agreements to be clear. In the absence of a clear short term gain to balance the costs, recognition agreements may not be viewed as a good use of resources by professional organizations responsible for their

negotiation. Eighth, for some professions, there is little interest in negotiating recognition agreements if foreigners are not permitted to practice the relevant professions in other countries. Most progress in reaching recognition agreements has been in those professions where there is a clear demand and where other countries are open to foreign professionals. Where the provision of some professional services is reserved for nationals, professional bodies are unlikely to see any value in negotiating recognition agreements.

4. Policies and Regulatory Frameworks on Skilled Labor Mobility in ASEAN Countries

Provisions in AFAS

In recent years, ASEAN Labor Ministers meetings have supported greater intra-regional labor mobility of skilled persons, both in relation to ASEAN trade and investment liberalization as well as the social dimensions of ASEAN economic integration. The ASEAN Labor Ministers Meeting on 11 May 2000 called for the labor force of member countries to be “prepared for and benefit from economic integration within ASEAN”. Following signing of AEC in 2003, Labor Ministers expressed in 2004 their commitment to address the priorities in the ASEAN Socio-Cultural Community ---to continue existing efforts to promote regional mobility and mutual recognition of professional credentials, talents and skills development. They noted the need for accelerated service liberalization by 2010 and MRAs by January 2008 and importance of developing an ASEAN agreement to facilitate the movement of experts, professionals, skilled labor and talents by Dec 2005.

National sensitivities to the migration issue has prevented much cooperation to date. The 1995 AFAS provides, inter alia, for regulatory convergence and regulatory harmonization including MRAs. ASEAN countries may recognize the education or experience obtained, requirements met and licensing or certification granted by other ASEAN countries. However, progress in Mode 4 on movement of natural persons (MNP) and progress in mutual recognition agreements (MRAs) have been slow. The Bali Concord II in 2003 called for completion of MRAs for qualifications in major professional services by 2008 to facilitate the free movement of professionals and skilled labor. With MRAs, each country may recognize education and experience, requirements, licenses and certificates granted in another country.

Mutual Recognition Arrangements

ASEAN has concluded 7 packages of commitments under AFAS. These packages provide for details of commitments from each ASEAN country in the various services sectors and sub-sectors. There have also been 3 additional packages of commitments in financial services and 2 additional packages on commitments in air transport. The AEC Blueprint adopted at the 13th ASEAN Summit in Nov 2007 set concrete steps to be taken to achieve a free flow of services by 2015 with flexibility. MRAs enable the qualifications of professional services suppliers to be mutually recognized by signatory member states, thus facilitating easier movement of professional services providers in the ASEAN region. At present, ASEAN has concluded 7 MRAs

- MRA on Engineering Services signed on 9 Dec 2005

- MRA on Nursing Services signed on 8 Dec 2006
- MRA on Architectural Services and Framework Arrangement in the MR of Surveying Qualifications both signed on 19 Nov 2007
- MRA on Medical Practitioners, MRA on Dental Practitioners, and MRA Framework on Accountancy Services signed on 26 Feb 2009

ASEAN University Network (AUN)

The AEC Blueprint lists as one of its actions toward free flow of skilled labor as enhancing cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region.

The 4th ASEAN Heads of Government meeting in 1992 emphasized the need to promote human resource development by considering ways to strengthen institutions of higher learning in the ASEAN region with a view to ultimately establish an ASEAN university network (AUN). The specific objectives of AUN are to promote cooperation and solidarity among professionals, academicians, scientists and scholars in the region; develop academic and professional human resources in the region; and promote information dissemination including electronic networking of libraries, exchanges and sharing of appropriate information among members of the academic community, policy makers, students and other relevant users.

The AUN structure comprises a Board of Trustees, Participating Universities and Secretariat. The initial participating leading universities of ASEAN are Universiti Brunei

Darussalam; Gadjah Mada; Universiti Sains Malaysia and Universiti Malaya; University of the Philippines; National University of Singapore and Nanyang Technological University; Burapha University of Thailand. Academic institutions of any ASEAN member country may be admitted to the AUN upon submission of application for such membership to the Board of Trustees. The AUN Secretariat is based at Chulalongkorn University in Thailand. At the Second AUN Rectors' meeting in March 2010, progress of the implementation of the ASEAN Credit Transfer System (ACTS) was discussed. Quality of the courses offered by AUN member universities is essential to the success of ACTS

Factors in ASEAN Skilled Labor Mobility

The ASEAN region has seen growing international and regional labor mobility. There are two types of flows. First, the much larger flow of unskilled and semi-skilled workers on short term contracts. Second, the much smaller flow of professionals and skilled manpower. The AEC covers only the second type of flows.

Cross-border skilled labor mobility in ASEAN countries reflect an interplay of various forces that include the following:

- *First, large disparities in wages and employment opportunities:* The more advanced countries, with higher wages and better employment opportunities, tend to attract migrants from less developed neighboring countries. Among the ASEAN countries the per capita income rankings (and reflective of salary rankings) are Singapore, Brunei, Malaysia, Thailand, Philippines, Indonesia, Vietnam and CLM. Singapore, Brunei and Malaysia are

experiencing general labor shortage as well as skills shortages, while the other countries are experiencing skills shortages to varying degrees.

- *Second, geographic proximity and social-cultural-linguistic environment:* Historically there was much free movement among the populations of Southeast Asia. In particular, people moved freely between Malaysia and Singapore as the two countries shared a long common history and social-cultural-linguistic ties. So when educational and job opportunities for ethnic Chinese in Malaysia became restrictive, many of them sought such opportunities in nearby Singapore and stayed on as permanent residents and Singapore citizens. However, in this day of globalization and the Internet, geographic proximity and its accompanying ready access to information and socio-cultural affinities are no longer strong pulls for skilled migrants, while language and educational links have become more important. Hence, many English-speaking professionals from ASEAN found employment in English-speaking countries in North America, UK and Australia-New Zealand. On the other hand, professionals conversant in the various European and Japanese languages tend to seek employment in these countries.
- *Third, disparities in educational development:* Countries in East Asia (Philippines, South Korea, Taiwan) that adopted the American and Japanese educational systems have long had broad-based tertiary education and produced large numbers of university and college graduates. With this foundation, South Korea and Taiwan were able to transit towards knowledge-based economies with little difficulty. On the other hand, Philippines economic development has been less robust, and Filipino university and college graduates had difficulties in securing remunerative employment at home and hence sought overseas

employment. Singapore, Malaysia and Hong Kong adopted the more restrictive British educational system. Singapore only rapidly expanded its university and polytechnic intakes from the 1980s and hence there is a shortage of experienced mid-level professionals and managers. Increasingly, ASEAN students studying in developed countries in North America, Europe, Japan and Australia-New Zealand are often attracted to stay on after graduation because of better-paying jobs, career-development prospects, and quality of life. The capacity of ASEAN professionals to secure overseas employment often depends on the quality of education received and the foreign language (particularly English) proficiency.

- *Fourth, policy factors.*

ASEAN countries can be divided into 3 main groups with respect to the mobility of professionals and skilled manpower. First, where inflows of skills far exceeded outflows of skills (that is, net brain gain). Singapore, Brunei and to a lesser extent Thailand are in this category. Second, where outflows of skills far exceeded inflows of skills (that is, net brain drain). Philippines and Malaysia are in this category. Most ASEAN countries do not have an active policy towards outward migration of its professionals and skilled workers except for the Philippines. Malaysia has historically large outflows of skills to Singapore but also increasingly to the developed countries of US-Canada, UK, Australia-New Zealand, reflecting dissatisfaction with discriminatory education and employment policies in the country. In recent years Malaysia is also actively promoting inflows of talents, including red-carpet treatment for its diaspora, as part of its economic restructuring strategy. Third, in the other ASEAN countries of Indonesia and CLV, skilled and professional manpower inflows and outflows do not figure prominently. In these countries, inflows have been limited by restrictive

regulations, while outflows have not been significant because of the small pool of professional and skilled manpower and their inadequate English proficiency that restricts their international mobility. Myanmar has English language proficiency but outflows are restricted by the political regime.

Policies and Regulatory Frameworks on Outward Skills Mobility

Policies range from “laissez faire” in which out-migration is regarded as a matter of individual choice, to specific policies to promote labour export, such as in Vietnam and Indonesia, so as to ease domestic unemployment and earn foreign exchange. Advances in modern transportation and ICT have greatly weakened the disadvantage of distance in choice of destination, while social and cultural links continue to bias migration in favour of certain locations. Measures to prevent brain drain by some countries include bonding of scholars on government scholarships ---- practiced in Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Vietnam. For example, in Indonesia, government scholarships are only given to civil servants and are regulated by each ministry’s regulation –minister’s decree. It is not a “national policy” since it is not stipulated on Law Perpres (government regulation) or Kepres (presidential decree). The Philippines and Malaysia are experiencing net brain drain.

