Chapter 2

Services Liberalization towards and ASEAN Economic Community

Philippa Dee
Crawford School of Economics and Government, Australian National Universtiy, Australia.

March 2011

This chapter should be cited as
Dee, P. (2011), 'Services Liberalization towards and ASEAN Economic Community', in Urata, S. and M. Okabe (eds.), *Toward a Competitive ASEAN Single Market: Sectoral Analysis*. ERIA Research Project Report 2010-03, pp.17-136. Jakarta: ERIA.

CHAPTER 2

Services Liberalization towards an ASEAN Economic Community

PHILIPPA DEE

Crawford School of Economics and Government

The Australian National University

The purpose of this paper is to map the actual policy space in five key services sectors — medical services (medical, dental, and paramedical services), health services (hospital, medical laboratory and ambulance services), banking, insurance and accountancy. The first four of these were also mapped in 2008. Thus the paper can indicate the extent of real reform since 2008 in these four sectors and indicate whether this reform was generated by AFAS commitments or by other processes. In all five sectors, it can also give an indication of the extent of further real policy reform that will be needed in each ASEAN member country in order to achieve the liberalization targets laid out in the ASEAN Economic Community Blueprint.

There has been at least some progress since 2008 in all four of the sectors that are repeat-sampled. Some of this has been in direct response to AFAS commitments, but most has other proximate causes. Not surprisingly, some of the policy changes in banking and insurance services involved a tightening of prudential regulation in response to the global financial crisis. Cambodia and Vietnam have also relaxed interest rate controls. Lao PDR has implemented a package of reforms in the insurance sector, although at the same time, the government does not want to issue any new licences. In the fields of medical and health services, there have been significant reforms in Indonesia and the Philippines.

Nevertheless, in all five sectors there is a significant way to go in order to achieve the Blueprint targets.

In the medical professions, three ASEAN countries still need to take definitive action to achieve the target of allowing up to 70 per cent foreign equity participation, and barriers to

the movement of individual professionals are still prevalent. It may prove difficult for ASEAN countries to ensure that their non-discriminatory regulation is no more burdensome than necessary to ensure quality of service, since this will require agreement on minimum acceptable standards of quality in each country. Nevertheless, there is significant further scope to promote a single market for medical professional services by ensuring that existing regulation does not discriminate against foreign providers.

In health services, non-discriminatory barriers to entry and operations have already been removed, so removing discrimination against foreign suppliers is the only remaining task. Progress here should prove less controversial than in the medical professions.

In banking, six out of the ten ASEAN countries have foreign equity limits that do not yet meet the ASEAN Blueprint's benchmarks. More progress has been made in insurance — seven ASEAN countries already meet the benchmark. In both banking and insurance, barriers to cross-border trade are still prevalent, despite the fact that the Blueprint is unequivocal about the liberalization of this mode of service delivery. And in banking, there is evidence that some countries are still using unnecessary restrictions in place of better-targeted prudential requirements. With the recent strengthening of prudential regulation, there is scope for further market opening.

In accountancy, six ASEAN countries already meet the Blueprint's targets for foreign equity participation — they have no restrictions on foreign equity at all. But restrictions on the movement of individual professionals are more prevalent that restrictions on commercial presence. They contribute to marked discrimination against foreign services suppliers. A single market for this and other professional services depends crucially on the free mobility of individual professionals. Mutual recognition agreements can help, but the relaxation of other restrictions on entry and operation is also required.

1. Services Targets in the ASEAN Economic Community

The establishment of the ASEAN Economic Community is intended to deepen economic integration in East Asia as a whole. It envisages the free flow of services, investment, and skilled labour, along with the free flow of goods and the freer flow of capital.

To achieve that end, the ASEAN Economic Community Blueprint has laid out an ambitious reform agenda designed to establish an ASEAN single market. In services, it is intended that by 2015, there should be substantially no restriction to ASEAN services suppliers in providing services and in establishing companies across national borders within the region, subject to domestic regulations. For four priority sectors — air transport, healthcare, e-ASEAN and tourism — this target was to be achieved earlier, by 2010. For logistics services, the target is to be achieved by 2013.

The blueprint contains detail about the scheduled sequence of events by which these targets are to be achieved. Liberalization is to occur through consecutive rounds of negotiations, every two years. The number of sectors to be liberalized is to be expanded in each round. For each new group of sectors, the liberalization commitments are to include:

- no restrictions on service delivery via mode 1 (cross-border trade, where neither the producer nor the consumer moves, and trade often occurs via the internet) and mode 2 (consumption abroad, where the consumer moves temporarily to the country of the producer), except where there are bona fide regulatory reasons, such as public safety;

- gradual expansion of the foreign (ASEAN) equity participation permitted in each sector, to be no less than 70 per cent by 2010 in the four priority sectors, and to be no less than 51 per cent by 2010 and 70 per cent by 2015 in all other sectors; and

- progressive removal of other limitations on market access via mode 3 (commercial presence, where the producer sets up a permanent commercial presence in the country of the consumer) by 2015.

The negotiations were also to set the parameters of liberalization for limitations on national treatment (i.e. liberalization involving the removal of discrimination against foreign providers), liberalization of service delivery via mode 4 (the movement of natural persons, whereby the individual service provider moves temporarily to the country of the consumer)

and the liberalization of horizontal limitations on market access (i.e. limitations that apply across a range of services sectors, possibly affecting both domestic and foreign providers) by 2009. Commitments were then to be made according to these parameters from 2009.

The blueprint allows for some overall flexibilities in achieving these objectives, including via an ASEAN minus X formula (where countries that are ready to liberalize can proceed first and be joined by others later). In financial services, the process of liberalization should also take place with due respect for national policy objectives and the level of economic and financial sector development of the individual members.

Accordingly, the ASEAN countries have been negotiating successive rounds of commitments under the ASEAN Framework Agreement on Services (AFAS). They have finalized their seventh package of commitments and are currently working on the eighth. In some respects, the commitments in the seventh package go further than the broad targets outlined in the ASEAN Economic Community Blueprint, because they make specific commitments on national treatment and market access for each mode of service delivery in each sector. But in other respects, the seventh package of commitments still lags the targets outlined in the Blueprint. In particular, the limits on foreign equity participation in the seventh package are often less than would be required by the Blueprint in 2010.

In many ASEAN countries, the commitments made under the ASEAN Framework Agreement on Services have tended to lag behind actual practice. Where this has been the case, the commitments have generally not had any real effect on 'policies on the ground'. Nevertheless, reforms have still taken place gradually on a unilateral basis, or in some cases in response to the process of accession to the World Trade Organization (WTO). However, the gap between AFAS commitments and actual practice has been closing over time. Thus from now on, we would expect AFAS commitments to be a source of direct policy change on a more frequent basis. If the ASEAN Economic Blueprint targets are to be met, the commitments should also start to generate policy changes at an accelerating rate.

One key purpose of this paper is to map the actual policy space in four key services sectors — medical services (medical, dental, and paramedical services), health services (hospital, medical laboratory and ambulance services), banking services and insurance services. The medical and health sectors are priority sectors, which according to the Blueprint were to be liberalized by 2010.

The four sectors were also mapped in 2008 (Dee 2008). The current exercise can therefore provide two kinds of information:

- it can demonstrate the extent of real reform since 2008 in these four sectors, and indicate whether this reform was generated by AFAS commitments or by other processes — unilateral reform or commitments under the General Agreement on Trade in Services (GATS) under the WTO; and

- it can give an indication of the extent of further real policy reform that will be needed in each ASEAN member country in order to achieve the liberalization targets laid out in the ASEAN Economic Community Blueprint.

A second purpose of this paper is to map for the first time the actual policy space in a fifth sector — accounting services. This is one of a number of professional services that support all business activity, including those services in priority sectors. The current mapping also lays down a baseline against which future reforms in accounting can be measured.

The current exercise maps the actual policy space in each sector, not just with respect to foreign equity limits, but also with respect to some of the more common limitations on national treatment and market access by mode of service delivery in these sectors. The exercise also maps aspects of the regulatory regimes in each sector that may reduce contestability and performance, and may therefore continue to limit trade even when all trade barriers (more narrowly defined) are removed. It is important to monitor these regulatory restrictions as potential additional impediments to achieving the ASEAN Economic Community.

In the first instance, the current exercise maps existing policies on a most-favoured nation (MFN) basis, meaning that it maps policies without taking into account any real, binding preferences that have been granted to other ASEAN member countries. This basis for information collection is appropriate, for several reasons. First, many services trade barriers are difficult or impossible to liberalize on a preferential basis. Second, some services trade barriers would be unwise to liberalize on a preferential basis. Third, the wording of the Blueprint itself only suggests preferential liberalization in the case of foreign equity limits. Nevertheless, where AFAS commitments have led to recent liberalization on a

preferential basis in healthcare or financial services, these preferences are also recorded. When these and similar mapping exercises are repeated in future, they will similarly record any preferences that emerge.

The information on actual policies affecting trade in medical, health, banking, insurance and accounting services has been collected using five separate questionnaires. The questionnaire instruments for the first four sectors were documented in Dee (2008). The instrument used for accounting services is reproduced as Appendix 1 at the end of this paper. The questionnaires were completed for each ASEAN economy over the period September 2010 to March 2011 by researchers contracted by the Economic Research Institute for ASEAN and East Asia (ERIA). The researchers involved in undertaking or supervising the project in their home countries, and whose hard work is gratefully acknowledged, are as follows:

- Brunei — Shazali Sulaiman, KPMG Brunei;
- Cambodia — Chap Sotharith and Chiek Chansamphors, Cambodian Institute for Cooperation and Peace;
- Indonesia — Raymond Atje, Ira Titiheruw and Pratiwi Kartika, Centre for Strategic and International Studies;
- Lao PDR — Leeber Leebouapao and Somnak Yawdhacksa, National Economic Research Institute;
- Malaysia — Zakariah Abdul Rashid, Quah Boon Huat, Samirul Ariff Bin Othman, Musalmah Binti Johan, Elayne Yee and K. K. Foong, Malaysian Institute of Economic Research;
- Myanmar — Kan Zaw, Kyaw Min Htun, Sanda Oo, Thapye Nyo, Nu Nu Lwin and Le Le Wai, Yangon Institute of Economics;
- Philippines — Rafaelita M. Aldaba, Kathrina G. Gonzales, Jo-Ann J. Latuja, Rufo R. Mendoza, Pinky S. Padronia and Joseph T. Yap, Philippine Institute of Development Studies;

- Singapore — Hank Lim and Bernard Aw, Singapore Institute of International Affairs;
- Thailand — Wisarn Pupphavesa Viroj Naranong, Punpreecha Bhuthong and Songporn Ketthong, Thailand Development Research Institute, and
- Vietnam — Vo Tri Thanh, Trinh Quang Long, Tran Binh Minh and Nguen Cong Manh, Central Institute of Economic Management.

The survey responses, along with any accompanying explanatory notes that were provided by the survey respondents, have been compiled in five spreadsheets, one for each survey. The spreadsheets are an integral part of the output of this project. They make transparent and publicly available both the detailed qualitative information contained in the survey responses, as well as the methods by which summary indexes have been generated. It is anticipated that scrutiny of this detailed information by stakeholders in the ASEAN region will lead to greater general understanding of the policies and practices affecting healthcare, finance and accounting in each economy.

It should be stressed, however, that the relative rankings of countries in the results should be regarded as indicative, rather than definitive. Despite efforts to develop a common understanding about the survey questions among the respondents, there is inevitable variation in the ways in which questions have been interpreted, and in the depth and quality of responses. Nevertheless, these differences have been narrowed in the process of repeat-sampling healthcare and finance.

The next section gives a brief qualitative overview of recent progress towards an ASEAN Economic Community in medical, health, banking and insurance services. The following sections summarize the survey results for each of the sectors under study. Each section describes the survey instrument and the survey results, both in terms of recent changes and future reform requirements, and outlines the main findings on achieving the services targets of the ASEAN Economic Community Blueprint.

2. Progress in Healthcare and Financial Services during 2008-10

A brief summary of the policy changes affecting trade in medical, health, banking and insurance services in ASEAN countries during 2008-10 is shown in Table 1. It is based on longer country reports in Appendix 2 at the end of this paper. The table shows that there has been at least some progress in all four sectors.

Table 1. Progress in Healthcare and Financial Services During 2008-10

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia
BANKING					
Recent	Since the Ministry of Finance issued clarification on lending in 2009, foreign bank branches can only lend against local capital.	An amendment was made in September 2009 to liberalize interest rate setting.	None	None	In Nov 2010, the central bank announced several measures to curb property speculation as well as to address the rising household debt problem. Among these, the monetary regulator imposed a maximum loan-to-value (LTV) ratio of 70%, which will be applicable to the third house financing facility taken out by a borrower.
Prospective	With effect from 1 January 2011, the Monetary Authority Brunei Darussalam ("MABD") will be establish as a Statutory Body to regulate the banking, finance and insurance sector, independent of the Ministry of Finance.	None	None	None	The Central Bank of Malaysia is currently preparing for a 'new' Financial Sector Masterplan, which would further liberalise the banking and securities markets.
Notes	None	Both the minimum capital requirement and the reserve requirement were changed in 2009 in response to the global financial crisis.	Changes to banking industry regulation concerned a few prudential measures.	None	None

INSURANCE					
Recent	None	None	None	New Law on Investment Promotion 2009 means that 100% foreign ownership is allowed, the minimum foreign equity in joint ventures has been reduced from 30% to 10%, and the term of licenses has been extended from 50 to 99 years. However, the government does not want to issue new licenses because of the small size of the market.	None
Prospective	None	None	None	The Law on Insurance is expected to be amended to be more appropriate to the current situation of a more liberalized and open economy to the world and regional integration. In the coming years, the scope of the compulsory insurance-based social security system will be extended.	None
Notes	None	None	The only change in insurance regulation during 2008-2010 concerned prudential measures.	None	None

MEDICAL PROFESSIONS					
Recent	None	New mutual recognition agreement signed with ASEAN countries in 2009.	Law no. 44/2009 covers medical professionals for hospitals. Hospitals can employ foreign medical professionals, but the employment must be intended for the purpose of knowledge and technology transfers - this rules out foreigners in unskilled positions. Permenkes no. 028 issued on 4 January 2011 says clinics cannot hire foreign healthcare workers. Foreign equity limits for medical and dental clinics (specialist only) have been raised from 65% to 67%. Those for nursing have been raised from 49% to 51% in Medan and Surabaya, and from zero to 49% in the rest of Indonesia.	None	None
Prospective	None	None	None	None	The Malaysian National Healthcare Financing Scheme (similar to Australia's Medicare system) may finally be implemented. The government is keen to push 'telemedicine', and has also been promoting 'medical tourism'. It has been promoting the recruitment of foreign doctors and specialists and establishing new medical colleges and twinning programs to raise the ratio of doctors per head of population.