Philippines:

Philippines stand out as the main supplier of skilled (also unskilled) labor to ASEAN countries and to developed countries such as the US, Canada, Europe and Australia. This reflects the large supply of Filipino professionals from its educational and training

institutions, Filipino command of the English language, and inadequate employment opportunities within the country. The Philippines government does not officially encourage overseas employment. But through the POEA, it promotes, facilitates and regulates the movement abroad of Filipino professionals, while TESDA provides the accreditation. Its labor attaches in the different countries gathers intelligence on employment opportunities and facilitates Filipino overseas employment. Filipino professionals working abroad include architects, engineers, health professionals, teachers, IT specialists and cultural workers. Filipino nursing and teaching professionals are in demand in various advanced countries because of the well established Filipino educational and training institutions and the command of the English language.

The Philippines represents a developing country that exports large numbers of its professional nurses to meet rising demand in OECD countries for healthcare professionals (nurses and doctors). The strong external demand has also attracted Filipino doctors and other health professionals to take up nursing qualifications to improve their “exportability”. Push and pull factors help explain why health professionals leave the Philippines. Push factors include low salaries at home, work overload, slow promotion, limited opportunities for employment, and the socio-political environment in the Philippines. Pull factors of receiving countries include higher compensation packages, better working conditions, opportunity to travel and learn other cultures, opportunity for family to migrate, and socio-political environment of receiving countries.

- The continuing exodus of experienced nurses is undermining the Philippines healthcare sector. Tullao (March 2008) argued that when the more productive human talents are

employed abroad, the less qualified and inexperienced are left domestically. Inefficiencies of these young and inexperienced service providers contribute to increases in labor costs in the Philippines. Also, the Philippines has to spend more to produce the same calibre of professionals that will in time also leave the country. The large remittances received by the Philippines are usually cited as a benefit from its out-migration. However, such remittances have also created the “Dutch disease” effect of exchange rate overvaluation.

Malaysia:

Kanapathy (March 2008) noted that Malaysian migration outflows are predominantly professional and technical manpower while migration inflows are almost entirely temporary low-skilled contract labor. Out-migration began in the early 1960s with migration for both work and long-term settlement, but recent trends suggest migrants are mostly temporary and in search of better opportunities. There are currently 784,000 Malaysians working abroad, with nearly half in Singapore, followed by Australia Britain and the US (Star Online 1 Nov 2010).

Programs have been implemented to woo the country’s talents back. In 2010, under the 10th Malaysia Plan, the government created the Talent Corporation to attract, motivate and retain talents and help agencies to ease the entry of skilled workers into the country. In addition to facilitating the diaspora to return, the Corporation also looks to engaging them, from wherever they are, to contribute to Malaysia. It also focuses on government scholars in local universities and abroad and chart out their professional development when they

return and join the workforce. It also looks into retaining highly skilled and talented foreign expatriates as well as enticing foreign experts who used to work in Malaysia to return. Criticisms of the work of the Talent Corporation include the need for a consistent policy of retaining talents and proposals for the government to offer incentives in the form of PR status in expatriates.

Singapore does not have a policy of restricting outward migration, but it has 2 regulations that temporarily restrict out-migration of young professionals and skilled manpower. One is the obligation for compulsory national military service for Singapore males. The other is the bonding of all tertiary students funded by government scholarships. Severe penalties are meted out to defaulters. A growing number of Singapore professionals are also working abroad, reflecting the internationalization of the Singapore economy and Singapore enterprises and the growing number of Singaporeans working for foreign MNCs, as well as Singaporean tertiary students studying abroad. Some have chosen to settle permanently abroad, particularly in the advanced countries. However, the inflow of brains exceeds the outflow. Nonetheless, given the small population size of Singapore, the government is concerned over the loss of the domestic talent pool and has supported networks to connect them with Singapore in the hope that they may one day return.

Policies and Regulatory Frameworks on Inward Skills Mobility

Labour receiving countries are sometimes apprehensive of the impact of large inflows of foreigners on their labour markets, and the demand pressures on social infrastructure and services. As a result, they attempt to control the volume and source of labour migrants. Policies are usually two-tracked and asymmetric, with liberal policies towards inflows of professionals and skilled manpower and highly restrictive policies towards inflows of unskilled and semi-skilled workers. Political-social-cultural considerations may also lead some receiving countries to prefer sourcing from particular regions and countries.

ASEAN governments have allowed or facilitated inflows of professionals and skilled manpower for various reasons, including:

- Facilitate FDI by permitting entry of foreign business people and professionals to accompany FDI – most ASEAN countries, with Singapore, Malaysia and Thailand having more liberal policies.
- To meet short-term skills shortages – Brunei, Cambodia, Laos, Malaysia, Singapore, Vietnam. Shortages are reported for Brunei in medical, nursing, accountancy and IT professions; Cambodia in engineering, IT, surveying; Indonesia in medical, dental, accountancy and IT; Laos in medical and dental; Malaysia in medical, dental, and IT; Philippines in scientists and technology workers; and Singapore and Vietnam in a wide spread of professions and skills.
- Facilitate structural/industrial upgrading –Indonesia, Myanmar, Philippines and Singapore. In the Philippines, to ensure a proper transfer of technology, DOLE requires employers of foreign nationals to provide an Understudy Training Program and

to designate at least 2 Filipino understudies. The functions of these employees must be deemed permanent and they must require skills or expertise that are scarce in the Philippines.

- Commitments under GATS and FTAs – ASEAN countries that are WTO members have to abide by their commitments under GATS, while ASEAN countries that are signatories to FTAs with provisions for services liberalization and investment liberalization would have to accommodate movement of natural persons.
- Promote health and education services: Several countries are seeking to improve and extend health and education services through permitting the entry of foreign professionals. Accreditation and recognition of professional qualifications through negotiations with and involvement of domestic professional bodies is one key policy area for movement of foreign professionals into these sectors. On education services, Singapore and Malaysia have policies encouraging establishment of foreign universities and campuses and recruitment of foreign academics to develop education hubs. On healthcare services several countries have facilitated inflows of health professionals to complement domestic doctors and nurses in providing healthcare services to nationals as well as promoting the country as medical centers for foreigners.

Policies and regulations that facilitate and encourage inflow of professionals and skilled manpower:

Foreign professionals and skilled manpower are attracted by:

- Better salaries and expatriate packages that include access to housing, medical benefits, education for children, and duty-free importation of household goods and vehicles.
- Better working conditions, job experience, and research opportunities
- Lower tax liabilities compared to home country
- Better quality of life compared to home country
- Prospects of permanent residence and citizenship

The main receiving countries are Singapore, Malaysia and Thailand. They have adopted different policy mixes that seek to balance various goals and differ significantly in the breadth and focus of policy. Singapore stands at one extreme, Thailand at the other and Malaysia is in between:

Singapore: Singapore has a large net inflow of professionals and skilled manpower (and an even larger inflow of unskilled and semi-skilled workers). It has a national strategy to attract inflows of professionals and executives to augment its limited domestic “talent pool” so as to facilitate economic upgrading and ensure sustainable economic growth. Potential migrants consider salaries, career opportunities, the quality of life, amenities and the environment as well as personal income tax regimes. A perennial question for Singapore is whether its quality of life and tax regime are as attractive as that of Hong Kong.

Singapore’s foreign skilled manpower are associated with the large presence of FDI in manufacturing and in services. Traditionally most of them are from the advanced industrial

countries of US, Western Europe, Australia and Japan, reflecting the importance role of intra-corporate transferees from the thousands of MNCs operating in Singapore. The Singapore public sector and Singapore domestic enterprises also employ large numbers of foreign professionals and skilled workers. Increasingly, the government has sought to encourage the inflow of foreign talent from Asian sources. Foreign talent is being recruited through liberalized immigration policies, easing requirements for permanent residence and citizenship, offer of scholarships and research fellowships, recruitment missions to the main centres of learning by government agencies, and improving the living and cultural attractions and tax regime of Singapore for foreign expatriates. Active recruitment of these professionals for the public service is undertaken by the Professionals' Information and Placement Service (PIPS) formed under the Public Service Commission, while for the private sector, the Committee for Attracting Talent to Singapore (CATS) helps with the recruitment. Professionals and skilled foreigners seeking employment in Singapore require an Employment Pass, valid for up to 5 years and renewable.

Access to Singapore citizenship is limited to foreigners who are at least 21 years and have been PRs for at least 2–6 years immediately prior to the date of application. According to the immigration authorities, citizenship applicants must be “of good character”, intend to reside permanently in Singapore, and be able to support themselves and their dependents financially.

The very rapid growth of foreign professionals (including permanent residents and new citizens) in 2008-2009, coupled with the impact of the global recession on the job market for Singaporean professionals, led to rising public concerns over the influx of foreign

workers --- crowding out jobs, public civic space, public transport, education and healthcare facilities and leading to a real estate bubble. This has led the government to slowdown the intakes of permanent residents, new citizens, and employment pass holders in 2010 and a promise to keep foreign workers (professionals, skilled, semi-skilled and unskilled) at around one third of the Singapore workforce in the foreseeable future.

A growing number of Singapore professionals are also working abroad, reflecting the internationalisation of the Singapore economy and Singaporean enterprises as well as the growing number of Singaporeans working for foreign MNCs. Some have chosen to settle permanently abroad, particularly in the more advanced countries. However, the inflows of “brains” far exceed the outflow of “brains”. Nonetheless, the government is concerned over the “loss” of the domestic talent pool and have supported networks to connect them with Singapore in the hope that they may one day return.

Malaysia: Less than 2% of in-migration consists of high-skilled labor. The government argues that the lack of skilled and qualified workers was impeding its economic programs. By end of 10th Malaysia Plan, the percentage of skilled workers in the country must rise to 37%, highlighting ICT as a priority sector; the target is to increase GDP per capita to RM 38,000 by 2015. To encourage FDI and upgrade towards skill and knowledge intensive industries, policies on intake of foreign professionals and skilled manpower have been liberalized. Expatriates are allowed to work in almost all sectors, except those that impinge on national security and some restrictions are imposed on their numbers in banking and

finance. However, manufacturing, firms located in the various Economic Growth Regions can hire as many expatriates as required. Expats can bring along their dependents.

Thailand: Under the Investment Promotion Law, aliens are allowed to enter Thailand to investigate investment opportunities, or for other matters which might benefit investment. BOI will grant permission to stay in Thailand for not more than 6 months at a time. A promoted company will be allowed by BOI to bring in foreign personnel as skilled technicians/ experts together with their families. Duration of 1-year at a time for the work permit will be allowed except for positions that have been approved to work in the promoted company for more than 2 years. However, BOI encourage the employment of Thai nationals as managers/technicians. The majority of BOI-promoted firms are Japanese, British, and American. The largest share of occupations given work permits are managers and executives, followed by elementary occupations and professionals.

BOI has a One-stop Centre to handle all aspects of visa extensions and issuance of work permits, including work permit extensions, issuance of re-entry permits and changes in type of visas to non-immigrants. The office expected to be able to process extensions of visas and permits within 3 hours, assuming all necessary supporting documents are provided.

Barriers to and regulations on employment of foreign professionals/skilled manpower:

These cover constitutional provisions reserving such jobs for nationals; requirements and procedures for employment visas and employment passes and permits; sectors and occupations closed to or with numerical caps foreign professionals and skilled manpower; economic test to justify the need for employment of foreigners; requirement to have foreign professionals and skilled labor replaced by locals; lack of recognition of foreign professional education, training and experience; and licensing regulations of professional associations.

(a) Legal and Administrative Framework on Inflows of Skilled Labor

Singapore: The government introduced several legislations since the 1980s for regulating the entry, employment, management, and departure of foreign labor. These include the Employment of Foreign Workers Act Immigration Act, Employment Agencies Act, Employment of Foreign Workers (levy order), Employment of Foreign Workers (fees) regulation, Work Permit (exemption) (consolidation) notification. The main government agencies involved are the Ministry of Home Affairs (MOHA) which exercises border controls under the Immigration and Checkpoint Authority, and the Ministry of Manpower (MOM) which issues work passes, enforces the regulations, and sees to the well being of foreign workers. Information regarding the different kinds of work permits and employment passes are available on the MOM website. There is extensive use of online information and applications resulting in transparency, efficiency and convenience. In January 2010, MOM launched the new Employment

Pass Services Centre (EPSC) to register and issue new Long Term Pass (LTP) cards to pass holders and their dependents entering Singapore on the various types of employment passes, providing a seamless and convenient service upon arrival in Singapore. Apart from MOHA and MOM, other agencies involved with managing and servicing foreign labour include the housing, physical planning and environmental authorities, the labour movement, and NGOs.

Indonesia: Laws and regulations concerning foreign workers in Indonesia are:

- Law No. 13/2003 about Employment, Chapter 8: The Use of Foreign Labor
- Decision of Minister Manpower and Transmigration, Republic of Indonesia, Number Kep.228/Men/2003: About legislation procedures of “Plan of Using Foreign Manpower” (RPTKA)
- Decision of Minister of Manpower and Transmigration, Republic of Indonesia, Number Kep-20/Men/III/2004: About procedure to obtain Employing Foreign Workers Permit (IMTA)
- Regulation of the Minister of Manpower and Transmigration, Republic of Indonesia, Number Per-07/Men/III/2006: About Simplification of Procedure to Obtain Employing Foreign Workers Permit (IMTA)
- Regulation of the Minister of Manpower and Transmigration, Republic of Indonesia, Number Per-07/Men/IV/2006: About Changes in the Regulation of the Minister of

Manpower and Transmigration Number Per-07/Men/III/2006 about Simplification of Procedure to Obtain Employing Foreign Workers Permit (IMTA)

- Some regulations and practices: Law no.13/2004 on Labor, chapter VIII article 42-29 regulates the use of foreign workers with implementing regulation such as Presidential and Ministry Decree

Cambodia: Foreign employee quota should not exceed 10% of total employees, otherwise a special approval from Ministry of Labor and Vocational Training is needed (source: Cambodia Labor Law)

(b) Constitutional Provision Reserving Jobs for Nationals

Philippines: As a general rule, the RP Constitution reserves the practice of licensed professions to RP citizens save in cases prescribed by law. These include engineering (specific engineering sectors); medicine and allied professions (specifics including medicine, medical technology, dentistry, midwifery, nursing etc); accountancy; architecture. Philippine law (RA 8182) also requires that preference be given the RP citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed Feb 1998 (RA 8555) gives the RP President the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Although the constitutional language states that “the practice of all professions in the Philippines shall be limited to Filipino citizens”, this statement is immediately followed by “save in cases prescribed by law”.

The Philippines constitution is not a strict legal barrier to the participation of foreign professionals. Most of the laws regulating professions contain reciprocity provisions. There are 45 laws governing the practice of specific professions, and 40 contain “reciprocity” provisions allowing foreigners to practice their profession in the Philippines, provided their countries of origin also allow Filipinos to practice these. However, the provisions are administratively difficult to satisfy and very few foreign professionals apply to the Professional Regulatory Commission (PRC) other than for temporary permits. In addition, a Supreme Court rule limits the practice of law to Philippine nationals ---5 laws regulating criminologists, environmental planners, foresters, pharmacists, and radio and x-ray technologists state the profession is restricted to Philippine nationals and contain no reciprocity provisions. It could also be argued that, with Filipino professionals leaving the country in great numbers for higher paying jobs abroad, few foreign professionals are likely to work in low-paying professions in the Philippines, even if the restrictive practices are relaxed.

Malaysia: Quotas and preference given to locals (indigenous and non-indigenous Malaysians); professions and sectors with numerical caps on foreign employment --- no more than 30% in any particular sector

(c) Visa Requirements, Employment Passes and Permits:

Employment discrimination against foreign professionals and skilled workers usually take the form of domestic regulations on qualifications and licensing requirements and procedures, nationality requirements, and economic needs and labor market tests. The extreme of discrimination is where constitutional provisions and practices reserve employment only to nationals unless there are waivers. In such a situation, professional recognitions provided by MRAs can only play a secondary role and does not provide automatic market access. These deviations from national treatment are usually embodied in the requirements and conditions for issue of employment visas, passes and permits.

Market access faces difficulties in getting visas, including visa fee, cumbersome and lengthy visa processing. While ASEAN countries have implemented visa-free rule for social visits among themselves, business and employment visas are required for foreign businesses and professionals seeking employment. Visa costs include fees for single and multiple visas, complexity of the application procedure and processing time. In addition countries require foreigners to be issued with employment passes or employment permits. The inward movement of professionals seem to be most restrictive in Indonesia, Cambodia, Laos and Myanmar, which require an employer hiring a foreigner to ensure that some capacity-building and skills-transfer activities are conducted so as to eventually replace the foreigner with a local staff member.

Brunei: Regulations and procedures on recruitment of foreign workers are based on the following conditions --- employer must be legally registered in Brunei; before recruiting foreign employees, employers must have a labor license issued by Commission of Labor; approval of Employment Visa (unless for countries with visa exemption) and Employment Pass must first be obtained from Director of Immigration by the employer for every foreign employee to be employed.

The Employment Pass is valid for up to 2 years. Those issued Employment Pass with validity of over 3 months are required to register for Brunei Identity Card, whose validity is based on the Employment Pass held and extendable on extension of Employment Pass. Foreign employees are required to return to their countries of origin upon completion of their 2-year employment contract.

Cambodia: All foreign workers and businessmen must obtain Business Visa, which serves as the employment pass valid for 1-month and extendable to 1-year. Business visa does not serve as employment permit until the work permit is issued. After the applicant is confirmed employment by employer, must go through the process to apply for work permit from the Ministry of Labor and Vocational Training. The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit.

Criteria used for issuing employment passes and permits: no foreigner can work unless possesses a work permit and an employment card issued by Ministry of Labor. These

foreigners must also have a legal work permit; have legally entered Cambodia; possess a valid passport; possess a valid residency permit; be fit for their job and have no contagious diseases. These conditions must be determined by a Prakas (ministerial order) from the Ministry of Health with the approval of the Ministry of Labor.

There is a quota of 10% of total employees, applicable to all sectors ---office staff 3%, specialist 6%, labor worker 1%. Acceptance of international qualifications and qualifications from certain countries and education institutions. For medical professionals - --WHO countries

Indonesia: Foreign managerial and expert personnel are allowed in positions that cannot yet be filled by Indonesian nationals. There are incentives on employment and stay of foreign workers for companies with export ratio of at least 85%. 3 requirements must be met by all foreigners seeking employment ---a minimum 5-year educational or job experience relevant to the position sought, a willingness to state that the foreign professional will relinquish his position to nationals, and a capacity to communicate in the Indonesian language. Bureaucratic procedures which underlie processing of work permits and visa applications include cumbersome documentation requirements seeking to protect domestic professionals from foreign competition, and to ensure rapid replacement of foreign workers with nationals through regulation.