HEALTH SERVICES					
Recent	None	None	Law no. 36/2009 on health requires all foreign healthcare facilities to obtain operating license. Law no 44/2009 on hospitals regulates their establishment and management and introduces mandatory accreditation every 3 years. Foreign equity limits for hospitals and medical laboratories have been raised from 65% to 67%. The minimum size of foreign hospitals has been lowered from 300 to 200 beds for ASEAN investors, though the hospitals still have to be specialist. Foreign medical professionals can be employed in hospitals and medical laboratories, but this must be intended for the purpose of knowledge and technology transfer - this now rules out foreigners in unskilled positions. Universal service oligations have been spelt out in law.	None	None
Prospective	None	None	None	None	None
HORIZONTAL					
Recent	None	None	None	None	None
Prospective	None	None	None	None	None

Table 1. Progress in Healthcare and Financial Services During 2008-10 (Continued)

	Myanmar	Philippines	Singapore	Thailand	Vietnam
BANKING					
Recent	None	None	None	The Bank of Thailand has permitted commercial banks to employ personnel of ASEAN nationality with unlimited numbers in any positions, but foreign institutions face consideration on a case-by-case basis. This policy change implements commitments under AFAS. A foreign bank with branches in Thailand is allowed to establish up to 2 additional branches by the approval of the Bank of Thailand. This implements commitments under the GATS.	In mid 2010, the Government removed the control over the lending interest rate (commercial banks could arrange the lending interest rate with customers), but the State Bank used some administrative procedures to impose the borrowing rate below 14% (the rate that commercial banks in the Vietnam banking association have committed). Circular 09 sets out stricter requirements for shareholders, especially founding shareholders, who wish to establish a joint stock commercial bank, and new longer timeframes of the application process for a licence. Prior to 2010, foreign bank branches could lend against the parent capital but from 2010, branches have to lend against their own chartered capital, not their parent capital.

Prospective	None	None	None	None	Under the Law on Credit Institutions which will take effect on 1 January 2011, the prime interest rate structure is abolished. The prime rate was eliminated as unreflective of the supply-demand relationship on the market and was viewed as interventionist by financial markets.
Notes	None	None	None	None	Certain prudential requirements have been raised, including the minimum capital adequacy ratio.

INSURANCE					
Recent	Myanma Insurance can supply insurance services including quasi-medical insurance for expatriates going abroad. In 2008 quasi-medical insurance did not exist.	None	None	None	None
Prospective	None	None	None	None	The draft amendment and supplement to the Law on Insurance Business would recognize the cross-border provision of insurance services by foreign insurance organizations and individuals. It would also recognize the right to set up branches of foreign non-life insurance enterprises in Vietnam. It would also abolish ceding percentages. All are in accordance with Vietnam's WTO commitments. It would expand the range of recognsed insurance products and insurance enterprises.
Notes	None	None	None	None	None

MEDICAL PROFESSIONS					
Recent	Same as for health services.	The process for issuing employment permits to foreign nationals has been extended from 1 to 3 working days. Otherwise, the lack of progress in liberalization stems from the constitutional provision that the practice of all professions in the Philippines shall be limited to Filipino citizens.	None	None	None
Prospective	None	None	None	None	None

HEALTH SERVICES					
Recent	Some easing of cross-border trade. Some joint venture hospitals have been established since 2008.	A major policy change is the suspension for one year of the need to obtain a Certificate of Need (CON), the only restriction on new entry of private hospitals. The DOH Administrative Order No. 2007-0027 created the improved quality assurance and monitoring program for clinical laboratories in the Philippines and rendered the DOH-BHFS Circular No. 3 Series of 2003, which suspends issuance of permit to new entry of laboratories, obsolete. The process for issuing employment permits to foreign nationals has been extended from 1 to 3 working days. In 2009, the Health and Wellness Alliance of the Philippines (HEAL Philippines) was established to organize industry and government stakeholders involved with global healthcare and wellness services, tourism and retirement.	None	None	The Health Insurance Law took effect on 1 July 2009, aiming to ease the load on provincial and central hospitals, and expand policyholder categories to include drug addicts and people with congenital defects who were previously excluded.
Prospective	None	There are emerging demands for the amendment of the Republic Act 4226 or the Hospital Licensure Act to expand the coverage of the law to include health facilities other than hospitals.	None	None	None

HORIZONTAL					
Recent	None	None	None	One distinctive change is the replacement of the Working of Alien Act 1978 by the new act, Working of Alien Act 2008. Among other things, it extends the validity period of the work permit from not exceeding one year to not exceeding two years. However, non-immigrants visas are normally granted for one year.	None
Prospective	None	None	None	None	None

Not surprisingly, some of the policy changes in banking and insurance services involved a tightening of prudential regulation in response to the global financial crisis. Prudential regulation has a legitimate purpose of ensuring systemic stability. It is generally not regarded as a barrier to trade in financial services, and for this reason it is carved out of the GATS. Recent prudential reforms are recorded under 'Notes' in Table 1, rather than as recent reforms of trade barriers. Nevertheless, Vietnam appears to have instituted stricter licensing requirements for banks to an extent that goes beyond purely prudential oversight. Within ASEAN, this is an isolated example of possible overreaction to the global financial crisis. In addition, both Brunei and Vietnam have required (or clarified) that foreign bank branches must lend against their local capital rather than their parent capital. As explained later, this is a 'grey area' measure — while it further constrains the activities of foreign bank branches, it also gives the local prudential authorities some control over the capital reserve requirements of foreign branches, rather than having to rely on the prudential oversight of the authorities in the branches' home countries.

The table also shows the extent to which countries in the region have instituted genuine trade reforms in response to commitments made under AFAS or the GATS. In banking, both Thailand and Vietnam have instituted multilateral reforms in line with commitments under the GATS, while Thailand has also relaxed restrictions on hiring foreign personnel on a preferential basis under its AFAS commitments. In insurance, Vietnam expects to implement a package of reforms in the near future in line with its WTO commitments. In health services, Indonesia has relaxed the minimum bed size for foreign-invested hospitals on a preferential basis. In medical professional services, Cambodia has implemented a mutual recognition agreement with its ASEAN neighbours. In all other respects, the reforms recorded in Table 1 are unilateral and non-preferential, or if they have a regional dimension, it is because of geographical constraints rather than preferential commitments.

Some of the more notable unilateral reform efforts are the relaxations of interest rate controls in Cambodia and Vietnam. Malaysia also awaits a new Financial Master Plan that will further liberalize the banking and securities markets in the near future. Lao PDR has implemented a package of reforms in the insurance sector, although at the same time, the government does not want to issue any new licences. While this moratorium is explained because of the small market size, it also has the potential to

offer protection to the existing government-foreign joint ventures. In Myanmar there has been a slight expansion in the range of insurance products on offer, although there has been no weakening of the monopoly position of Myanma Insurance.

In the fields of medical and health services, there have been significant reforms in Indonesia and the Philippines, and a slight easing in Myanmar. In Indonesia, new legislation has been introduced to fill the significant gaps in the regulatory framework that were noted in 2008 (Dee 2008). In a few cases, the introduction of explicit legislative guidelines has the potential to limit practices (such as the hiring of foreigners into relatively unskilled positions) that might have occurred otherwise. In most cases, however, the legislation will have somewhat reduced the scope for bureaucratic discretion. It also tightens the quality assurance framework in Indonesia by making the hospital accreditation process mandatory every three years. Finally, the Indonesian legislative reforms have also been accompanied by a slight easing of foreign equity limits. In the Philippines, there has been a lifting of the regulatory restrictions on the entry of new hospitals and medical laboratories. In Myanmar there has been a growth in cross-border trade in medical and health services and some limited evidence of foreign investment occurring.

Thus there is evidence of worthwhile reform efforts in all four of the services industries that have been repeat-sampled since 2008. A key question is how far these reforms take ASEAN towards reaching its end goal of a single market for services. That question can be addressed by comparing the extent of reform with the level of restrictive regulation that remains in place. That is the purpose of the remaining sections in this paper.

3. Medical Professional Services

3.1. A scorecard for services liberalization — medical services

Healthcare services can be provided by individual medical professionals, or in a broader institutional setting. Accordingly, the Central Product Classification, which is used to classify the different services covered by the GATS, recognizes two types of healthcare services:

- The services of medical professionals, including medical and dental professionals and midwives, nurses, physiotherapists and paramedical personnel;

- Health services, including hospital services (including psychiatric hospitals), and the services of medical laboratories, ambulances, and residential health care other than hospitals.

This section covers the first of these, while the next section covers the second.

Medical professional services can be traded via mode 3 (commercial presence, in the form of medical clinics), and mode 4 (the movement of either individual professionals or the employees of foreign-located professional services firms). Medical, dental and para-medical services are sometimes provided via mode 1 (e.g. remote diagnostic services) and mode 2 (consumption abroad).

The questionnaire covering barriers to trade in medical services is reproduced in Dee (2008). It asks about actual policies affecting all these modes of delivery. Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new professional services firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms (e.g. whether they are prohibited from incorporating, whether foreign entrants are required to establish in a joint venture). It also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in professional service firms, or whether there are restrictions on medical service firms being owned by people who are not licensed professionals.

Under mode 4, the questionnaire asks whether there are restrictions on the entry into professional practice of new individual professionals, either domestic, foreign or both, and asks about any nationality, citizenship or residency requirements for individual professionals to practice. The questionnaire also asks about restrictions on the ability of individual professionals to leave their home country, as this can also affect mode 4 trade. Finally, the questionnaire asks about limitations on the movement of intra-corporate transferees (i.e. the employees of professional service firms), which might take the form of nationality or residency requirements on certain classes of directors, executives, managers or employees, or a requirement for labour

market testing to establish that there is no qualified domestic person available for a position before a foreign person can be hired.

Under modes 1 and 2, the questionnaire asks whether foreign medical professionals located abroad can provide services cross-border to patients in the home country (e.g. via telemedicine), and whether domestic residents can purchases medical services while abroad.

In addition, the questionnaire recognizes that certain aspects of the domestic regulatory regime could have a detrimental effect on trade in medical services by unduly restricting the ability of domestic and/or foreign professionals to provide services. A key restriction here is limitations on the recognition of foreign qualifications, which can limit the ability of foreign professionals to obtain a licence to practice. Accordingly, the questionnaire asks about the requirements that foreign professionals need to undergo to obtain a licence to practice, including whether they need to retrain or sit a local examination, and whether their foreign qualifications are automatically accepted or are subject to a case-by-case assessment.

The questionnaire also asks about other potentially anti-competitive aspects of the regulatory regime, including whether there are activities reserved by law to the profession, whether there are restrictions on advertising or fee setting, whether there are restrictions on the ability of foreign service providers to access government subsidies (where these are available), either for themselves or for their clients, whether there are limitations on foreign professionals participating in government contracts, and whether there are requirements for foreign invested firms to train local staff (which could raise their costs).

Finally, the questionnaire reveals information about the transparency of the regulatory regime, by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public. For information purposes only, it also asks for details about the regulator and about the licensing criteria used.

As noted earlier, the detailed responses (including comments) are recorded in separate spreadsheets. For ease of summarizing the survey responses, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-

one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of medical professionals, partial scores are assigned as follows. For private, foreign and non-professional equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limited is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75. When scoring restrictions on cross-border trade, limitations on either the form of services or the groups to which they can be offered are scored at 0.33 each. When scoring restrictions on consumption abroad, limitations in the form of quotas or authorization requirements are scored at 0.5. When scoring the requirements for foreign professionals to obtain a local licence, retraining is scored as the most restrictive (1.0), having to pass an examination is scored as the next most restrictive (0.75), while case-by-case assessment, having to pass an aptitude test or having to have local practice is scored at 0.5. When scoring restrictions on advertising, 'soft' restrictions are scored at 0.5.

To obtain a restrictiveness score for a broad restriction category, such as a score for all the restrictions affecting a particular mode of service delivery, the zero-one scores for each of the restrictions affecting that mode have been simply added together. This means that each of the different restrictions affecting that mode have been given equal weight — no attempt has been made to make an assessment of the relative severity of the different restrictions. Accordingly, the overall restrictiveness scores for broad categories of restrictions reflect the frequency, but not necessarily the severity, of individual restrictions. To normalize the scores for a group, they have then been divided by the maximum possible restrictiveness score for that group. This gives a final restrictiveness score expressed as a percentage, where a score of 75 per cent means that three-quarters of the restrictions that could potentially apply to that category of trade do in fact apply.

3.2. Scorecard results for medical professional services

Most of the survey questions are answered separately for three different types of professionals — medical, dental, and para-medical (nurses, midwives, etc.). The detailed scoring for medical professionals is shown in Table 2. As will be seen from Table 3, the responses for dental and para-medical professions are similar to those for medical professions, and detailed scoring is available by request from the author.

Table 2. Restrictions on trade in medical services (index 0-1)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
A. Market Access – commercial presence (mode 3) – Professional service firms											
1 Are there restrictions on new entry - by any firm?	0	0	0	0	0	0	0	0	0	0	0
By foreign firms?	0	0	1	1	0	1	0	0	0	0	0.3
3 Are firms prohibited from incorporating?	0	0	0	0	0	0	0	0	0	0	0
4 Are foreign firms prohibited from est. in a joint venture?	0	0	0	0	0	0	0	0	0	0	0
Are they required to establish in a JV?	0	0	1	1	1	1	0	0	0	0	0.4
B. Market Access – Inward movement of natural persons (mode 4) – Individual professionals											
5 Are there restrictions on new entry - by any individual?	0	0	0	0	0	0	0	0	0	0	0
Entry by foreign individuals	1	0	0	0	0	1	1	0	0	0	0.3
7 Is there a nationality or citizenship requirement?	1	0	0	0	1	1	1	0	1	0	0.5
8 Is there a residency or local presence requirement?	1	1	1	1	1	1	1	0	1	0	0.8
C. Market Access – Outward movement of natural persons (mode 4) – Individual professionals											
9 Are there restrictions on outward movement?	0	1	0	0	0	1	1	0	0	1	0.4
10 Are there other restrictions on exit?	0	0	0	0	1	0	0	0	0	0	0.1
D. Market Access – Inward movement of natural persons (mode 4) – Intra-corporate transferees											
11 Are there requirements to have nationals/residents?	1	1	1	0	1	1	1	0	1	1	0.8
12 Are there restrictions on employing locally trained professionals in foreign firms?	0	0	0	0	1	1	0	0	0	0	0.2
13 Are intra-corporate transferees subject to labour market tests?	0	1	1	1	1	1	1	0	0	0	0.6
14 Are managerial personnel required to be locally licensed as a professional?	0	1	1	1	1	1	1	0	0	1	0.7
15 Are managerial personnel required to be locally domiciled?	0	1	1	1	1	1	0	0	0	1	0.6