To employ foreign workers, a company must submit a Plan of Using Foreign Manpower (**RPTKA**) to Ministry of Manpower and Transmigration. The company must

ask for visa recommendation from Director of Provision and Use of Manpower and bring the recommendation to the Ministry of Law and Human Rights. After obtaining the approval letter of granting a visa, the company must submit request for Employing Foreign Workers Permit (IMTA) to Ministry of Manpower and Transmigration and have it signed.

- Requirements for RPKTA (Manpower Plan) to be legalized: Requires information on business license from the competent authority; validation certificate for the company as a legal entity with legal status; company's domicile from the local government; organization structure of company; copy of the letter of appointment of Indonesian as co-worker of foreign expatriate; copy of proof of reporting employment condition on the basis of Law No.7 of 1981 on the Report Obligatory in companies that are still valid.
- Information asked in the RPTKA form: identity of the employer of the foreign worker (TKA); position and/or status of foreign worker in the structure of the company's organization chart; TKA's amount of wages to be paid; job description and job requirements of TKA; work sites; TKA's usage period; appointment of an Indonesian citizen manpower employed as a companion of TKA; plan of educational program and training of Indonesian workers. The RPTKA should be submitted to BKPM to secure visas within 3 months from the date of approval
- Requirements for a visa recommendation: copy of the decision letter of RPTKA validation; passport copy of TKA to be employed; curriculum vita of TKA to be employed; copy of diploma and/or description of work experience of TKA to be employed; copy of letter of appointment of an Indonesian worker as the TKA's

companion. The visa extension for a foreign expatriate, to be issued by the immigration office, is based on extension of working permit issued by Regional Investment Coordinating Board concerned.

- Requirements of obtaining Employment Foreign Workers Permit (IMTA): copy of employment agreement; proof of payment of compensation fund of using TKA through the Bank appointed by the Minister (the compensation fund is USD100/month as Fund for Improving Skill and Expertise DPKK).
- Criteria used for issuing passes and permits: Education, professional qualifications; skills accreditation requirements; relevant work experience requirements; salary offered by prospective employer as indicator of level of skills and relevant work experience. Duration of the foreign expatriate's term to work in Indonesia is subject to government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. No quota or numerical cap by sector or profession.
 - Qualifications criteria for medical doctors: registration letter issued by medical board/council in native country; certificate/letter of good standing from medical board/council in native country; CV which includes person's identity, education, experience and medical publications; legalized medical certificate, proof of undertaking adaptation program if necessary; copy of competency certificate; health examination letter by registered medical doctors in Indonesia; signed letter of doctors' oath; signed letter of professional ethics; work permit from

immigration office; Indonesian language graduation certificate and proof of registration payment from a bank.

- Qualification criteria for nurses: education certificates, copy of competency certificate, proof of undertaking adaptation program, health examination letter by registered medical doctors in Indonesia, signed letter of professional ethnics and recommendation from professional organisation in native country.
- Qualification criteria for accountant: state register number for accountant, valid certificate of public accounting examination from IAPI (Ikatan Akuntan Public Indonesia) or in case the certificate dated more than 3 years, certificate of attending continuing accounting professional education for at least 60 credit units during the last 2 years, experience in general audit practice for at least 1000 working hours during the last 5 years and at least 500 working hours of those leading and/or supervising general audit which is legalized by the head of partners in the public accountant office, Indonesian ID card to prove local domicile, tax registration number (NPWP), its public accountant licence has never been revoked previously. In addition, there is mandatory membership of IAPI.

Laos: Foreign investors shall give priority to Laos citizens in recruiting and hiring. They have the right to employ skilled and expert foreign personnel when necessary. Foreign

investors have the obligation to upgrade the skills of their Lao employees. Under the Decree on Business Law Annex III, certain professions are closed to foreign workers.

All foreign investors and foreign employees must obtain work visas and work permits. The chief barriers to the entry of foreign professionals are cumbersome entry and work permit procedures, with exorbitant visa fees, processing delays in obtaining a work permit and multiple registration formalities. Different types of employment passes and permits, with application forms obtainable from the Department of Domestic and Foreign Investment Promotion. There are no numerical quotas.

Malaysia: Immigration processing time of several months often proves to be too long for prospective job seekers. Visa processing delays is often the reason for their acceptance of an alternative destination. Employment pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years. There are different types of employment passes and permits for professionals, academics and managers.

- A company with foreign paid-up-capital of less than US\$2 million will be considered for expatriate posts on the basis of the following: First, key posts can be considered where the foreign-paid-up capital is at least RM500,000; this figure is only a guideline and the number of key posts allowed depends on the merits of each case. Second, for executive posts which require professional qualification and practical experience, expatriates may be employed up to a max period of 19 years,

subject to condition that Malaysians are trained to eventually take over the posts. Third, for non-executive posts which require technical skills and experience, expatriates may be employed up to max period of 5 years, subject to condition that Malaysians are trained to eventually take over the posts. Fourth, employment of other foreign workers is allowed in construction, plantation, services (domestic maids, restaurants, hotel industry, trainers and instructors) and manufacturing sectors. Fifth, the Foreign Workers Division of Immigration Department is the approving authority for the employment of foreign workers belonging to the skilled, semi-skilled and unskilled categories (i.e. excludes expatriates under the management, professional, and technical/supervisory categories). Sixth, approval is based on the merits of each case and subject to conditions that will be determined from time to time. An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed. Seventh, to ensure that foreign labor is employed only when necessary, an annual levy on foreign workers is imposed. The levy rate on foreign workers in the manufacturing, services and construction sectors are RM125 pm and workers in the agricultural sector are RM30pm. Eighth, foreign workers (expatriates) who pay income tax are exempt from paying the worker levy

- Quota or numerical caps for each profession/sector ---not more than 30% in any particular sector
- Restrictions on employment of nationals from certain countries---no diplomatic relations with Israel.

- Criteria used for issuing passes and permits ---contract of employment with a minimum period of 2 years' education and professional qualifications; skills accreditation requirements; relevant work experience requirements; salary offered by prospective employer as indicator of level of skills and relevant work experience.
- Preference given to education and qualifications from first world countries in the British Commonwealth, North American and EU.

Myanmar: The chief barriers to the entry of foreign professionals are cumbersome entry and work permit procedures, with exorbitant visa fees, processing delays in obtaining a work permit and multiple registration formalities. Employment preference is given to citizens provided that MIC may, if necessary, allow the appointment of foreign experts and technicians by enterprises formed under the Permit issued by MIC. An economic organization formed under a Permit shall make arrangements for local and foreign training so as to ensure its local personnel proficiency in their work and promotion to higher ranks of services

Philippines:

The following are the more common types of work visas:

- *Multiple entry special visa:* for foreign personnel of offshore banking units of foreign banks duly licensed by RP Central Bank to operate as such. These foreign

personnel shall be issued multiple entry special visa (under Presidential Decree No. 1034) valid for 1-year; foreign personnel of regional or area HQ of MNCs that are officially recognised by the RP government. These foreign nationals, their spouses and unmarried minor children accompanying them, may be issued multiple entry special visas valid for 3-years. The holder of this visa is exempted from obtaining an alien employment permit from DOLE as condition for working in RP.

- *Special non-immigrant or 47(a)(2) visa*: for entry of foreign personnel employed in supervisory, technical or advisory positions in EPZ enterprises, BOI-registered enterprises, and Special Government Projects. The visa is generally valid for an initial period of 1-year and renewable from year to year.
- *Pre-arranged employment of 9(g) visa*: for a foreigner who will be occupying an executive, technical, managerial or highly confidential position in a local company, or who is proceeding to RP to engage in any lawful occupation where a bona-fide employer-employee relationship exists. The visa is granted for a period co-terminus with the AEP, which is in turn granted for a period discretionary to the DOLE, usually based on duration of the assignment of the foreigner.
- *Treaty Trader's or Investor's visa*: for a national of the US, Germany or Japan, countries with which RP has concluded a reciprocal agreement for admission of treaty traders or investors. Company applying for the visa must be majority-owned by US, German or Japanese interests and the nationality of the foreigner and majority of the shareholders of the company must be the same. The foreigner must be employed in a supervisory or executive capacity, and the visa may be extended

to the foreigner's spouse and unmarried children. The visa is generally valid for 1-year subject to extension.

- *Subic Free Port Zone Work Visa and Clark Special Economic Zone Work Visa* : A foreign national who possesses executive or highly technical skills which no RP citizen within the Subic Free Port Zone and Clark Special Economic Zone possesses.
- *SIRV for investors in tourist-related projects and tourist establishments*: A foreigner who invests an amount of at least US\$50,000 in a qualified tourist-related project or tourism establishment, as determined by a government committee.
- *Special visa for employment generation (SVEG)*: The SVEG is granted to a foreigner with controlling interests in an entity/firm/partnership/corporation that establishes/expands/

rehabilitates a business activity/investment/enterprise/industry that enables the proportional employment of at least 10 fulltime/regular Filipinos on a long-term basis in the Philippines. Foreigners exercising managerial functions in an entity/firm/ partnership/corporation that has the power to hire/dismiss/promote employees may apply for SVEG. Foreigners with other investments in the Philippines consisting of real estate, shares of stock or bonds, insurance, mutual plans, estate funds, and local or foreign currency time deposits may avail themselves of the SVEG

Foreigners cannot be employed in areas where there is willing and able local personnel. The engagement of foreign persons is regulated through the provision in the amended

Philippines Labor Code on employment permit of non-resident aliens ---it states that “any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor and Employment (DOLE)”.