Table 2. Restrictions on trade in medical services (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
E. Cross-border trade (Mode 1)											
16 Are professionals located abroad able to provide services cross-border to patients in your country (eg tele-medicine)?	0.67	0	0	0.00	0.33	0.67	0	0	0	0	0.17
F. Consumption abroad (Mode 2)											
17 Can domestic residents purchase medical services while abroad?	0	0	0	0	0	0.5	0	0	0	0	0.1
G Ownership											
18 Is private ownership allowed - existing operators?	0	0	0	0	0	0	0	0	0	0	0.0
New entrants	0	0	0	0	0	0	0	0	0	0	0.0
19 Is foreign ownership allowed - existing operators?	0.75	0	0.35	0.75	0.3	1	0.75	0	0.51	0	0.4
New entrants	0.75	0	0.33	0.75	0.3	1	0.75	0	0.51	0	0.4
20 Are non-professional investors allowed an equity stake in professional service firms - existing operators?	0	0.01	0	0.01	0.01	0	0	0	0	0	0.0
New entrants	0	0.01	0	0.01	0.01	0	0	0	0	0	0.0
H. Regulation – licensing											
24 What are the requirements for foreign individual professionals to be licensed to practice locally	0.5	0	1	0.5	0.5	0.5	0.5	0.5	0.75	0	0.5
25 Are there any other requirements for the licensing and accreditation of foreign individual professionals?	0	0	1	0	0	1	0	0	1	1	0.4

Table 2. Restrictions on trade in medical services (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
I. Regulation – restrictions on operation											
29 Are there activities reserved by law to the profession?	1	1	1	0	1	1	1	0	0	0	0.6
30 Are there restrictions on the profession having a partnership or association with other professions?	0	0	0	0	0	0	0	0	0	0	0
31 Are there restrictions on the profession advertising, marketing or soliciting?	0	1	1	0	0.5	0.5	1	1	0	0	0.5
32 Are there restrictions on fee setting?	0	0	0	0	1	0	0	0	0	0	0.1
33 Is there a requirement for foreign-invested firms to train local staff?	1	1	0	1	1	1	0	0	0	0	0.5
34 Are there restrictions on the participation of foreign professionals or firms in government contracts?	0	0	0	0	0	1	1	0	0	0	0.2
35 Is there a requirement to have the work of a foreign professional approved by a locally trained/licensed professional?	1	0	0	0	1	1	0	0	0	0	0.3
39 Are foreign providers restricted in their access to producer subsidies?	0	0	0	0	1	1	0	0	0	0	0.2
Are their clients restricted in their access to consumer subsidies?	0	0	0	0	1	1	1	0	0	0	0.3
36 Which of the following are consulted in advance of regulatory changes (eg licensing requirements)?											
Service providers	1	1	1	0	1	0	1	1	0	1	0.7
Professional bodies	1	1	1	1	1	1	1	1	1	1	1
Users	0	1	0	0	0	0	0	1	0	0	0.2
Other	0	0	0	0	0	0	1	0	0	0	0.1
37 How are laws and regulatory decisions made public?											
Government website	0	0	1	0	1	0	1	1	0	1	0.5
Professional body's website	0	0	1	0	0	0	1	1	1	1	0.5
Official gazette	1	1	1	1	1	1	1	1	1	1	1
Other	0	0	0	1	0	0	1	0	0	1	0.3

Summary restrictiveness scores (obtained as described above) are shown in Table 3 for each of the medical professions under consideration, while a summary of the restrictions affecting domestic and foreign suppliers (firms or individual professionals) separately is shown, for medical professionals only, in Table 4.

Table 3. Restrictions on trade in medical services by profession and by mode of delivery (per cent)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
Consumption abroad (Mode 2)	0	0	0	0	0	50	0	0	0	0	5
MEDICAL											
Commercial presence (mode 3) – Professional service firms	0	0	40	40	20	40	0	0	0	0	14
Inward movement of natural persons (mode 4) – Individual professionals	75	25	25	25	50	75	75	0	50	0	40
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	50	0	0	50	25
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	80	60	100	100	60	0	20	60	58
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	25	0	11	25	10	33	25	0	17	0	15
Regulation – licensing	25	0	100	25	25	75	25	25	88	50	44
Regulation – restrictions on operation	33	33	22	11	72	72	44	11	0	0	30
TOTAL	**28**	**27**	**34**	**27**	**50**	**64**	**38**	**4**	**17**	**15**	**30**
Transparency	38	50	63	38	50	25	88	75	38	75	54
DENTAL											
Commercial presence (mode 3) – Professional service firms	0	0	40	40	20	40	0	0	0	0	14
Inward movement of natural persons (mode 4) – Individual professionals	75	25	25	25	50	75	75	0	50	0	40
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	0	0	0	50	20
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	80	60	100	100	60	0	20	60	58
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	25	0	11	25	10	33	25	0	17	0	15
Regulation – licensing	25	0	100	25	25	75	25	25	88	50	44
Regulation – restrictions on operation	33	33	22	11	72	72	22	11	0	0	28
TOTAL	**28**	**27**	**34**	**27**	**50**	**64**	**29**	**4**	**17**	**15**	**29**
Transparency	38	50	63	38	50	25	88	75	38	75	54

Source: Author.

Table 3. Restrictions on trade in medical services by profession and by mode of delivery (per cent) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
PARA-MEDICAL											
Commercial presence (mode 3) – Professional service firms	0	0	40	40	20	40	0	0	0	0	14
Inward movement of natural persons (mode 4) – Individual professionals	75	25	25	25	50	75	75	0	50	0	40
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	0	0	0	50	20
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	40	60	100	100	60	0	20	60	54
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	25	0	25	25	10	33	25	0	17	0	16
Regulation – licensing	25	0	0	25	25	75	25	0	88	50	31
Regulation – restrictions on operation	33	33	11	11	72	72	22	0	11	0	27
TOTAL	**28**	**27**	**22**	**27**	**50**	**64**	**29**	**0**	**20**	**15**	**28**
Transparency	38	50	63	38	50	25	88	100	38	75	56

Source: Author.

Table 4. Restrictions on trade in medical services by ownership category and mode of delivery (per cent)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
DOMESTIC MEDICAL											
Commercial presence (mode 3) – Professional service firms	0	0	0	0	0	0	0	0	0	0	0
Inward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Outward movement of natural persons (mode 4) – Individual professionals	0	50	0	0	50	50	50	0	0	50	25
Ownership	0	0	0	0	0	0	0	0	0	0	0
Regulation – restrictions on operation	25	50	50	0	63	38	50	25	0	0	30
TOTAL	**5**	**21**	**11**	**0**	**24**	**18**	**21**	**5**	**0**	**11**	**12**
FOREIGN MEDICAL											
Commercial presence (mode 3) – Professional service firms	0	0	57	57	29	57	0	0	0	0	20
Inward movement of natural persons (mode 4) – Individual professionals	100	33	33	33	67	100	100	0	67	0	53
Inward movement of natural persons (mode 4) – Intra-corporate transferees	20	80	80	60	100	100	60	0	20	60	58
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	50	0	23	50	20	67	50	0	34	0	29
Regulation – licensing	25	0	100	25	25	75	25	25	88	50	44
Regulation – restrictions on operation	36	29	14	14	75	82	43	7	0	0	30
TOTAL	**37**	**29**	**44**	**37**	**60**	**81**	**45**	**4**	**24**	**16**	**38**

Source: Author.

It is possible to use the information in these tables to assess the extent to which individual countries have reached the explicit targets of the ASEAN Economic Community Blueprint. However, in the case of medical services (in this section) and health services (in the next), a major caveat is in order. First, these are two areas where governments have a legitimate reason to regulate to ensure the quality of the service. Second, they also tend to do so 'before the event' by regulating the quality of inputs into service provision (the quality of medical professionals, the quality of hospital facilities), rather than 'after the event' by monitoring the quality of service outputs. Finally, there tends to be what economists call a 'targets/instruments' problem — the same restrictions on entry that are used to ensure quality can also be used to protect incumbent service providers from domestic or foreign competition. Therefore, it may not be possible to promote a single market by removing absolutely all barriers to entry without jeopardizing service standards. Accordingly, some middle ground needs to be found. As argued in Dee (2008), this requires ASEAN member countries to define what they regard as *minimum acceptable* service standards, and to allow the mobility of any medical professional service providers who meet those standards. It also requires that regulatory structures are no more burdensome than necessary to ensure this minimum acceptable quality of the service. In most cases, this means that they should operate on a non-discriminatory basis.

Tables 3 and 4 show that modes 1 and 2 are already relatively liberal. Consumption abroad involves consumption beyond the jurisdiction of domestic quality control processes, so quality control rationales for regulatory restrictions do not apply. Furthermore, most governments recognize that it is impossible in practice to control what their citizens purchase while abroad. It would be a relatively low cost exercise for ASEAN countries to commit formally to keeping this mode of trade free of government restrictions, and on a most-favoured nation basis (i.e. for trade with all countries, not just with ASEAN partners).

Mode 1 trade in medical services is less liberal than mode 2 trade. Some countries restrict mode 1 trade to certain procedures, but this runs the risk of locking out trade in new procedures or services that have yet to be developed. To the extent that there are quality concerns, the development of ASEAN minimum acceptable standards would facilitate the removal of more burdensome barriers to trade among ASEAN members. But some of the most competitive suppliers of mode 1 diagnostic

and medical laboratory services are in places like Hong Kong — outside of the ASEAN region. Hence, to maximize the benefits of mode 1 liberalization, it should also be on a most-favoured nation basis.

A further liberalization target in the Blueprint is liberalization of limits on foreign equity participation. Four ASEAN countries already meet or exceed the Blueprint's foreign equity target of 70 per cent (where a score lower than 0.3 against question 19 in Table 2 indicates that the country allows the foreign ownership share to reach 70 per cent or higher). These are Cambodia, Malaysia, Singapore and Vietnam. In addition, Indonesia now comes very close to meeting the target. Two additional countries probably meet the target. Brunei has a requirement that at least one of the owners of a medical service firm must be local. Whether this meets a 70 per cent foreign equity target depends on the size of the firm. In the Philippines, professional service firms may be foreign owned as long as the service providers are Filipino citizens. Therefore, there are technically no restrictions on the equity participation of foreigners in corporations. However, for general partnerships and single proprietorships for which the owners are the services providers, foreign ownership is not allowed because of the Constitutional provision restricting the practice of professions to citizens.

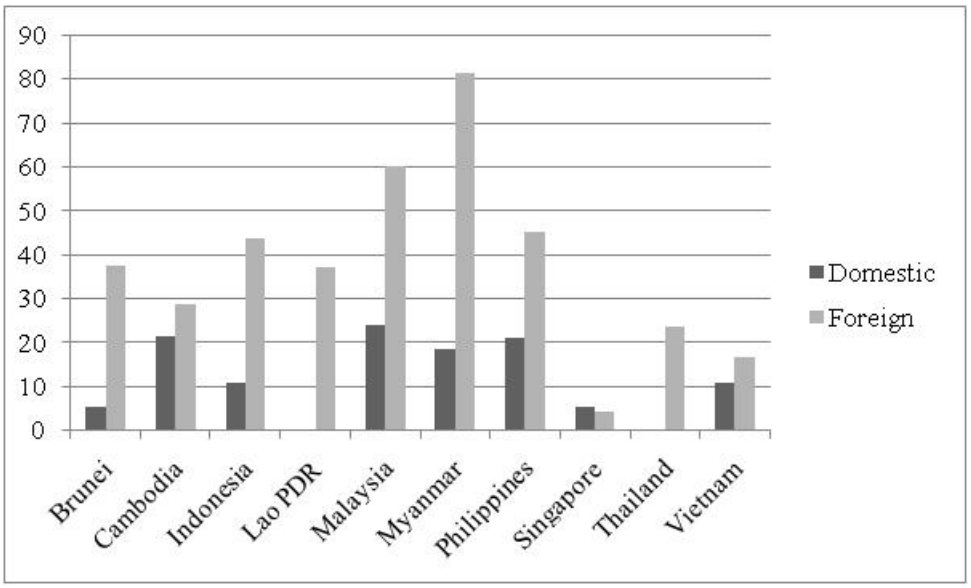
Thus it seems that a majority of ASEAN countries already meet, or probably meet, the Blueprint's foreign equity target. This reflects the fact that ASEAN is already relatively liberal in healthcare services, and foreign equity limits have typically been among the first targets of further services trade liberalization initiatives. However, these targets were to be achieved by 2010. Thus three ASEAN members still need to take definitive action. In Lao PDR there is still a potential disconnect between its relatively liberal investment law and its more opaque sectoral regulation. Thailand still requires government approval for majority foreign ownership. And Myanmar has yet to allow its legislation permitting foreign ownership to be reflected in actual practice.

But Tables 3 and 4 also indicate that the greatest prevalence of restrictions is on Mode 4 trade, with restrictions affecting the inward movement of both individual professionals and intra-corporate transferees. Domestic regulatory regimes also impose a relatively high frequency of restrictions. This is particularly significant, as

some of these restrictions also affect domestic services suppliers, and may therefore doubly penalize economic performance in the health sector. However, some of these have been justified on the grounds of quality assurance. At minimum, ASEAN countries should remove the discrimination against foreign services providers.

A visual presentation of the extent of discrimination against foreign providers is shown in Figure 1. This plots the prevalence of restrictions against domestic and foreign medical professionals across all modes of delivery — the domestic and foreign totals from table 4. The figure shows that in most ASEAN counties, the *proportion* of restrictions that actually apply is much higher for foreign service providers than for their domestic counterparts. But this only captures one aspect of the discrimination against foreigners. Foreigners also face a higher *total number* of restrictions. So the overall extent of discrimination against foreigners is even greater than indicated in Figure 1.

Figure 1. Restrictions on trade in medical services by ownership category (per cent)



Ensuring that non-discriminatory restrictions were no more burdensome than necessary is likely to be a very difficult process — it will require obtaining agreement on minimum acceptable standards. Figure 1 demonstrates that a great deal can be done in the meantime. There is considerable scope for ASEAN countries to make additional commitments to remove derogations from national treatment and thereby to remove discrimination against foreign suppliers.

A final question is whether the recent reforms have made a significant difference. This is indicated in Figures 2 and 3, for domestic and foreign services providers respectively. These figures compare the overall prevalence of restrictions in 2008 and 2010. The differences reflect the reforms summarized in Table 1. The reforms have made only a slight difference to the overall prevalence of restrictions on foreign suppliers, and no difference to the prevalence of restrictions on domestic suppliers. Thus ASEAN reforms are indeed focused on reducing the extent of discrimination against foreign suppliers. But a great deal more remains to be done.

Figure 2. Changes in restrictions on domestic medical services over time (per cent)

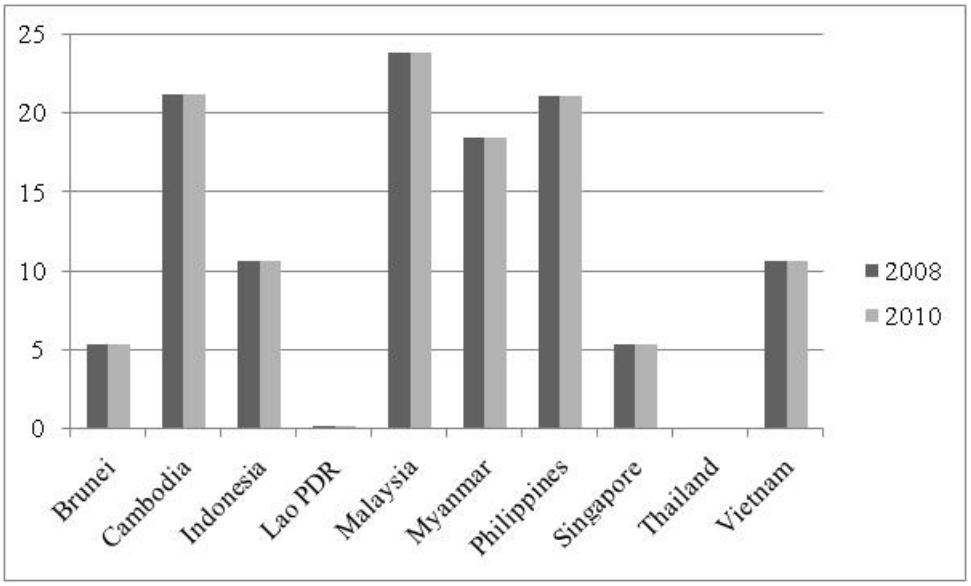
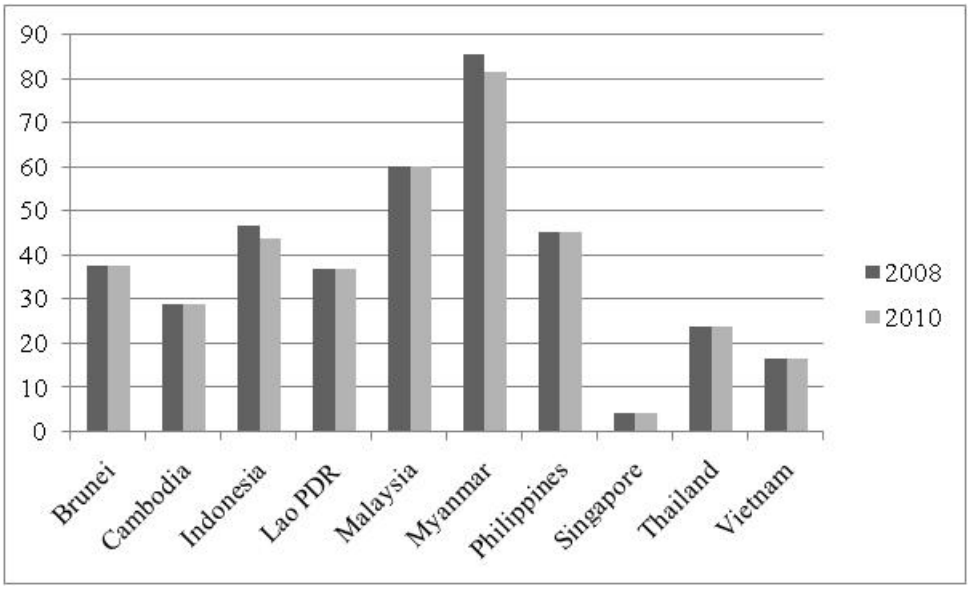


Figure 3. Changes in restrictions on foreign medical services over time (per cent)



4. Health Services

4.1. A scorecard for services liberalization — health services

Health services are primarily facilities-based services that are traded via mode 3, that is, by the entry and operation of foreign-invested operators. Increasingly, however, hospital and medical laboratory services are traded via mode 1 (e.g. telemedicine or remote diagnostic services). Hospital services are also traded via mode 2 (consumption abroad). Once again, the questionnaire covering barriers to trade in health services (Dee 2008) asks about actual policies affecting all these modes of delivery. The format is similar to that for medical services, but focusing on restrictions that affect health institutions rather than individual professionals.

Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new health services firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms (e.g. whether they are prohibited from incorporating, whether foreign entrants are required to establish in a joint venture), and whether they are restricted in the scope of services they can provide or the number or type of clients they can service. It also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in health service firms.

Under mode 4, the questionnaire asks essentially the same types of questions about restrictions on intra-corporate transferees as in the professional services questionnaire.

Under modes 1 and 2, the questionnaire asks whether foreign health services firms located abroad can provide services cross-border to patients in the home country (e.g. via telemedicine), and whether domestic residents can purchases health services while abroad.

The questionnaire also asks about potentially anti-competitive aspects of the domestic regulatory regime, including whether foreign-invested firms are subject to different licensing or quality assurance requirements from domestic firms, and whether there are restrictions on the ability of foreign health service providers to

access government subsidies (where these are available), either for themselves or for their clients.

Finally, the questionnaire reveals information about the transparency of the regulatory regime, by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public.

As with medical services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of health services, partial scores are assigned as follows. For private and foreign equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limited is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75. When scoring restrictions on cross-border trade, limitations on either the form of services or the groups to which they can be offered are scored at 0.33 each. When scoring restrictions on consumption abroad, limitations in the form of quotas or authorization requirements are scored at 0.5.

4.2. Scorecard results for health services

The scoring has been done separately for hospital, medical laboratory and ambulance services. The detailed results for hospital services are shown in Table 5. Comparable tables for medical laboratory and ambulance services are similar, and are available by request from the author.

Table 5. Restrictions on trade in hospital services (index 0-1)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
A. Market Access – commercial presence (mode 3)											
1 Are there policy restrictions on new entry - by any firm?	0	0	0	0	0	0	0	0	0	0	0
By foreign firms?	1	0	0	0	0	1	0	0	0	0	0.2
3 Are these firms prohibited from incorporating (with limited liability)?	0	0	0	0	0	0	0	0	0	0	0
4 Are foreign health services firms prohibited from establishing in a joint venture with local professionals?	0	0	0	0	0	0	0	0	0	0	0
Are they required to establish in a JV?	1	0	1	0	1	1	0	0	0	0	0.4
5 Are foreign health services firms restricted in the scope of services they can provide?	0	0	1	0	0	1	1	0	0	0	0.3
6 Are foreign health services firms restricted in the number of clients (domestic and/or foreign) they can service?	1	0	0	0	0	1	1	0	1	0	0.4
B. Market Access – movement of natural persons (mode 4) – intra-corporate transferees											
7 Are there minimum requirements to have nationals/residents as executives, managers etc in foreign invested health service firms?	1	1	1	1	1	1	1	0	1	1	0.9
8 Are there prohibitions or maximum restrictions on employing locally trained professionals in foreign invested professional service firms?	0	0	0	0	1	1	0	0	0	0	0.2
9 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	0	1	1	1	1	1	1	0	0	0	0.6
10 Are there categories of managerial personnel who must be locally licensed as a medical professional?	0	1	1	1	1	1	1	0	1	1	0.8
11 Are there categories of managerial personnel who must be locally domiciled?	0	1	1	0	1	1	0	0	1	1	0.6
C. Cross-border trade (Mode 1)											
12 Are foreign health services providers located abroad able to provide servicescross-border to patients in your country (eg tele-medicine)?	0.67	0	0	0	0.33	0.67	0	0	0	0	0.2

Table 5. Restrictions on trade in hospital services (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
D. Consumption abroad (Mode 2)											
13 Can domestic residents purchase health services while abroad?	0	0	0	0	0	0.5	0	0	0	0	0.1
E. Ownership											
14 Is private ownership allowed - in existing operators?	0	0	0	0	0	0	0	0	0	0	0
New entrants	0	0	0	0	0	0	0	0	0	0	0
15 Is foreign ownership allowed - in existing operators?	0.75	0	0.35	0	0.3	1	0	0	0.51	0	0.3
New entrants	0.75	0	0.33	0	0.3	1	0	0	0.51	0	0.3
F Regulation											
21 Are foreign providers subject to different licensing requirements from domestic firms?	0	0	1	1	0	1	0	0	0	0	0.3
22 Are foreign providers required to train local staff?	1	1	1	1	1	1	0	0	0	0	0.6
23 Do quality assurance obligations on foreign providers differ from those for domestic institutions?	0	0	0	0	0	0	0	0	0	0	0
24 Are foreign providers of these services restricted in their ability to charge fees?	0	0	0	0	1	1	0	0	0	0	0.2
26 Are foreign providers restricted in their access to producer subsidies?	0	0	1	0	1	1	1	0	0	0	0.4
Are their local clients (nationals) restricted in their access to consumer subsidies?	0	0	1	0	1	1	1	1	0	0	0.5
29 Which of the following are consulted in advance of regulatory changes (eg accreditation requirements) affecting service providers?											
Service providers	1	1	1	1	1	1	1	1	1	1	1
Users	0	1	1	1	0	0	1	1	1	0	0.6
Other	0	0	0	0	0	1	1	0	0	1	0.3
30 How are laws and regulatory decisions affecting these service providers (see name of sheet) made public?											
Regulator's website	0	0	1	0	1	0	1	1	1	1	0.6
Official gazette	1	1	1	0	1	1	1	1	1	1	0.9
Other	0	0	1	1	0	0	1	1	0	1	0.5

Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Tables 6 and 7.

Table 6. Restrictions on trade in health services by service and by mode of delivery (per cent)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
Consumption abroad (Mode 2)	0	0	0	0	0	50	0	0	0	0	5
HOSPITAL											
Commercial presence (mode 3)	43	0	29	0	14	57	29	0	14	0	19
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	80	60	100	100	60	0	60	60	62
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	38	0	17	0	15	50	0	0	26	0	15
Regulation	17	17	67	33	67	83	33	17	0	0	33
TOTAL	**31**	**22**	**46**	**22**	**48**	**72**	**30**	**4**	**22**	**13**	**31**
Transparency	33	50	83	50	50	50	100	83	67	83	65
MEDICAL LABORATORY											
Commercial presence (mode 3)	43	0	14	0	14	57	29	0	14	0	17
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	80	60	100	100	60	20	20	60	60
Cross-border trade (Mode 1)	0	0	0	0	33	67	0	0	0	0	10
Ownership	38	0	17	0	15	50	0	0	26	0	15
Regulation	17	17	67	33	67	83	0	0	0	0	28
TOTAL	**28**	**22**	**42**	**22**	**48**	**72**	**22**	**4**	**13**	**13**	**29**
Transparency	33	50	83	50	50	50	100	83	67	67	63
AMBULANCE											
Commercial presence (mode 3)	43	0	71	0	14	57	29	0	14	0	23
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	100	60	100	100	60	20	20	60	62
Cross-border trade (Mode 1)	0	0	0	0	0	0	0	0	0	0	0
Ownership	38	0	50	0	15	50	0	0	26	0	18
Regulation	17	17	83	33	67	83	0	0	0	0	30
TOTAL	**28**	**22**	**74**	**22**	**46**	**70**	**22**	**4**	**13**	**13**	**31**
Transparency	33	50	67	50	50	50	0	67	67	67	50

Source: Author.

Table 7. Restrictions on trade in hospital services by ownership category and mode of delivery (per cent)

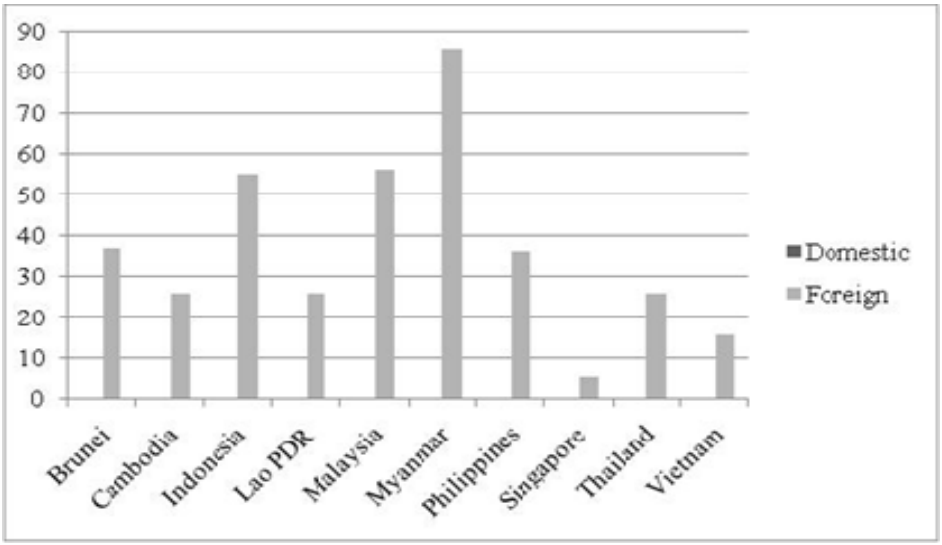
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
DOMESTIC HOSPITAL											
Commercial presence (mode 3)	0	0	0	0	0	0	0	0	0	0	0
Ownership	0	0	0	0	0	0	0	0	0	0	0
Regulation	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
TOTAL											
FOREIGN HOSPITAL											
Commercial presence (mode 3)	55	0	36	0	18	73	36	0	18	0	24
Movement of natural persons (mode 4) – intra-corporate transferees	20	80	80	60	100	100	60	0	60	60	62
Cross-border trade (Mode 1)	67	0	0	0	33	67	0	0	0	0	17
Ownership	75	0	34	0	30	100	0	0	51	0	29
Regulation	17	17	67	33	67	83	33	17	0	0	33
TOTAL	**37**	**26**	**55**	**26**	**56**	**85**	**36**	**5**	**26**	**15**	**37**

Source: Author.

The pattern of restrictions across modes of delivery is also similar to that for medical services. Restrictions that are most prevalent are those affecting the movement of intra-corporate transferees and regulatory restrictions. Table 7 indicates that, compared with medical services, the regulatory restrictions in health are skewed to penalizing foreign suppliers, rather than affecting domestic and foreign suppliers equally.

This latter impression is confirmed in Figure 4 for hospital services. By 2010, there are no non-discriminatory restrictions affecting domestic suppliers. Figure 5 shows that the last of these was removed between 2008 and 2010, when the Philippines removed its last regulatory barrier to entry.

Figure 4. Restrictions on trade in hospital services by ownership category (per cent)



By contrast, the prevalence of restrictions against foreign health services providers is still quite high (Figure 4), and the recent reforms since 2008 have made only slight inroads into those trade barriers (Figure 6).