- The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien desired. No alien disqualified under the Anti-Dummy Law, can intervene in the management, operation, or control of the business reserved to Filipino except when said alien is a technical personnel whose employment is specifically authorized by the Philippines President upon recommendation of the department head concerned.
- Regarding the practice of licensed profession, foreigners may be allowed to practice in the Philippines provided the same treatment is accorded to Filipino professionals in the alien’s home country under the principle of reciprocity.
- BOI-registered companies may employ foreign nationals for supervisory, technical or advisory positions for a period not exceeding 5 years from its registration, extendable for limited periods at the discretion of the BOI. Majority foreign-owned BOI registered companies may employ foreign nationals for President, treasurer, and general manager positions beyond the period of 5 years.

- Subic Bay Freeport enterprises may employ foreign nationals (any positions) upon prior approval of the Subic Bay Metropolitan Authority for a period of 5 years extendable from year to year. Foreign nationals entering into cost operating contracts and service with the government for exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals (any position). Foreign nationals under the Corporation Code may be employed as member of the Board of Directors by election to the Board.

The AEP (Alien Employment Permit) permit fee is P8,000 for 1-year validity plus P3,000 for every additional year of validity up to a maximum of 5 years. An application for AEP shall be filed personally or through their respective employer with the DOLE Regional Office or Field Office having jurisdiction over the intended place of work. Documentary requirements in filing application for AEP ---acceptance of international qualifications from certain countries and educational institutions; bilateral agreements relevant for recruitment of health professionals (for example, with Ireland, Germany, UK, Japan). AEPs issued more than doubled during the decade, with the growth reflecting the demand for foreign labor services to enable the local economy to cope with the fast changing innovations and technological advances in the global market. The bulk are Japanese and Korean nationals in manufacturing, particularly in firms located in the industrial zones, followed by real estate and business activities, and transport storage and communications.

Singapore provides largely visa-free entry for business and social visitors, but have 3 types of visas for employment. First, semi-permanent residents with semi-permanent work

passes who are allowed to take any job anywhere in Singapore (valid for 5 years); they can apply for citizenship and face no restrictions in the labour market and can bring their families. Second, foreign professionals with employment passes which are issued only for specific jobs and for a specific duration (valid for 1-5years); although tied to a specific company, Such employment pass holders enjoy limitless opportunities to get their permits extended. Third, short term contract workers with permits usually valid for 2 years (subject to renewal)

Singapore has an elaborate structure of employment passes (EP) for foreign professionals and skilled manpower which are defined by educational/skills qualifications and salaries. Employment passes are valid for up to 5 years and are renewable. There is no foreign worker levy or dependency ceiling quota as with lower-skilled work permit holders. They are also eligible to apply for dependent pass (DP) for spouse and unmarried children and may apply to become Singapore permanent residents or citizens Except for the Q and S pass holders, they may also apply for Long term social visit pass (LTSVP) for parents, parents-in-law, step-children, spouse, handicapped children and unmarried daughters. Employment pass is also tied up with the specific employer, except for the Personalised Employment Pass.

- ***P passes*** are issued to foreigners who hold professional qualifications and seeking to work in a professional, managerial, executive, or specialist capacity. They are generally issued to those with university degrees, or have skills and years of work experience. They are issued on a case-by-case basis to investors and entrepreneurs who can contribute to the Singapore economy as well as to persons of exceptional

ability in the arts, sciences and business. *P1 passes* are issued to applicants with fixed monthly salaries of more than S\$7,000, while *P2 passes* are issued to those with fixed monthly salaries of S\$3,500-S\$7,000. *Q1 passes* are issued to foreigners of lesser but acceptable degrees, professional qualifications and specialist skills with lower fixed monthly salaries of over S\$2,500 but under S\$3500. An Employment Pass (EP) is normally tied to a specific employer and any change of employer requires a fresh application.

- ***Personalized Employment Pass (PEP)***: The PEP is not tied to any employer and holders can take on employment in any sector (with some exceptions) and do not need to re-apply for a new pass when changing jobs and can remain in Singapore for up to 6 months in between jobs. The PEP is non-renewable and is valid for 5 years and is available for certain categories of P1, P2 and Q1 pass holders.
- ***S pass*** was introduced in 2004 for mid-level skilled foreigners whose monthly fixed salary is at least S\$1,800, with other criteria being education qualifications, skills and job type and work experience. The number of S-Pass holders a company can employ is capped at a Dependency Ceiling of 25% of the company's total workforce. S Pass applicants with fixed monthly salaries of more than S\$2500 pm may apply for Dependent Passes for their family members. As with employers of work permit holders, employers of S Pass holders must purchase medical insurance for their employees.
- In January 2008, 2 new categories have been introduced for Professional Visit Passes (PVP) which is valid for 6 months. The original two groups cover

professionals who possess specialised skills such as commissioning new equipments or are involved in business arbitration or mediation services. The new categories are Work Permit (Performance Artiste) which applies to foreign performers wanting to work at nightspots; and Miscellaneous Work Permit (MWP) that applies to key organisers of religious, ethnic and community gatherings and foreign journalists covering events.

Thailand: The Investment Promotion Law allows aliens to enter Thailand to investigate investment opportunities or for other matters which might benefit investment. BOI will grant permission to stay in Thailand for not more than 6 months at a time. The Alien Occupation Law requires all aliens working in Thailand to obtain a Work Permit. The Work Permit is subject to renewal or extended visa. A Work Permit is valid for 1 year but extendable.

The number of foreign workers allowed in a company is determined by its registered capital – 2 million baht per 1 foreign worker with a max of 10 workers is 3% of the firm's fulltime workforce.

- If the company is registered with BOI, can obtain multiple work permits without needing to increase registered capital, depending on the agreement reached with BOI. However, BOI companies need to be set up with minimum of 1 million baht of registered capital.

- If the company does not have BOI approval and the foreign employee is not married to a Thai national, then 2 million baht of registered capital per work permit holder will be required. If applicant is married to a Thai national, then the required amount of registered capital is 1 million baht.

Vietnam: Enterprises with foreign owned capital and parties to a business cooperation contract shall have the right to recruit and employ labor in accordance with business requirements and must give priority to Vietnamese citizens, shall only recruit and employ foreigners for jobs which require a level of technical and management expertise which a Vietnamese citizen cannot satisfy but must train Vietnamese citizens as replacements. Criteria used for issuing passes and permits are education, professional qualifications and relevant work experience.

Educational and Professional Qualifications, Regulations and Licensing Requirements, Quality Assurance and Language Requirements

A major challenge is certification of professional qualifications skills across ASEAN countries with different educational systems and standards. MRAs are designed to facilitate mobility of professionals in the regulated or partially regulated occupations. Medical doctors and nurses clearly belong to the first category in all ASEAN countries. IT professionals belong to an unregulated category with no legal requirements for registration or licensing, or even a requirement to comply with professional standards set up by a corresponding professional body.

At the 7th ASEAN Summit in November 2001, Leaders mandated the start of negotiations on mutual recognition arrangements (MRAs) to facilitate the flow of professional services under AFAS. An MRA enables professional service providers registered/certified in its signatory countries to be equally recognized in other signatory countries. ASEAN has concluded MRAs on:

1. Engineering services, signed in December 2005
2. Nursing services, signed in December 2006
3. Architectural services, signed in November 2007
4. Framework for surveying qualifications, signed in November 2007
5. Medical practitioners, signed in February 2009
6. Dental practitioners, signed in February 2009
7. Accountancy services, signed in February 2009
8. Common competency standard for tourism professionals is being developed.

Quality assurance refers to pre-employment requirements, health and security clearance, personal and professional references. These are normally required by receiving countries and prospective employers.

Language proficiency (in the national language of receiving country) is usually required in certain professions, such as medical, nursing, teaching and legal to ensure efficient delivery of service and protect consumers. It acts as a serious barrier to skilled labor mobility. In

countries where English is one of the state languages and a language of instruction in the tertiary system (Singapore and Philippines) the mobility of healthcare and teaching professionals is greatly facilitated. Likewise, prospects of working abroad for healthcare professionals from Myanmar are greatly facilitated by their English language skills. On the other hand, lack of English language skills is a major impediment to international mobility of Indonesian and Thai professionals. Entry into Japan of healthcare professionals under various bilateral EPAs with ASEAN countries requires that the foreign nurses undergo appropriate language training before they qualify for a Japanese license/registration.