Figure 5. Changes in restrictions on domestic hospital services over time (per cent)

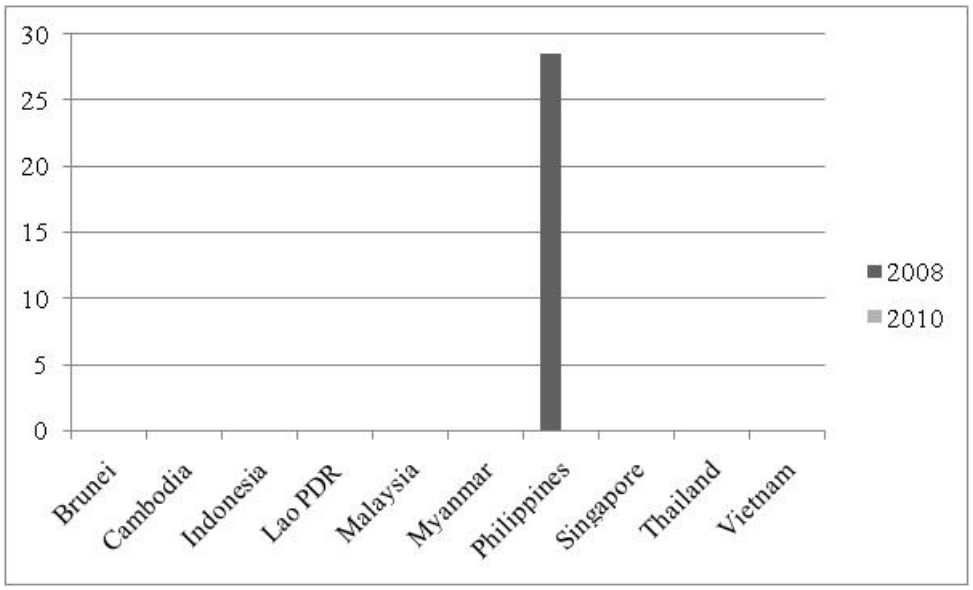
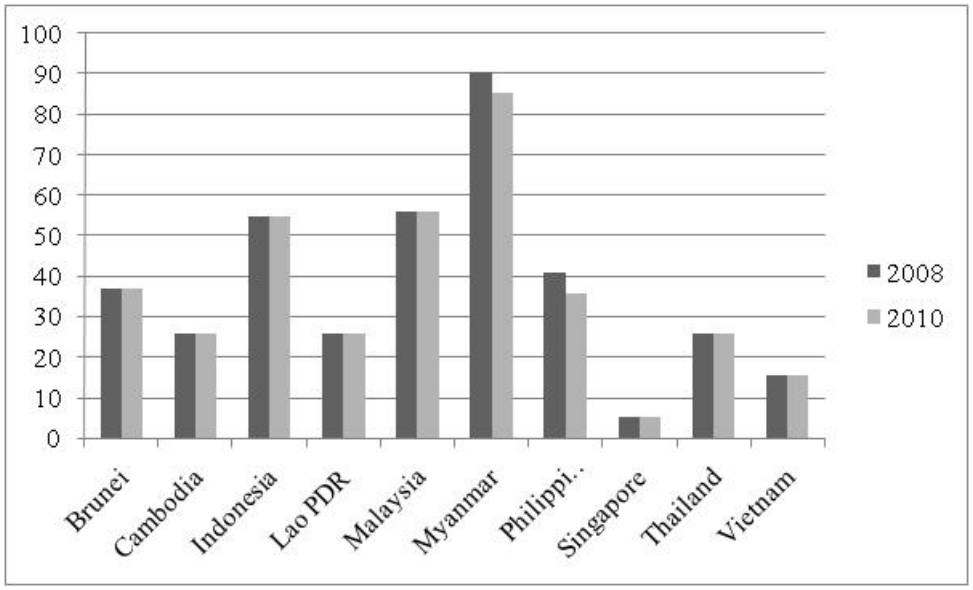


Figure 6. Changes in restrictions on foreign hospital services over time (per cent)



There is considerable scope for ASEAN countries to make additional commitments to remove derogations from national treatment and thereby to remove discrimination against foreign suppliers. And this process is likely to be less difficult and controversial than dealing with the remaining trade barriers in medical professional services.

5. Banking Services

5.1. A scorecard for services liberalization — banking services

Banking services involve the acceptance of deposits and other payable funds from the public, and lending of all types, including consumer credit and mortgages. In open economies, banking also involves the provision of foreign exchange services. While banking involves risks, some research has suggested that there are economies of scale in risk management, so that it can be an advantage if banks can combine their banking activities with other activities involving risk management, including insurance and securities management (see Barth, Caprio and Levine 2004 for a survey of the arguments and evidence). Nevertheless, there is also evidence that allowing banks to diversify into such non-traditional activities can create conflicts of interest that may have contributed to the global financial crisis (e.g. Blundell-Wignall et al. 2009). Recent research has tended to confirm that restrictions on banks' ability to undertake non-traditional banking activities should be regarded as prudential restrictions rather than as trade barriers (Dinh 2011).

Banking services can be delivered through all four modes of supply — cross-border (mode 1), via the movement of consumers (mode 2), via commercial presence and via the movement of individual bank personnel (particularly intra-corporate transferees, mode 4).

The questionnaire covering barriers to trade in banking services (Dee 2008) asks about actual policies affecting all these modes of delivery. However, one key aspect of the macroeconomic environment will affect trade in banking services via all four modes of supply. This is whether there are any controls on short- or long-term capital flows between countries. The questionnaire asks first about the existence of such capital controls.

Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new banks, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of foreign banks (e.g. whether branches and/or subsidiaries are allowed), and whether banks are restricted in the scope of services they can provide (including non-traditional services) or the number or outlets (street branches, offices and ATMs) they can have.

As alluded to earlier, the issue of the legal form that foreign banks are allowed to take is one area where the distinction between prudential and non-prudential regulation becomes blurred. When foreign banks establish subsidiaries, they must automatically hold equity capital in those subsidiaries locally, and the host country's prudential rules governing minimum capital ratios can be applied to that local equity capital. By contrast, when foreign banks establish branches, their equity capital can stay in the home country, and the host country's prudential rules cannot be as easily applied. Some countries are prepared to allow this, essentially relying on the prudential regulation of the foreign bank's home country to determine capital ratios. Other countries allow foreign branches, but constrain them to lend against local capital. This is more restrictive than allowing them to lend against parent capital, although it can be justified for prudential reasons. It has nevertheless been counted as a restriction if branches are not allowed to lend against parent capital.

The banking questionnaire also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in banks.

Under modes 1 and 2, the questionnaire asks about limitations on the movement of intra-corporate transferees (i.e. the directors, executives, managers and employees of banks), which might take the form of nationality or residency requirements on

certain classes of personnel, or a requirement for labour market testing. It also asks about the permitted length of short- or long-term stay for such transferees, an aspect of the regulatory regime that is typically set horizontally by immigration departments rather than by banking regulators.

Finally, the questionnaire asks about potentially anti-competitive aspects of the domestic regulatory regime, including whether foreign-invested banks are subject to different licensing requirements from domestic banks, and whether interest rates are set or approved by government.

As with medical and health services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of banking services, partial scores are assigned as follows. When scoring restrictions on capital flows, restrictions on inflows and outflows over either the short or long term are each given a score of 0.25. These scores are additive. For private and foreign equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limited is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75.

Other restrictions on commercial presence are given partial scoring as follows. When scoring economic needs tests, the requirement to show an economic benefit is scored as 0.5, approval unless contrary to the national interest is scored as 0.3, and notification requirements are scored as 0.2. More than one of these may apply at once. When scoring permissible legal forms, restrictions on subsidiaries are scored as 0.3, restrictions on branches able to lend against local capital are scored as 0.2, restrictions on branches able to lend against parent capital are scored as 0.4, and restrictions in representative offices are scored as 0.1. These scores are additive. When scoring

restrictions on banks' ability to raise finds or lend, restrictions on the amount or form of activity, the groups to which it can be directed, or the restriction that it be conducted through a subsidiary, are each scored as 0.25. These scores are additive. Restrictions on providing settlement services or foreign exchange services via commercial presence (mode 3) or cross-border (mode 1) are scored at 0.5 when banks are able to undertake some but not all of these services. Expansion of branches or ATMs is scored as 0.5 if these are limited in number or location, or if they are subject to non-prudential regulatory approval.

When scoring restrictions on consumption abroad, limitations in the form of quotas or authorization requirements are scored at 0.5. When scoring restrictions on interest rates, if lending or borrowing rates or the gap between them are set by government, each receives a score of 0.33. If instead they need to be approved by government, they each receive a score of 0.17.

Finally, the scoring of the permitted length of short or long term stay for foreign bank personnel is inversely proportional to the length of stay. Permitted lengths longer than 90 days (short term) or 4 years (long term) are scored as being unrestricted.

As noted earlier, perceptions have changed recently about restrictions on banks' ability to undertake non-traditional activities — securities, real estate or insurance business or the ownership of non-financial firms. These are increasingly recognized as having a prudential purpose (primarily to avoid conflicts of interest), instead of being barriers to trade. Thus while these restrictions were included in the original scoring for 2008 (Dee 2008), they have been omitted from the scoring of either 2008 or 2010 in this paper.

5.2. Scorecard results for banking services

The detailed results for foreign services providers are shown in Table 8. Comparable tables for domestic service providers are essentially a subset of those in table 8, and are available by request from the author.

Table 8. Restrictions on banking services - foreign banks (index 0-1)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
A. Market Access											
a. Macroeconomic policies											
1 Are there restrictions on capital flows?	0	0	0	0	0	0.5	0.25	0	0.5	0	0.1
b. Commercial presence (mode 3)											
2 Are there policy restrictions on new entry of foreign banks?	0	0	0	0	1	1	1	1	1	1	0.6
4 Is the entry of foreign banks restricted by screening or needs tests (other than licensing requirements, which are covered later)?	0.8	0	0	0.7	0.3	0	0.5	0	0.5	1	0.4
5 Which legal forms of establishment are allowed for foreign banks?	0.5	0	0	0.6	0.4	0.9	0	0.2	0.4	0.4	0.3
6 Are there restrictions on the ability of foreign banks to raise funds?	0	0	0	0	0.25	1	0	0	0	0.25	0.2
7 Are there restrictions on the ability of foreign banks to lend?	0	0	0.25	0	0.75	1	0.5	0	0	0.25	0.3
9 Which of the following services are foreign banks permitted to provide domestically?											
Settlement services (eg collection, payment)	0	0	0	0.5	0.5	1	0	0	0.5	0	0.25
Foreign exchange services	0	0	0.5	0	0.5	1	0	0	0.5	0	0.3
10 Are there restrictions to expanding operations — street branches, offices and ATMs - for foreign banks?	0.5	0.5	0.5	0	0.5	1	0.5	1	0.5	0.5	0.55
c. Cross-border trade (Mode 1)											
11 Are foreign banks located abroad able to lend or raise funds in your country?											
Lending	0	0	0	1	1	0.33	0	0	0	1	0.3
Raising funds	0	0	0	1	1	1	0	0.33	0	0	0.33
12 Are foreign banks located abroad able to provide the following services domestically?											
Cross-border settlement services	0	0	0.5	0.5	0	0.5	0	0	1	0.5	0.3
Cross-border foreign exchange business	1	0	0	0.5	0	0.5	1	0	1	0.5	0.5
d. Consumption abroad (Mode 2)											
13 Can domestic residents purchase financial services while abroad?	0	0	0	0	0	0	1	0	0	0.5	0.2

Table 8. Restrictions on banking services - foreign banks (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
e. Movement of natural persons (Mode 4)											
14 Are there residency or nationality requirements or quotas for executives, managers etc employed by locally established foreign banks?	1	1	1	1	0	1	1	1	1	1	0.9
15 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	0	0	1	0	0	1	1	0	0	0	0.3
16 Identify the permitted length of short-term visit (in days) for foreign bank personnel.	0.75	0.75	0	0.25	0.25	0.75	0	0.5	0.25	0.25	0.375
Identify the permitted length of long-term stay (in years) of foreign intra-corporate transferees.	0.6	0.8	0.4	0.8	0	0.8	0	0.6	0.8	0.4	0.52
B. Ownership											
18 Is foreign ownership in the provision of banking services allowed existing banks?	0	0	0.01	0	0.7	1	0.6	0.75	0.51	0.7	0.4
New entrants	0	0	0.01	0	0.7	1	0.6	0.75	0.51	0.7	0.4
C Regulation											
24 Are licenses allocated by discretionary decisions of the issuing authority?	1	0	0	1	1	1	0	0	1	1	0.6
25 Are foreign firms subject to different licensing requirements from domestic firms?	1	0	1	0	0	1	0	0	0	0	0.3
26 Are interest rates set or approved by government for foreign banks?	0	0	0	0	0.5	1	0	0	0	0.33	0.2

Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Table 9.

Table 9. Restrictions on trade in banking services by ownership category and mode of delivery (per cent)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
a. Macroeconomic policies	0	0	0	0	0	50	25	0	50	0	13
d. Consumption abroad (Mode 2)	0	0	0	0	0	0	100	0	0	50	15
DOMESTIC FIRMS											
b. Commercial presence (mode 3)	19	7	18	17	0	43	14	14	43	35	21
B. Ownership	0	0	0	0	0	0	0	0	0	0	0
C Regulation	50	0	0	50	75	100	0	0	50	67	39
TOTAL	**21**	**5**	**11**	**20**	**14**	**45**	**9**	**9**	**36**	**34**	**20**
FOREIGN FIRMS											
b. Commercial presence (mode 3)	23	6	16	23	53	86	31	28	43	43	35
c. Cross-border trade (Mode 1)	25	0	13	75	50	58	25	8	50	50	35
e. Movement of natural persons (Mode 4)	59	64	60	51	6	89	50	53	51	41	52
B. Ownership	0	0	1	0	70	100	60	75	51	70	43
C Regulation	67	0	33	33	50	100	0	0	33	44	36
TOTAL	**34**	**15**	**25**	**37**	**45**	**85**	**32**	**29**	**45**	**47**	**39**

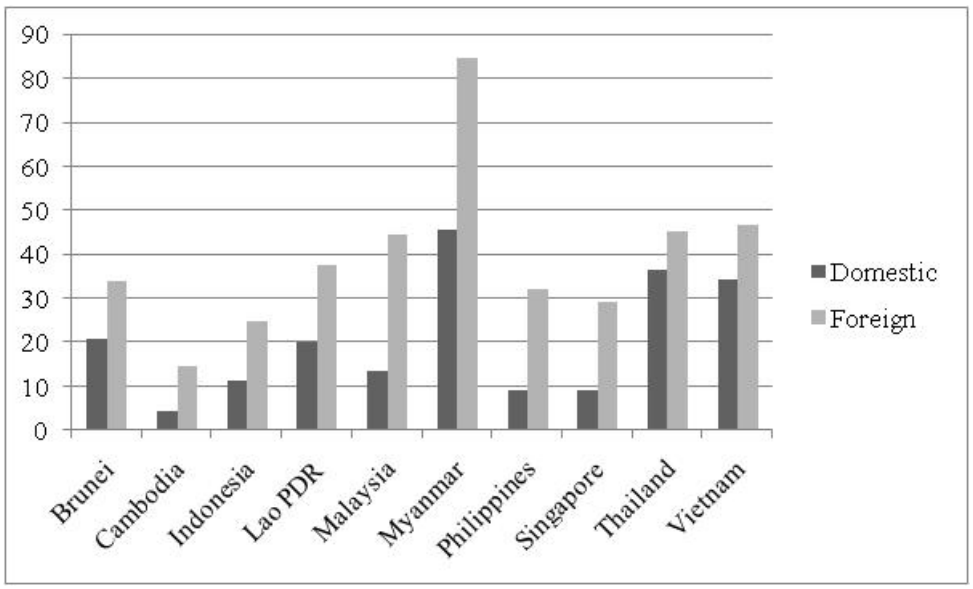
Source: Author.

The most prevalent restrictions are foreign ownership restrictions and restrictions on the movement of intra-corporate transferees. Six out of the ten ASEAN countries have foreign equity limits that do not meet the ASEAN Blueprint's benchmarks (where a score higher than 0.3 against question 18 in table 8 indicates that the country does not allow the foreign ownership share to reach 70 per cent or higher).

Also relatively prevalent are regulatory restrictions (other than ownership restrictions) on commercial presence, and other forms of regulation. These include restrictions on expanding operations, on lending or raising funds, and on the legal form of commercial presence. They also include government control or approval of interest rates. These restrictions may affect domestic as well as foreign banks. Restrictions on cross-border delivery (mode 1) trade are still as prevalent as restrictions on commercial presence (mode 3), despite the priority placed by the Blueprint on liberalizing mode 1. The restrictions that are least prevalent are those on the delivery of banking services via mode 2 (consumption abroad).

Figure 7 confirms the impression that there are still significant barriers to trade in banking services in most ASEAN countries. The prevalence of restrictions is most marked for foreign banking services providers, but is also non-trivial for domestic providers.

Figure 7. Restrictions on trade in banking services by ownership category (per cent)



Financial services do not suffer from the same 'targets/instruments' problem as medical and health services. The instruments used to achieve the legitimate target of systemic stability — capital reserve ratios, liquidity ratios, deposit insurance schemes, disclosure requirements — are distinct from the barriers to entry and operations that protect incumbent service providers from competition. Thus trade liberalization need not jeopardize systemic stability, so long as such prudential measures are in place. If anything, the recent global financial crisis has encouraged ASEAN countries to strengthen their prudential regulations. But on trade reform, the situation has been at least partly one of stasis, if not backsliding. Ironically, this can be attributed in part to the earlier Asian financial crisis. In the wake of that crisis, many ASEAN countries also undertook significant reform of their prudential regulation, and some loosened restrictions on foreign ownership on a most-favoured nation basis, albeit sometimes only temporarily. Even in trade circles, this created an impression that 'everything that needs to be done, has been done'.

Yet the results in Figure 7 suggests otherwise. A majority of ASEAN countries have yet to reach the ASEAN Blueprint targets for foreign equity limits. And barriers to trade extend far beyond these limits, as the Blueprint itself recognizes. With the recent strengthening of prudential regulations, there is little justification for the remaining restrictions on forms of lending and raising funds. As the operation of monetary policy is strengthened, there is little justification for the remaining controls over interest rates. In some ASEAN countries, however, it is not just the design, but also the implementation of prudential regulation that needs strengthening.

A final question is whether the recent reforms have made a significant difference. This is indicated in Figures 8 and 9, for domestic and foreign services providers respectively. These figures compare the overall prevalence of restrictions in 2008 and 2010. As in other sectors, the reforms have made only a slight difference to the overall prevalence of restrictions. In some countries, such as Vietnam, reforms in some dimensions (as easing of interest rate controls) have been offset by a tightening in others (more stringent non-prudential licensing requirements). Thus there is evidence that ASEAN counties are still using unnecessary regulatory restrictions in place of better-targeted prudential requirements.

Figure 8. Changes in restrictions on domestic banking services over time (per cent)

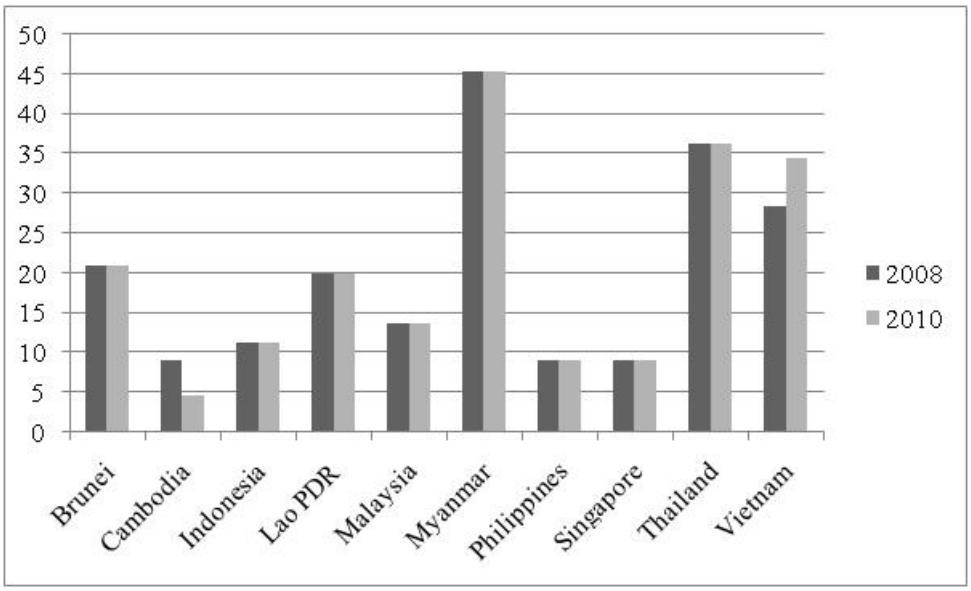
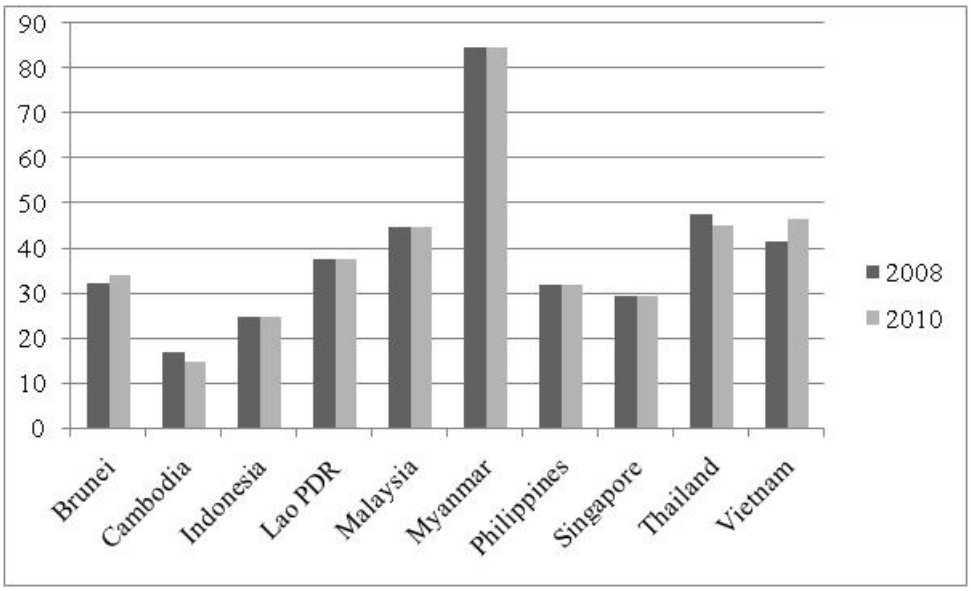


Figure 9. Changes in restrictions on foreign banking services over time (per cent)



6. Insurance Services

6.1. A scorecard for services liberalization — insurance services

Insurance services involve the provision of different types of insurance, including life insurance, medical insurance, property insurance (which can cover marine, aviation and transport (MAT), automobile, freight, and building insurance), reinsurance, and broking services. Perhaps more than any other service, insurance is traded actively through all four modes of supply.

The structure of the insurance questionnaire (Dee 2008) is similar to that for banking. In addition to the general restrictions on commercial presence, there are a few that are peculiar to insurance. One is restrictions on reinsurance — whether it is prohibited, whether reinsurance is restricted to foreign insurance companies, or whether a certain percentage of premiums need to be reinsured with domestically appointed insurers (the so-called ceding percentage). Another is limitations on whether insurance companies can hold assets overseas, or limitations on the form in which they must hold their assets.

Included in the restrictions on cross-border trade is whether there are restrictions on offshore insurance companies being allowed to solicit business through advertising in the home country. Included in the regulatory restrictions is whether the insurance premiums for the various insurance products are set or approved by government.

Note that although the insurance questionnaire includes questions about whether medical insurance can be traded internationally, it does not include questions about whether domestic medical insurance policies are mobile, in the sense of covering medical procedures that are obtained outside of the home country. The mobility of medical insurance coverage is an important prerequisite for promoting trade in medical and health services, but mobility is determined as much by the decision of individual medical insurance companies as it is by government policy.

As with the previous services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of banking services, partial scores are assigned as follows. When scoring restrictions on capital flows, restrictions on inflows and outflows over wither the short or long term are each given a score of 0.25. These scores are additive. For private and foreign equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limited is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75.

Other restrictions on commercial presence are given partial scoring as follows. When scoring economic needs tests, the requirement to show an economic benefit is scored as 0.5, approval unless contrary to the national interest is scored as 0.3, and notification requirements are scored as 0.2. More than one of these may apply at once. When scoring permissible legal forms, restrictions on subsidiaries are scored as 0.3, restrictions on branches are scored as 0.5 and restrictions in representative offices are scored as 0.1. These scores are additive. When scoring restrictions on insurers' ability to reinsure, a restriction that it must be with foreign reinsurers is scored as 0.3, a minimum ceding percentage is scored as 0.6 and other restrictions are scored as 0.1. These scores are additive. When scoring restrictions on insurers' placement of assets, partial restrictions on placement overseas are scored as 0.5, and other restrictions on placement (such as on the type of financial instrument) are scored as 0.1. Expansion of branches is scored as 0.5 if these are limited in number or location, or if they are subject to non-prudential regulatory approval.

When scoring restrictions on consumption abroad, partial limitations are scored at 0.5. When scoring restrictions on the prices of insurance products, if these are set by government they receive a score of 1.0, whereas if they need to be approved by government they receive a score of 0.5.

Finally, the scoring of the permitted length of short or long term stay for foreign insurance personnel is inversely proportional to the length of stay. Permitted lengths

longer than 90 days (short term) or 4 years (long term) are scored as being unrestricted.

6.2. Scorecard results for insurance services

The detailed results for providers of life insurance are shown in Table 10. Comparable tables for providers of medical and property insurance, reinsurance and broking activity are available by request from the author.

Table 10. Restrictions on trade in life insurance services (index 0-1)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
A. Market Access											
a. Macroeconomic policies											
1 Are there restrictions on capital flows?	0	0	0	0	0	0.5	0.25	0	0.5	0	0.1
b. Commercial presence (mode 3)											
2 Are there policy restrictions on new entry of insurance providers - any provider?	0	0	0	1	0	1	0	0	1	0	0.3
Foreign providers?	0	0	0	1	0	1	1	0	1	0	0.4
4 Is entry restricted by screening or needs tests (other than licensing requirements, which are covered later)?											
Domestic providers	0.8	0	0	1	0	0	0	0	0.5	0	0.2
Foreign providers	0.8	0	0	1	0.3	0	0	0	0.5	0	0.3
5 Which legal forms of establishment are allowed for foreign insurance providers?	0.6	0.4	0.6	0	0	1	0	0	0.1	0.5	0.3
6 Are foreign insurance firms prohibited from establishing in a joint venture with local firms?	0	0	0	0	0	1	0	0	0	0	0.1
Are they required to establish in a JV?	0	0	1	0	1	1	0	0	1	0	0.4
7 Are insurance companies located in your country permitted to provide life insurance domestically?											
Domestic firms?	0	0	0	0	0	0	0	0	0	0	0
Foreign firms?	0	0	0	0	0	1	0	0	0	0	0.1
8 Is life insurance subject to monopoly provision?	0	0	0	0	0	1	0	0	0	0	0.1
9 What restrictions (if any) apply to reinsurance by resident insurance companies?											
Domestic insurance companies	0	0	0	0	0	0.3	0	0	0	0	0.0
Foreign insurance companies	0	0	0	0	0	1	0.7	0	0	0	0.2
10 What restrictions (if any) apply to the placement of assets by resident insurance companies?											
Domestic insurance companies	0	0	0.5	0	0	1	0.6	0	0.6	1	0.4
Foreign insurance companies	0	0	0.5	0	0	1	0.6	0	0.6	1	0.4

Table 10. Restrictions on trade in life insurance services (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
11 What restrictions (if any) apply to expanding operations — street branches, offices?											
Domestic insurance companies	1	0	0.5	0	0	0	0	0	0.5	0.5	0.3
Foreign insurance companies	1	0	0.5	0	0.5	1	0	0	1	0.5	0.45
c. Cross-border insurance trade (Mode 1)											
12 Can domestic residents purchase life insurance cross-border from a foreign insurance company?	0	1	0	0	1	1	1	0	0	0	0.4
13 Are offshore life insurance firms allowed to solicit business through advertising in the domestic country?	1	1	1	1	1	1	0	1	1	1	0.9
d. Consumption abroad (Mode 2)											
14 Can domestic residents purchase life insurance from a foreign insurance company while abroad?	0	0	0	0.5	0	1	0.5	0	0	0	0.2
e. Movement of natural persons (Mode 4)											
15 Are there residency or nationality requirements or quotas for executives, managers etc employed by locally established foreign insurance companies?	1	1	1	1	0	1	1	0	1	1	0.8
16 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	0	0	0	0	0	1	1	0	0	0	0.2
17 Identify the permitted length of short-term visit (in days) for foreign insurance personnel.	0.75	0.75	0.5	0.75	0.25	1	0	0.5	0.25	0.25	0.5
Identify the permitted length of long-term stay (in years) of foreign intra-corporate transferees.	0.6	0.8	0	0.8	0	1	0	0.6	0.8	0.4	0.5
B. Ownership											
18 Is private ownership in the provision of insurance services allowed - existing providers?	0	0	0	0	0	1	0	0	0	0	0.1
New entrants	0	0	0	0	0	1	0	0	0	0	0.1
19 Is foreign ownership in the provision of insurance services allowed - existing providers?	0	0	0.01	0	0.7	1	0	0	0.75	0	0.2
New entrants	0	0	0.2	0	0.7	1	0	0	0.75	0	0.3
C Regulation											
24 Are licenses allocated through discretionary decisions by the issuing authority?	1	0	0	0	1	1	0	0	1	0	0.4
25 Are foreign firms subject to different licensing requirements from domestic firms?	0	1	1	1	0	1	0	0	0	1	0.5
26 Are the prices of life insurance products set or approved by government?											
Domestic companies	0.5	0	0	0.5	0.5	1	0	0	0.5	0.5	0.35
Foreign companies	0.5	0	0	0.5	0.5	1	0	0	0.5	0.5	0.35

Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Tables 11 and 12.