5. CONCLUSION

“Free flows of skilled labor” is a goal of the AEC to be realized by 2015. In allowing for movement of skilled labor, according to the prevailing regulations of the receiving country, ASEAN is working to:

- Facilitate the issuance of visas and employment passes for ASEAN professionals and skilled labor who are engaged in cross-border trade and investment related activities.
- Facilitate the free flow of services, particularly, develop core competencies and qualifications for job/occupational skills required in the priority service sectors by 2009 and in other services sectors by 2015. This entails completing MRAs for major professional services, including Priority Integration Services (PIS) sectors of e-commerce, healthcare, air travel, tourism and logistics by 2008; developing core competencies (concordance of skills and qualifications) for job/occupational skills required in PIS by

2009; developing core competencies (concordance of skills and qualifications) for job/occupational skills in all service sectors by 2015.

- Enhance cooperation among ASEAN University Network (AUN) members to increase mobility for both students and staff within the region.
- Strengthen the research capabilities of each ASEAN Member Country in terms of promoting skills, job placements and developing labor market information networks among ASEAN Member Countries

Skilled labor mobility is essential for effective implementation of services liberalization and FDI liberalization as well as a goal in itself for deeper ASEAN economic integration. Further, as more ASEAN countries strive to move up the technological ladder, liberalizing trade in goods and services and in FDI is not enough, and a larger pool of professional and skilled manpower becomes necessary. Until such time when domestic educational and training institutions are able to supply the necessary high level manpower, countries will have to depend on “foreign talents”. Even with adequate domestic supply there is still a need for foreign talents, as they will provide the competition, stimulation and synergy to improve the quantity, quality and productivity of domestic talents. Some countries, particularly Singapore and to a lesser extent Malaysia, are regarding foreign talent as an upgrading and competitive tool and to enhance their roles as education and medical hubs, and have active policies to promote inflows of foreign professionals and skilled manpower. Most ASEAN countries,

however, have yet to move away from policies, regulations and practices that aimed at protecting domestic professionals and skilled workers from foreign competition.

Effective cooperation among the ASEAN University Network in terms of mobility of students and staff remain limited, reflecting the sharp differences in curricula and standards among the institutions, lack of ASEAN “role models” and the limited financial resources for student and staff exchange. Cooperation and exchange tend to be with universities and institutions from the advanced countries of North America, Western Europe, Australia and Japan rather than intra-ASEAN. It does not help that the medium of instruction in the ASEAN countries is usually the national language. A greater use of the English language as a medium of instruction would facilitate student and staff exchanges among ASEAN countries, and in the process gain wider recognition of ASEAN academic and professional qualifications. Institutions should redouble their efforts to achieve cooperation and integration in education and adopt policies across countries that will facilitate the exchange of students and staff, and eventually the mobility of skilled workers. It would be useful if ASEAN adopted concerted approaches to improve the efficacy of their education and training institutions in providing the necessary skills for the labor market.

MRAs appear to be the main tool for skilled labor mobility in ASEAN. However, negotiating for recognition is a complex and time-consuming process given the wide differences in development levels among ASEAN countries. Effective implementation of these MRAs pose even further problems.

Negotiating bilateral MRAs might be easier to achieve and implement.

Negotiations of MRAs cannot be equated with market access and effective intra-ASEAN skills mobility. There are many domestic regulations and practices that impede such mobility. These include constitutional provisions reserving such jobs for nationals; requirements and procedures for employment visas and employment passes and permits; sectors and occupations closed to or with numerical caps on foreign professionals and skilled manpower; economic and labor market tests to justify the need for employment of foreigners and requirement by employers to have them replaced by locals within a stipulated period; lack of recognition of foreign professional education, training and experience; licensing regulations of professional associations; and language proficiency requirements.

It would be hard to envision a single market and production base without the free flow of skilled labor to deliver on services and FDI liberalization. Countries should try to remove, as far as possible, impediments to free flow of skilled labor. More information exchange and transparency and simplifying visa and employment pass applications would help.

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ERIA Country Research Teams' inputs

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Appendix;

Table 1: Conditions for approval of foreign employees

Brunei	Regulations and procedures on recruitment of foreign workers, ranging from laborers to executive managers, except for clerical and related workers, drivers, securities and related workers where locals are available are based on the following conditions: 1st, employer must be legally registered in Brunei 2nd, before recruiting foreign employees, employers must have a labor licence issued by Commissioner of Labor 3rd, approval of Employment Visa and Employment Pass must first be obtained from Director of Immigration by the employer for every foreign employee to be employed
Indonesia	Foreign managerial and expert personnel in positions cannot yet be filled by Indonesian nationals are allowed. There are incentives regarding employment and stay of foreign workers for companies with export ratio of at least 85%
Laos	Foreign investors shall give priority to Lao citizens in recruiting and hiring. They have the right to employ skilled and expert foreign personnel when necessary. Foreign investors have the obligation to upgrade the skills of their Lao employees. Under the Degree on Business Law Annex III, certain professions are closed to foreign workers.
Malaysia	A company with foreign paid-up capital of less than US\$2 million will be considered for expatriate posts on the basis of the following: 1st, key posts can be considered where the foreign paid-up capital is at least RM500,000. This figure, however, is only a guideline and the number of key posts allowed depends on the merits of each case. 2nd, for executive posts which require professional qualification and practical experience, expatriates may be employed up to max period of 10 years, subject to condition that Malaysians are trained to eventually take over the posts. 3rd, for non-executive posts which require technical skills and experience, expatriates may be employed up to max period of 5 years, subject to condition that Malaysians are trained to eventually take over the posts. 4th, employment of other foreign workers is allowed in construction, plantation, service (domestic maids, restaurants, hotel industry, trainers and instructors) and manufacturing sectors. 5th the Foreign Workers Division of Immigration Department is the approving authority for the employment of foreign workers belonging to the skilled, semi-skilled and unskilled categories (ie does not include expatriates under the management, professional and technical/supervisory categories). 6th, approval is based on the merits of each case and subject to conditions that will be determined from time to time. An employer's application to employ foreign workers will only be considered after efforts to find qualified local citizens and permanent residents have failed. 7th, to ensure that foreign labor is employed only when necessary, an annual levy on foreign workers is imposed. The levy rate on foreign workers in the manufacturing, services and construction sectors are RM125 pm and workers in the agricultural sector are RM30 pm. 8th, however, foreign workers (expatriates) who pay income tax are exempt from paying levy.
Myanmar	In appointing personnel in an organisation formed under the Permit issued by MIC, preference shall be given to citizens, provided that the MIC may, if necessary, allow the appointment of experts/technicians from abroad. An economic organisation formed under a Permit shall make arrangements for local and foreign training so as to ensure its local and foreign training so as to ensure its local personnel proficiency in their work and promotion to higher ranks of services.
Philippines	Foreigners cannot be employed in areas where there is willing and able local personnel. No alien disqualified under the Anti-Dummy Law, can intervene in the management, operation, or control of the business reserved to Filipino except when said alien is a technical personnel whose employment is specifically authorized by the Philippines President upon recommendation of the department head concerned. Regarding the practice of licensed profession, foreigners may be allowed to practice in the Philippines provided the same treatment is accorded to Filipino professionals in the alien's home country under the principle of reciprocity. BOI-registered companies may employ foreign nationals for supervisory, technical or advisory positions for a period not exceeding 5 years from its registration, extendible for limited periods at the discretion of the BOI. Majority foreign-owned BOI-registered companies may employ foreign nationals for President, treasurer, and general manager positions beyond the period of 5 years. Subic Bay Freeport enterprises may employ foreign nationals (any positions) upon prior approval of the Subic Bay Metropolitan Authority for a period of 5 years extendible from year to year. Foreign nationals entering into coal operating contracts and service with the government for exploration and development of oil and geothermal resources are likewise allowed to employ foreign nationals (any positions) Foreign nationals under the Corporation Code may be employed as member of the Board of Directors by election to the Board
Thailand	Under the Investment Promotion Law, aliens are allowed to enter Thailand to investigate investment opportunities, or for other matters which might benefit investment. BOI will grant permission to stay in Thailand for not more than 6 months at a time. A promoted company will be allowed by BOI to bring in foreign personnel as skilled technicians/experts together with their families. Duration of 1 year at a time for the work permit will be allowed except for positions which have been approved to work in the promoted company for more than 2 years. However, BOI encourage the employment of Thai nationals as managers/technicians. BOI has set up a One-stop Centre to handle all aspects of visa extensions and issuance of work permits, including work permit extensions, issuance of re-entry permits and changes in type of visa to non-immigrant. The office expected to be able to process extensions of visas and work permits within 3 hours, assuming all necessary supporting documents are provided.
Vietnam	Enterprises with foreign owned capital and parties to a business cooperation contract shall have the right to recruit and employ labor in accordance with business requirements and must give priority to Vietnamese citizens, shall only recruit and employ foreigners for jobs which require a level of technical and management expertise which a Vietnamese citizen cannot satisfy but must train Vietnamese citizens as