Table 11. Restrictions on trade in insurance services by insurance product and by mode of delivery (per cent)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
Macroeconomic policies	0	0	0	0	0	50	25	0	50	0	13
LIFE INSURANCE											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	50	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	50	0	0	0	20
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	25	25	50	50	100	0	0	50	50	40
TOTAL	**31**	**19**	**24**	**32**	**24**	**85**	**21**	**7**	**43**	**26**	31
MEDICAL INSURANCE											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	50	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	100	50	0	0	30
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	25	50	50	75	0	0	50	75	45
TOTAL	**31**	**26**	**24**	**32**	**24**	**82**	**22**	**8**	**43**	**30**	32
PROPERTY INSURANCE											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	100	50	50	70
Consumption abroad (Mode 2)	0	0	0	50	0	100	50	50	0	0	25
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	75	50	50	100	0	0	50	50	50
TOTAL	**31**	**26**	**30**	**32**	**24**	**85**	**21**	**12**	**43**	**26**	33

Table 11. Restrictions on trade in insurance services by insurance product and by mode of delivery (per cent) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
REINSURANCE											
Commercial presence (mode 3)	26	3	23	25	11	71	18	0	43	22	24
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	0	50	100	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	0	0	0	0	15
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	25	50	50	75	0	0	50	50	43
TOTAL	**31**	**26**	**24**	**32**	**24**	**82**	**19**	**4**	**43**	**30**	31
BROKING											
Commercial presence (mode 3)	26	3	23	25	11	71	18	1	33	22	23
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	100	70
Consumption abroad (Mode 2)	0	0	0	50	0	100	0	0	0	0	15
Movement of natural persons (Mode 4)	59	64	63	64	6	100	50	28	51	41	53
Ownership	0	0	5	0	35	100	0	0	38	0	18
Regulation	50	75	25	0	50	75	0	0	50	50	38
TOTAL	**31**	**26**	**27**	**26**	**24**	**82**	**19**	**7**	**38**	**30**	31

Source: Author.

Table 12. Restrictions on trade in life insurance services by ownership category and mode of delivery (per cent)

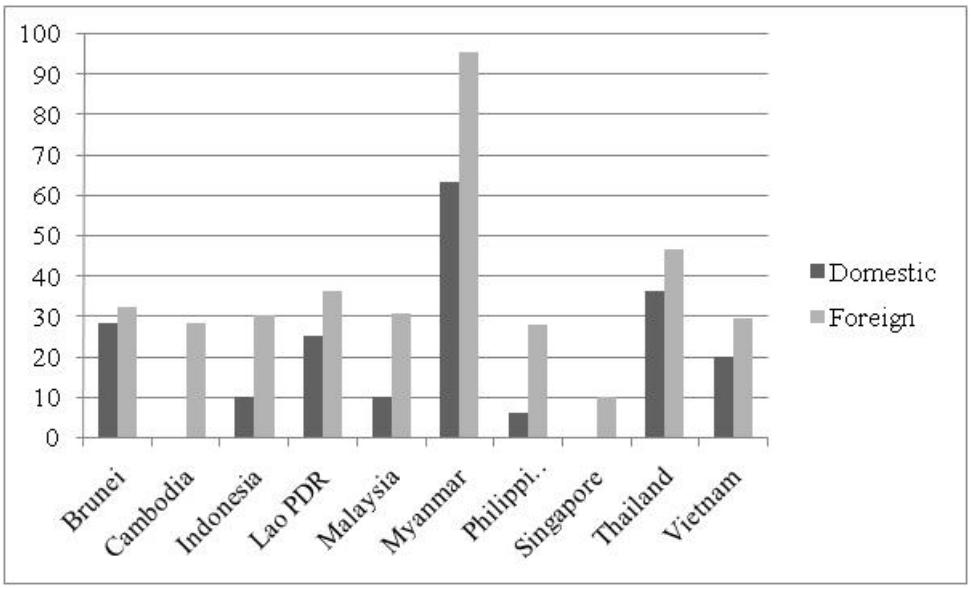
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
LIFE INSURANCE - DOMESTIC											
Commercial presence (mode 3)	28	0	15	31	0	43	9	0	40	23	19
Ownership	0	0	0	0	0	100	0	0	0	0	10
Regulation	67	0	0	33	67	100	0	0	67	33	37
TOTAL	**28**	**0**	**10**	**25**	**10**	**63**	**6**	**0**	**36**	**20**	20
LIFE INSURANCE - FOREIGN											
Commercial presence (mode 3)	25	4	27	21	19	89	24	0	44	21	28
Cross-border insurance trade (Mode 1)	50	100	50	50	100	100	50	50	50	50	65
Consumption abroad (Mode 2)	0	0	0	50	0	100	50	0	0	0	20
Movement of natural persons (Mode 4)	59	64	38	64	6	100	50	28	51	41	50
Ownership	0	0	11	0	70	100	0	0	75	0	26
Regulation	40	40	40	60	40	100	0	0	40	60	42
TOTAL	**32**	**28**	**30**	**36**	**31**	**95**	**28**	**10**	**46**	**29**	37

Source: Author.

The table indicates that foreign ownership restrictions in insurance are not as prevalent as they are in banking — seven of the ten ASEAN countries already meet the ASEAN Blueprint benchmark. However, cross-border trade in insurance services is still widely restricted. This is significant because unlike banking, insurance does not rely on extensive networks of local retail outlets, so it is feasible for cross-border trade to be a significant mode of delivery. Insurance is also widely affected by restrictions on the movement of intra-corporate transferees. Insurance is also affected by regulatory restrictions (other than ownership restrictions) on commercial presence, including discretionary licensing and government controls or approvals of insurance premiums.

As with banking, the prevalence of restrictions in insurance is most marked for foreign services providers (Figure 10). However, it is also non-trivial for domestic providers in at least some ASEAN countries.

Figure 10. Restrictions on trade in insurance services by ownership category (per cent)



Note that both insurance and banking services face significant barriers to cross-border (mode 1) trade, despite the fact that the Blueprint is unequivocal about the liberalization of this mode of delivery. Consumers who undertake such cross-border transactions may need to be reminded of the limits of consumer protection in such cases. But there is little reason why transactions should not be allowed currently on a 'caveat emptor' basis, while governments also work to strengthen both the

government and private sector mechanisms that have developed to handle disputes over cross-border e-commerce transactions. And similar comments apply to mode 2 trade. The most significant developments in the protection of cross-border e-commerce transactions have been outside of the ASEAN region, spearheaded by countries such as Australia. Thus ASEAN liberalization of mode 1 and mode 2 trade in financial services, hand in hand with a strengthening of cross-border consumer protection, should proceed on a most-favoured nation basis.

A final question is whether the recent reforms have made a significant difference. Figures 11 and 12 tell the same story as Table 1 — there has been very little reform of regulatory restrictions on trade in insurance services during 2008-10. In Lao PDR, legislative reforms have been essentially negated by the recent moratorium on granting new licences. Insurance is a sector that is typically under pressure during WTO accession negotiations, so some ASEAN countries will have already undergone market opening in this context. Other ASEAN countries will need to accelerate their reform efforts in this sector if the ASEAN Blueprint targets are to be met.

Figure 11. Changes in restrictions on domestic insurance services over time (per cent)

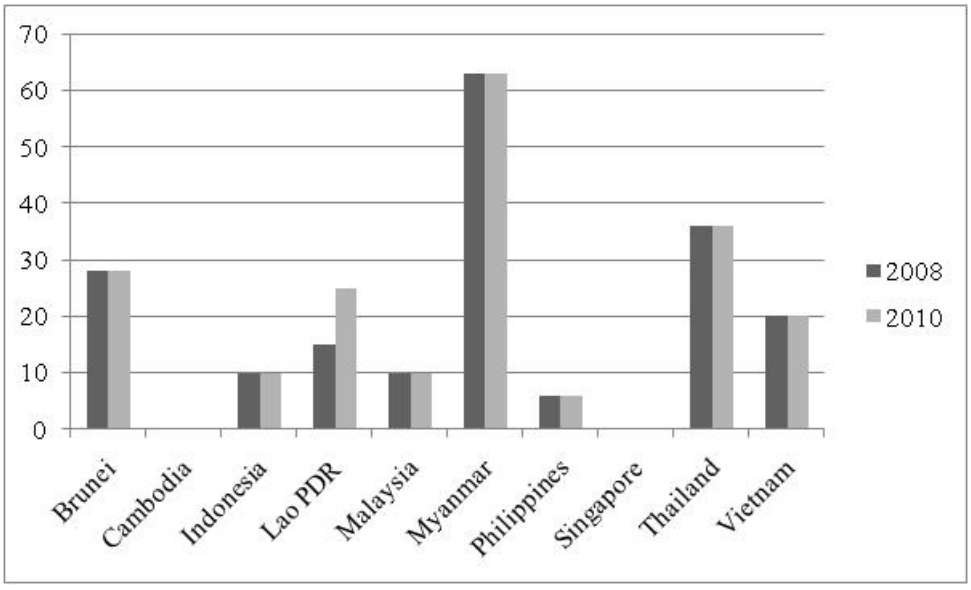
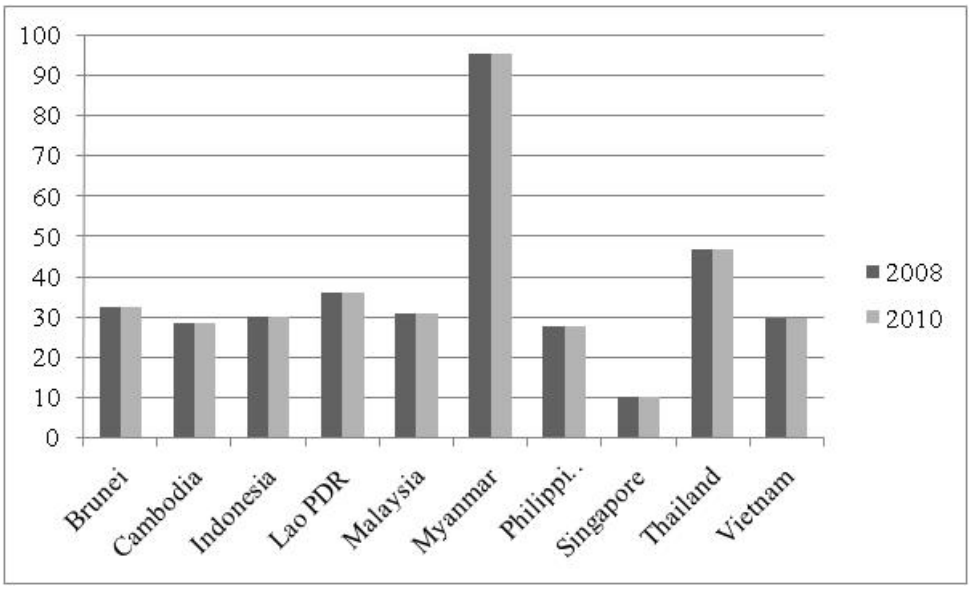


Figure 12. Changes in restrictions on foreign insurance services over time (per cent)



7. Accounting Services

7.1. A scorecard for services liberalization — accounting services

Like most professional services, accounting services can be provided by individual accountants, or in a broader institutional setting. They can be traded via mode 3 (commercial presence, in the form of accounting firms), and mode 4 (the movement of either individual accountants or the employees of foreign-invested accounting firms). Accounting back office functions are increasingly being provided via mode 1, although the full service generally requires face-to-face contact through mode 3 or mode 4.

The questionnaire covering barriers to trade in accounting services is reproduced in Appendix 1 at the end of this paper. It is similar to that for medical professionals. Under commercial presence, the questionnaire asks whether there are restrictions on the entry of new professional services firms, either domestically-owned, foreign-invested or both, and whether there are restrictions on the legal form of such firms (e.g. whether they are prohibited from incorporating, whether foreign entrants are required to establish in a joint venture). It also asks about ownership restrictions — whether there are maximum limits on the equity participation of either private domestic or foreign shareholders in accounting firms, and whether there are

restrictions on accounting firms being owned by people who are not licensed accountants.

Under mode 4, the questionnaire asks whether there are restrictions on the entry into professional practice of new individual professionals, either domestic, foreign or both, and asks about any nationality, citizenship or residency requirements for individual professionals to practice. The questionnaire also asks about restrictions on the ability of individual professionals to leave their home country, as this can also affect mode 4 trade. Finally, the questionnaire asks about limitations on the movement of intra-corporate transferees (i.e. the employees of professional service firms), which might take the form of nationality or residency requirements on certain classes of directors, executives, managers or employees, or a requirement for labour market testing to establish that there is no qualified domestic person available for a position before a foreign person can be hired. Finally, the questionnaire asks about the requirements that foreign professionals need to undergo to obtain a licence to practice, including whether they need to retrain or sit a local examination, and whether their foreign qualifications are automatically accepted or are subject to a case-by-case assessment.

The questionnaire also asks about other potentially anti-competitive aspects of the regulatory regime, including whether there are activities reserved by law to the profession, whether there are restrictions on advertising or fee setting, whether there are limitations on foreign accountants participating in government contracts, whether the work of foreign accountants needs to be signed off by a locally trained or licensed accountant, and whether there are requirements for foreign invested firms to train local staff (which could raise their costs).

Finally, the questionnaire reveals information about the transparency of the regulatory regime, by canvassing which stakeholders are consulted in advance of regulatory changes and by asking how regulatory decisions are made public. For information purposes only, it also asks for details about the regulator and about the licensing criteria used.

As with the previous services, the qualitative information about trade restrictions and regulatory regimes has been coded in a zero-one fashion, where for each question, a score of 1 has been assigned if the restriction applies, and 0 if it does not.

Sometimes an intermediate score is assigned for intermediate stages of restrictiveness. In the case of the accounting profession, partial scores are assigned as follows. For private, foreign and non-professional equity restrictions, partial scores are allocated in inverse proportion to the equity limitation. For example, if equity participation is limited to 25 per cent, then a score of 0.75 is assigned, while if equity participation is allowed to reach 75 per cent, then a score of 0.25 is assigned. If there are limitations on equity participation, but no numerical limited is stated, this is taken as a sign that bureaucratic discretion is involved, and this is taken to be relatively restrictive — it is assumed to be equivalent to a 25 per cent equity limit, and so receives a score of 0.75. When scoring the requirements for foreign professionals to obtain a local licence, retraining is scored as the most restrictive (1.0), having to pass an examination is scored as the next most restrictive (0.75), while case-by-case assessment, having to pass an aptitude test or having to have local practice is scored at 0.5.

7.2. Scorecard results for accounting services

The detailed results for accountancy are shown in Table 13. Summary restrictiveness scores for broad categories of restrictions have also been obtained using the same methods as for medical professional services. The results are shown in Table 14.