Source: ASEAN Secretariat website - Employment of Foreign Workers

Table 1 (Continued): Conditions for approval of foreign employees

	2. Work Permit
Brunei	<p>Foreigners entering Brunei to take up employment require Employment Pass, valid for up to 2 years.</p> <p>Foreigners from countries without visa exemptions with Brunei must obtain Employment Visa before entry.</p> <p>Foreign employees who are issued with Employment Pass with validity of over 3 months are required to register for Brunei Identity Card, whose validity is based on the Employment Pass held and extendable on extension of Employment Pass.</p> <p>Foreign employees are required to return to their countries of origin upon completion of their 2 year employment contract</p>
Indonesia	<p>Duration of the foreign expatriate's term to work in Indonesia is subject to government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. The visa extension for a foreign expatriate is based on extension of working permit issued by Regional Investment Coordinating Board concerned. Extension of the visa will be issued by the immigration office.</p> <p>The RPTKA or Manpower Plan should be submitted to BKPM to secure visas within 3 months starting from the date of approval.</p>
Laos	All foreign investors and foreign employees must obtain work visas and work permits
Malaysia	Employment Pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years.
Myanmar	Allowed for foreign experts and technicians employed by the enterprises formed under the Permit issued by MIC.
Philippines	Working visas are required
Singapore	<p>Foreigners (excluding PRs) who intends to work in Singapore are required to obtain employment passes issued under Regulation 9 of the Immigration Regulations. The minimum salary level for an Employment Pass is more than S\$2000. Foreigners whose monthly salary are below that should apply for R passes or 2-year work permits. All applications must be sponsored by a Singapore-based company.</p> <p>P passes are for those who hold administrative, professional and managerial jobs, entrepreneurs and investors and specialist talent (world class artistes and musicians)</p> <p>Q passes are for skilled workers and technicians</p> <p>R passes are for semi-skilled and unskilled workers with 2-year work permits</p> <p>Professional visit passes are for foreigners engaged in short-term professional assignments.</p> <p>Business or social visit passes for foreigners entering Singapore to attend business negotiations/discussions and required to apply for Business Visit Passes.</p>
Thailand	The Alien Occupation Law required all aliens working in Thailand to obtain a Work Permit prior to starting work. The Work Permit is subject to renewal or extended visa. A Work Permit is valid for 1 year but extendable.
Vietnam	<p>Work permit granted by Ministry of Labor, Invalid and Social Affairs, based on approval of the Investment Licensing body.</p> <p>Duration of Work Permit shall not exceed 3 years</p>

Source: ASEAN Secretariat website - Employment of Foreign Workers

Table 2: Employment passes and work permits

Brunei	<p>Foreigners entering Brunei to take up employment require Employment Pass, valid for up to 2 years.</p> <p>Foreigners from countries without visa exemptions with Brunei must obtain Employment Visa before entry.</p> <p>Foreign employees who are issued with Employment Pass with validity of over 3 months are required to register for Brunei Identity Card, whose validity is based on the Employment Pass held and extendable on extension of Employment Pass. Foreign employees are required to return to their countries upon completion of their 2-year employment contract.</p>
Indonesia	<p>Duration of the foreign expatriate's term to work in Indonesia is subject to government regulation, based on expertise and the availability of an Indonesian to replace the expatriate position. The visa extension for a foreign expatriate is based on extension of working permit issued by Regional Investment Coordinating Board concerned. Extension of the visa will be issued by the immigration office. The RPTKA (Manpower Plan) should be submitted to BKPM to secure visas within 3 months.</p>
Laos	All foreign investors and foreign employees must obtain work visas and work permits
Malaysia	Employment Pass is issued to any foreigner who enters the country to take up a contract of employment with a minimum period of 2 years.
Myanmar	Allowed for foreign experts and technicians employed by the enterprises formed under the Permit issued by MIC.
Philippines	Working visas are required
Singapore	<p>Foreigners (excluding PRs) who intends to work in Singapore are required to obtain employment passes issued under Regulation 9 of the Immigration Regulations. The minimum salary level for an Employment Pass is more than S\$2000. Foreigners with salaries below that should apply for R passes or 2-year work permits. All applications must be sponsored by a Singapore-based company.</p> <p>P passes are for those who hold administrative, professional and managerial jobs, entrepreneurs and investors and specialist talent (world class artistes and musicians)</p> <p>Q passes are for skilled workers and technicians</p> <p>R passes are for semi-skilled and unskilled workers with 2-year work permits</p> <p>Professional visit passes are for foreigners engaged in short-term professional assignments.</p> <p>Business or social visit passes for foreigners entering Singapore to attend business negotiations/discussions and required to apply for Business Visit Passes.</p>
Thailand	<p>The Alien Occupation Law required all aliens working in Thailand to obtain a Work Permit prior to starting work.</p> <p>The Work Permit is subject to renewal or extended visa. A Work Permit is valid for 1 year but extendable.</p>
Vietnam	Work permit granted by Ministry of Labor, Invalid and Social Affairs, based on approval of the Investment Licensing body. Duration of work permit shall not exceed 3 years

Source: ASEAN Secretariat website - Employment of Foreign Workers; Singapore Ministry of Manpower website on Singapore

Table 3: Survey on inward skilled labor mobility

Questions:	Burundi	Cambodia	Indonesia	Laos	Malaysia	Morocco	Philippines	Singapore	Thailand	Vietnam
1. General policy/regulatory framework										
a. No policy										
b. Some regulations and practices	x		x	x			x	x	x	x
c. Very restrictive										
d. Fairly restrictive										
e. Fairly open		x			x	x				
f. Very open										
2. General policy/attitude on brain drain and reverse brain drain										
a. Bonding of government scholarships		x	x	x	x	x		x		x
b. Carrots to retain professionals					x					
c. Appeal to nationalism					x					
d. Financial/job incentives for returnees					x					
e. Others	x						x		x	
f. No policy										
4. Reasons for opening up to foreign professionals										
a. Short term measure to meet short term shortages	x	x		x	x			x		x
b. Facilitate structural/industrial upgrading						x	x	x		
c. Effect liberalisation of services and FDI		x		x		x				
d. Commitments under GATS and FTAs			x	x						
e. Others										
5. Perceived shortage of professional manpower										
a. Medical	x		x	x	x			x		
b. Dental			x	x	x					
c. Nursing	x							x		
d. Accountancy	x		x					x		
e. Legal								x	x	
f. Financial										
g. Engineering		x								
h. IT	x	x	x		x			x		
i. Surveying		x								
j. Others							x	x		
6. Measures to attract foreign professional manpower										
a. Better salaries and expatriate packages	x	x		x	x			x		
b. National treatment				x				x		
c. Better quality of life	x	x					x	x		
d. Offer of permanent residence and citizenship								x		
e. Others							x		x	
7. Policy and regulatory restrictions on employment of foreign professionals										
a. Constitutional provision reserving such jobs for nationals					x		x			
b. Professions/sectors closed to foreign employment					x		x			
c. Professions/sectors with numerical caps on foreigners		x			x					
d. Difficulties of getting employment visa	x									
i. Visa fee			x				x			
ii. Cumbersome and lengthy visa processing	x		x				x			
iii. Qualifications criteria and verification process	x		x		x			x		x
iv. Language requirement	x		x		x			x		x
v. Ethical and character referees and checks			x					x		
e. Restrictions on entry of spouse and dependent children			x							
f. Restrictions on employment of foreigners from some countries										
g. Acceptance of qualifications from certain countries	x	x			x		x	x		
h. Others									x	
8. Employment pass and work permit requirements	x	x	x	x	x		x	x	x	x

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4a: Measures on inward skilled labor mobility- Brunei

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward:	Policy depends on the profession	Regulations to ensure that the qualifications are accredited and from a recognised professional body	Yes for all foreign workers	Sector and occupation caps very much determined by market needs		ASEAN, in particular Malaysia, Indonesia, Philippines and Thailand	Qualifications have to be accredited by Ministry of Health for doctors and nurses and approved by Brunei Medical Board. For accountants, qualifications must be accredited by Brunei Institute of Public Accounts and Ministry of Finance		

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4b: Measures on inward skilled labor mobility- Cambodia

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward		1. Law on Investment 2. Law on Taxation 3. Cambodia Employment and Labor Law	Business visa, valid for 1-visit and 1-month, extendable	Must have work permit to work (business visa not enough). 2 kinds of requirements: (1) Stay permit and (2) Work permit with max 1-year and cost USD100. No employment passes for border areas	Allowed to remit abroad in foreign currency after paying appropriate tax. Less than 182 days stay (non-resident) subject to 20% tax. For more than 182 days stay (resident) progressive tax payable up 20%	None	Doctors and nurses: from WHO countries	none	Article 18 of Law on Investment - obligation to provide adequate and consistent training to local employees; promotion of Cambodian staff to senior positions made over time, but enforcement not strong

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4c: Measures on inward skilled labor mobility- Laos

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward	Yes	Labor law	Certificate of employment	FDI No sector/occupation caps	None	In practice, preference for	Yes	Yes	Yes

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4d: Measures on inward skilled labor mobility- Malaysia

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward		see attached	see attached	see attached	see attached	For public sector-3rd world Commonwealth, South Asia, Indonesia, Egypt. For private sector-- 1st world Commonwealth, North America, EU, Ireland	Subject to recognition by government and relevant professional bodies. Preference given to 1st world Commonwealth, North American and EU countries	see attached	see attached

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4e: Measures on inward skilled labor mobility- Myanmar

	Policy	Regulations and measures	Employment visa requirements	Employment passes	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward	Fairly open policy	1. Dept of Labor performs registration for foreign professionals given permission to work by the Myanmar Investment Commission. 2. Foreign professionals shall abide by immigration rules, regulations and procedures	Foreign professionals must meet requirements of Ministry concerned	Foreign professionals allowed to work with permission of MIC. No specific caps by sector/occupation/firm	None	None	Subject to concerned agencies and departments and ministries	None	Training locals are subject to related firms

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4f: Measures on inward skilled labor mobility- Philippines

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward	Generally, the RP constitution reserves the practice of licenced professions to citizens. RA8182 also requires that preference be given to citizens in the hiring of consultants and other professionals necessary for implementation of projects funded by foreign assistance. However, RA8555 provides for Presidential waiver.	See list	See List	1. Multiple entry special visa; 2. Special non-immigrant 47a2 visa; 3. Pre-arranged employment 9g visa; 4. Treaty Trader's or Investor's visa; 5. Subic Bay FPZ work visa; 6. Clark SEZ work visa; 1. Special resident retiree's visa; 2. Special investor's resident visa; 3. SIRV for investors in tourist-related projects; 4. Subic FPZ residency visas for retirees; 5. Special visa for employment generation. There are no provisions on caps/quotas --hiring foreigners depends on the needs of the company provided the non-availability of competent and able person in RP	Gross income received by foreign employed in the following entities is subject to 15% tax --- regional or area HQ or regional operating HQ established in RP by MNC; offshore banking units; service contractors or subcontractors in petroleum operations. Alien expat of regional or area HQ enjoys duty-free importation of personal and household effects except motor vehicle	MRA among ASEAN members.	See List	Employment of foreign professional will only be allowed after determination of non-availability of RP citizen competent, able and willing to perform the same services. The labor market test is one main barrier for trade in services, especially in education sector where foreign professionals may be allowed to teach	DOLE requires employers of foreign nationals to provide an Understudy Training Programme and to designate at least 2 Filipino understudies. The functions of these employees must be deemed permanent, and they must require skills or expertise that are scarce in RP.
Outward	RP government promotes, facilitates and regulates movement abroad of Filipino professionals through POEA, with labor attaches abroad gathering intelligence on employment opportunities to facilitate overseas employment. The RP government gives preference to overseas employment of higher skilled worker categories and facilitates their movement through POEA and accreditation through TESDA. Government seeks a selective promotion of overseas employment.			An Overseas Employment Certificate (OEC) is a requirement under POEA Rules and Regulations to help ensure that OFWs are properly documented and protected. No quotas under JPEPA for IT and medical workers	RP citizens working abroad generally considered non-resident and exempt from RP income tax on income earned abroad.	POEA has list of restricted markets and skills where deployment of Filipino workers are prohibited	Qualification criteria depends on needs of hiring countries		

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4g: Measures on inward skilled labor mobility- Singapore

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward	Yes	Yes		P1,P2,Q1,S No caps	see List	None	Yes	None	None

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4h: Measures on inward skilled labor mobility- Thailand

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward		1. Immigration Act 1979. 2. Alien Employment Act 2008. 3. Board of Investment	Must apply for non-immigrant type B visa (business visa). Period of stay not to exceed 1-year and extendable on yearly basis.	Under Alien Employment Act, work permit required, although foreigner may have a non-immigrant visa. Work permit is job-specific and geographic-specific, validity not exceeding 2 years except for BOI promotion. Renewal of work permit not exceeding 2-years each time, with total length of 4-years unless otherwise prescribed by Ministry No sector/occupation/firm caps	None	None	see list	None	None

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 4i: Measures on inward skilled labor mobility- Vietnam

	Policy	Regulations and measures	Employment visa requirements	Employment passes, special resident visas	Wage levies/taxes	Geographic preference	Qualifications criteria	Economic/labor market tests	Train local replacement
Inward	Yes	Must have employment permit if work for more than 3 months. For head of foreign firms no employment permit needed	None	For some professions	None	None	With higher education	None	None

Source: Tabulations of questionnaire survey to ERIA country research teams

Table 5: Movement of natural persons in Singapore FTAs

Singapore-New Zealand	<p>Movement of Business Persons: For intra-corporate transferees the following conditions apply:</p> <ul style="list-style-type: none"> a. Executives and senior managers, an initial stay of up to 3 years in NZ b. Specialist and/or senior personnel, an initial stay of up to 3 years c. Specialist personnel, an initial stay of up to 3 years d. Installers and servicers, for periods of stay not exceeding 3 months in any 12 month period e. For business visitors, a period/periods not exceeding 3 months in any 12 month period
Singapore-Australia	<p>Movement of Business Persons: This chapter covers 2 major categories of business persons directly involved in cross-border trade and investments through the following commitments:</p> <ul style="list-style-type: none"> a. Business visitors will be permitted to enter and engage in business activities within Australia for a period of 3 b. Intra-corporate transferees including managers, executives and specialists within organisations will be permitted to stay and work in Australia for a committed period of up to 14 years. <p>Both parties agreed to confer the same benefits on both citizens and PRs of the other country under this chapter. Both countries have committed that neither country shall require labor market testing, labor certification tests or other similar procedures as a condition for temporary entry of business persons</p>
Singapore-Japan	<p>Movement of Business Persons: There may be limitations on the treatment accorded under this Part to natural persons who are PRs of Singapore, where Japan adopts measures pursuant to its domestic laws and regulations</p> <p>The Chapter will facilitate the movement of 4 major categories of business persons:</p> <ul style="list-style-type: none"> a. Business visitors such as salespersons, will be permitted to enter and operate in Japan for a period of 90 days. b. Intra-corporate transferees will be permitted to stay and work in Japan for as long as they are required by their companies. c. Investors will be permitted to stay in Japan in order to establish and maintain their investments d. Engineers can enter Japan to service their contracts with companies in Japan
Singapore-EFTA	<p>Natural persons covered by a Party's specific commitments shall be allowed to supply the service in accordance with the terms of those commitments. This shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence of employment on a permanent basis.</p> <p>This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in a manner so as to nullify or impair the benefits accruing to a Party under the terms of the specific commitment</p>
Singapore-US	<p>Movement of Business Persons: Only Singapore citizens will gain benefits from the Movement of Natural Persons chapter for the USSFTA. All of the categories for business persons need not to be subject to labor certification tests. Business visitors to the US do not have to apply for a visa because of the Visa Waiver Program.</p> <p>The H1-b1 visa is a specially created category under the USSFTA. It benefits Singapore professionals in that it can be renewed yearly with no upper time limit. The H1-b1 visa is subject to a quota of 5400 H1-b1 visas per year for Singapore. As it is specifically allotted to Singapore citizens, there is no competition with other nationals.</p> <p>Whilst the H1-b visa is subject to a labour market test, this is not required under the H1-b1 visa. Hence the US employer does not need to prove that no other American can take the job that the Singaporean is applying for.</p> <p>The business visitors could extend their visit up to 90 days. Intra-corporate transferees with L1A and L1B visas are allowed up to an initial period of 1-3 years, an extension up to a max of 7 years may be allowed. However, the total term must not exceed 8 years.</p> <p>Traders with E1 or E2 visas are allowed a 2-year maximum stay period</p>

Table 5 (Continued): Movement of natural persons in Singapore FTAs

Singapore-Korea	<p>Movement of Business Persons: The Chapter lays out the terms and extent to which citizens and PRs of one country can enter into the other country for the purpose of doing business. It will facilitate the movement of 4 major categories of business persons:</p> <ul style="list-style-type: none"> a. Service sellers b. Short-term service suppliers c. Traders and investors who are managers, executives or specialists; d. Intra-corporate transferees who are employed as managers, executives, or specialists
Singapore-India	<p>Movement of Business Persons: Business visitors going into India for negotiation of deals, market exploration may apply for a multiple journey visa up to a validity period of 5 years provided the relevant terms and conditions apply. (Note: one criterion imposed is that applicable measures concerning the protection of public health and national security may limit the period of visa eg from 5 years to at most 2 years.</p> <p>Short term service suppliers who are going into India to provide a specific service (without a commercial preference can stay for up to 90 days in single visa with possible extension for a further 90 days</p> <p>Intra-corporate transferees refers to personnel from businesses operating in both countries and requires the transfer of personnel like managers, technical expertise between the 2 establishments. They can apply for a visa with validity period up to 2 years with possible extgensions of up to 3 years at a time.</p> <p>Professionals can also apply for a visa period of up to 1 year. The annex provides a list of 127 specific occupations</p>
Singapore-China	<p>Movement of Business Persons: This Chapter facilitates easier temporary entry for 3 categories of business persons from Singapore into China. They include:</p> <ul style="list-style-type: none"> a. Business visitors -- periods of stay up to a maximum of 6 months b. Intra-corporate transferees --shall be granted a long term stay permit as stipulated in the terms of contracts concerned or an initial stay of 3 years, whichever is shorter. c. Contractual service suppliers: In eligible sectors will be granted entry for up to 1 year, or+B22 the length of contract, which is shorter. The services provided are only limited to Accounting services, Medical and dental services, Architectural services, Engineering services, Urban planning services, Computer and related services, Construction and related engineering services, education and tourism
Singapore-Panama	<p>Movement of Business Persons: Intra-corporate transferees for an initial period of up to 2 years may be given. It may be extended for periods of up to 3 years at a time for a total term not exceeding 8 years</p> <p>Neither Party shall require labour market testing, labour certification tests, or other procedures of similar effect as a condition for temporary entry in respect of natural persons on whom the benefits of this Annex are conferred.</p>