Table 13. Restrictions on trade in accounting services (index 0-1)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
A. Market Access – commercial presence (mode 3) – Professional service firms											
1 Are there restrictions on new entry - by domestic firms	0	0	0	0	0	0	0	0	0	0	0
By foreign firms	1	0	0	0	0	1	1	0	0	0	0.3
3 Are accounting firms prohibited from incorporating?	1	0	1	0	1	0	1	0	0	0	0.4
4 Are foreign firms prohibited from est. in a joint venture?	0	0	0	0	0	1	1	0	0	0	0.2
Are they required to establish in a JV?	1	0	0	0	0	1	1	0	1	0	0.4
5 Are foreign firms prohibited from/limited in undertaking certain services?	0	1	0	0	0	1	1	0	0	0	0.3
B. Market Access – Inward movement of natural persons (mode 4) – Individual professionals											
6 Are there restrictions on new entry - by domestic individuals	0	0	0	0	0	0	0	0	0	0	0
By foreign individuals	0	0	0	0	0	1	1	0	1	0	0.3
8 Is there a nationality or citizenship requirement?	0	0.5	0	0	0	1	1	0	1	1	0.45
9 Is there a residency or local presence requirement?	1	1	1	0	1	1	0	0	1	1	0.7
10 Are foreign individuals prohibited from/limited in undertaking certain services?	0	1	0	0	0	1	1	0	1	0	0.4
C. Market Access – Outward movement of natural persons (mode 4) – Individual professionals											
11 Are there policy restrictions on outward movement?	0	0	0	0	0	0	0	0	0	0	0
12 Are there other restrictions on exit?	0	0	0	0	0	0	0	0	0	0	0

Table 13. Restrictions on trade in accounting services (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
D. Market Access – Inward movement of natural persons (mode 4) – Intra-corporate transferees											
13 Are there requirements to have nationals/residents?	1	1	1	1	1	1	1	1	1	1	1
14 Are there restrictions on employing locally trained professionals in foreign firms?	1	1	1	1	1	1	1	1	1	0	0.9
15 Are intra-corporate transferees subject to labour market tests?	0	1	0	1	1	1	1	0	0	1	0.6
16 Are managerial personnel required to be locally licensed as a professional?	1	1	1	0	1	0	1	0	1	1	0.7
17 Are managerial personnel required to be locally domiciled?	1	0	1	0	1	1	1	0	0	1	0.6
E. Ownership											
18 Is private (ie non-government) ownership allowed? - existing operators	0	0	0	0	0	0	0	0	0	0	0
New entrants	0.75	0	0	0	0	0	0	0	0	0	0.08
19 Is foreign ownership allowed? - existing operators	0.75	0	0	0	0	1	1	0	0.51	0	0.33
New entrants	0.75	0	0	0	0	1	1	0	0.51	0	0.33
20 Are non-professional investors allowed an equity stake? Existing operators	1	0.51	0.75	0.67	1	1	1	0	0	0	0.59
New entrants	1	0.51	0.75	0.67	1	1	1	0	0	0	0.59
F. Regulation – licensing											
24 What are the requirements for *foreign* individual accountants to be licensed to practice locally?	0.5	1	0.75	0.5	0.5	1	1	0.75	1	0.75	0.775
25 Are there any other requirements for the licensing and accreditation of *foreign* individual accountants?	0	0	0	1	0	1	0	0	0	0	0.2

Table 13. Restrictions on trade in accounting services (index 0-1) (Continued)

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
G. Regulation – restrictions on operation											
27 Are there activities reserved by law to this profession?	1	1	1	1	1	1	1	0	1	1	0.9
28 Are there restrictions on partnership or association with other professions?	1	0	1	0	1	1	1	1	0	0	0.6
29 Are there restrictions on advertising, marketing or solicitating?	0	0	1	0	1	1	1	1	1	0	0.6
30 Are there restrictions on fee setting?	0	0	0	0	0	0	0	0	0	0	0
31 Is there a requirement for foreign invested accounting firms to train local staff?	1	1	0	1	0	1	0	0	0	0	0.4
32 Are there restrictions on the participation of foreigners in government contracts?	0	0	0	0	1	0	0	0	0	0	0.1
33 Is there a requirement to have the work of a foreigner approved by a locally trained/licensed accountant?	0	0	0	1	1	1	0	0	0	0	0.3
34 Which of the following are consulted in advance of regulatory changes (eg licensing requirements)?											
Service providers	1	1	1	1	1	0	1	0	0	0	0.6
Professional bodies	0	1	1	1	1	1	1	1	0	1	0.8
Users	0	1	1	1	1	0	1	0	0	0	0.5
Other	0	0	0	0	0	0	1	1	0	0	0.2
35 How are laws and regulatory decisions affecting this profession made public?											
Government website	0	1	1	1	1	0	1	1	1	1	0.8
Professional body's website	0	1	0	0	1	0	1	1	1	1	0.6
Official gazette	1	1	0	0	1	1	1	1	1	1	0.8
Other	0	0	0	1	0	0	1	1	0	1	0.4

Table 14. Restrictions on trade in accounting services (per cent)

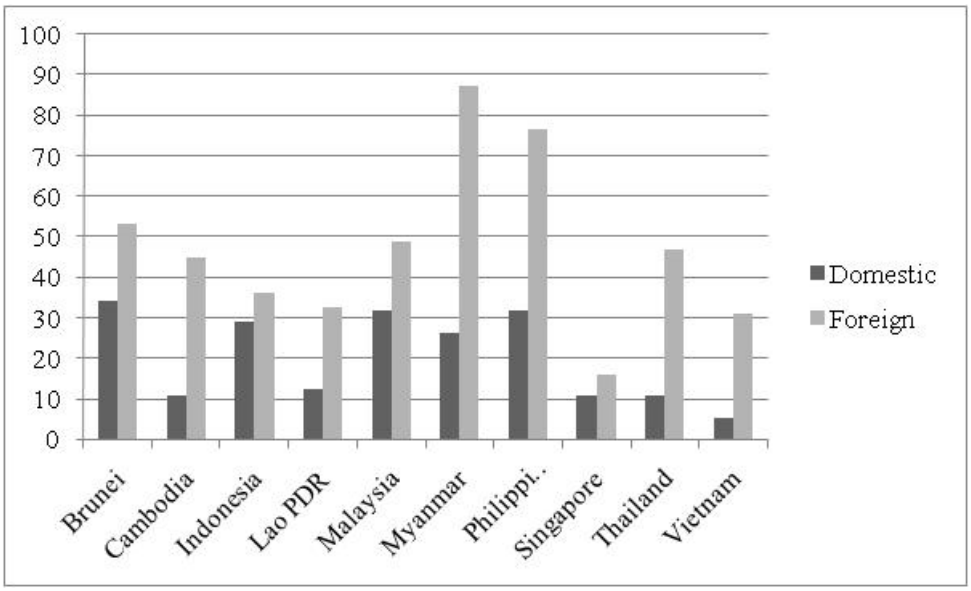
	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam	AVERAGE
OVERALL											
Commercial presence (mode 3) – Professional service firms	50	17	17	0	17	67	83	0	17	0	27
Inward movement of natural persons (mode 4) – Individual professionals	20	50	20	0	20	80	60	0	80	40	37
Outward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Inward movement of natural persons (mode 4) – Intra-corporate transferees	80	80	80	60	100	80	100	40	60	80	76
Ownership	71	17	25	22	33	67	67	0	17	0	32
Regulation – licensing	25	50	38	75	25	100	50	38	50	38	49
Regulation – restrictions on operation	43	29	43	43	71	71	43	29	29	14	41
TOTAL	**48**	**35**	**34**	**27**	**44**	**70**	**64**	**14**	**36**	**23**	**40**
Transparency	25	75	50	63	75	25	100	75	38	63	59
DOMESTIC											
Commercial presence (mode 3) – Professional service firms	33	0	33	0	33	0	33	0	0	0	13
Inward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Outward movement of natural persons (mode 4) – Individual professionals	0	0	0	0	0	0	0	0	0	0	0
Ownership	58	17	25	22	33	33	33	0	0	0	22
Regulation – restrictions on operation	50	25	75	25	75	75	75	50	50	25	53
TOTAL	**34**	**11**	**29**	**12**	**32**	**26**	**32**	**11**	**11**	**5**	**20**
FOREIGN											
Commercial presence (mode 3) – Professional service firms	56	22	11	0	11	89	100	0	22	0	31
Inward movement of natural persons (mode 4) – Individual professionals	25	63	25	0	25	100	75	0	100	50	46
Inward movement of natural persons (mode 4) – Intra-corporate transferees	80	80	80	60	100	80	100	40	60	80	76
Ownership	83	17	25	22	33	100	100	0	34	0	42
Regulation – licensing	25	50	38	75	25	100	50	38	50	38	49
Regulation – restrictions on operation	40	30	30	50	70	70	30	20	20	10	37
TOTAL	**53**	**45**	**36**	**33**	**49**	**87**	**77**	**16**	**47**	**31**	**47**

Source: Author.

Six ASEAN countries already meet the Blueprint's targets for foreign equity participation in accountancy firms — they have no restrictions on foreign equity at all. The Philippines has a constitutional requirement that certified practising accountants be Filipino citizens, in the absence of an enabling law allowing foreign practice. This requirement will be difficult to reform. The bureaucratic discretion exercised in Brunei and Thailand over foreign commercial entry can more readily be rolled back.

As with other professional services, restrictions on the movement of individual professionals are more prevalent than restrictions on commercial presence — this is the key method by which services trade is usually impeded, and it accounts for the marked overall discrimination against foreign services suppliers shown in Figure 13.

Figure 13. Restrictions on trade in banking services by ownership category (per cent)



Nevertheless, regulatory restrictions affecting both domestic and foreign suppliers are also reasonably common.

As noted earlier, accountancy is one of a number of professional services that support economic activity throughout the economy. Other such services are law and engineering. Other studies have shown that accountancy tends to be more restrictive than engineering, but less restricted than law (Nguyen-Hong 2000). A single market for these services depends crucially on the free mobility of the individual professionals. This can be facilitated by mutual recognition agreements. But it also

requires the relaxation of nationality and residency requirements, and the lifting of restrictions on the activities of foreign professionals, once they are licensed. The results in this paper have shown that there is a great deal more to be done to facilitate the movement of intra-corporate transferees and individual skilled professionals within ASEAN, even as some ASEAN countries are major demandeur of freer mode 4 trade with the rest of the world.

Appendix 1 — Questionnaire Form — Accounting Services

ERIA TRADE IN SERVICES SECTORAL QUESTIONNAIRE – ACCOUNTING SERVICES

COVERAGE

1.A. Professional services
b. Accounting, auditing, and bookkeeping services 862

Professional services can be delivered via mode 3 (commercial presence) and mode 4 (movement of natural persons - either individual professionals or the employees of foreign located professional service firms).

INTRODUCTION

- The questionnaire covers: the conditions of *competition* in the sector, notably policy restrictions on entry and ongoing operations; restrictions on *ownership*, private and foreign; *regulation*, including measures to ensure quality of service. The emphasis is on policies affecting competition, international trade and investment in accounting services, rather than more general policies affecting the accounting service sector.

Note (1): Please give information for the current year only.

Note (2): Whenever a question is not applicable, (e.g. because the particular activity or institution is not allowed), please indicate using 'NA', rather than leaving the cell blank, and please explain why the question is not applicable.

Note (3): Where reporting monetary values, please note currency.

Note (4): If insufficient space is provided, please attach additional information on separate sheets.

SUGGESTED INFORMATION SOURCES

Government department in charge of regulating accounting services.
Professional bodies representing the accounting profession
Independent regulatory body overseeing the accounting profession (if one exists)
A domestic accounting firm (if necessary)
A foreign-invested accounting firm (if necessary)

I. Policy Section

I.A. Market Access – commercial presence (mode 3) – Professional service firms

1. Are there restrictions on new entry of accounting *firms,* other than equity restrictions (equity restrictions are covered in the section on ownership)? Examples are restrictions on numbers of new licences. No = no restriction. Yes = some restriction.				
	Restrictions on entry by *domestic* firms?	If yes, total number of firms allowed	Restrictions on entry by *foreign* firms	If yes, number of foreign firms allowed
Accounting	☐ No ☐ Yes		☐ No ☐ Yes	

2. If entry by firms is restricted, what are the reasons provided? (tick all relevant reasons)	
	Accounting
To give incumbent firms time to prepare for competition	☐
To increase government revenue from privatization or licence fees	☐
Exclusive rights believed necessary to attract (strategic) investment	☐
Exclusive rights to allow the provision of universal service	☐
Inadequate regulatory and supervisory capacity	☐
Strategic activity reserved to the state	☐
Entry subject to economic needs test by govt	☐
Entry subject to geographic location	☐
Entry controlled by professional association	☐
Other (specify):	

3. Are accounting services firms *prohibited* from incorporating (with limited liability)? Are they *required* to establish in a particular form (eg partnership)?		
	Prohibition on incorporation?	Required form of establishment (please state)
Accounting	☐ No ☐ Yes	

4. Are foreign accounting services firms *prohibited* from establishing in a joint venture with local professionals? Are they *required* to establish in a JV? Are there restrictions on JVs (eg equity limits)			
	JV prohibited?	JV required?	Restrictions on JVs
Accounting	☐ No ☐ Yes	☐ No ☐ Yes	

5. Are foreign accounting services firms *prohibited* from undertaking certain types of accounting services (eg auditing, taxation). Are they limited to certain types of services (eg consulting). Please describe the nature of the restriction.			
	Some services prohibited?	Only some services can be provided?	Nature of restrictions on services
Accounting	☐ No ☐ Yes	☐ No ☐ Yes	

I.B. Market Access – Inward movement of natural persons (mode 4) – Individual professionals

6. Are there policy restrictions on new entry of *individual* accountants (eg numerical limits). Exclude the application of general licensing criteria, which are covered later. No = no restriction. Yes = some restriction.				
	Restrictions on entry by *domestic* individual	If yes, total number of professionals allowed	Restrictions on entry by *foreign* individuals	If yes, number of foreign professionals allowed
Accounting	☐ No ☐ Yes		☐ No ☐ Yes	

7. If entry by individual accountants is restricted, what are the reasons provided? (tick all relevant reasons)	
	Accounting
To give incumbent individuals time to prepare for competition	☐
To increase government revenue from privatization or licence fees	☐
Exclusive rights believed necessary to attract (strategic) investment	☐
Exclusive rights to allow the provision of universal service	☐
Inadequate regulatory and supervisory capacity	☐
Strategic activity reserved to the state	☐
Entry subject to economic needs test by govt	☐
Entry subject to geographic location	☐
Entry controlled by professional association	☐
Other (specify):	

8. Is there a nationality or citizenship requirement for individual accountants to qualify or to practice (whether as a condition of licence, or otherwise)? Please tick one.			
	Required to qualify or practice	Required for use of professional title, but practice relatively free	No restrictions
Accounting	☐	☐	☐

9. Is there a residency or local presence requirement for individual accountants to practice (whether as a condition of licence, or otherwise)? Please tick one.				
	Permanent residency required (more than 12 months)	12 months or less prior residency required	Domicile required	Other (specify)
Accounting	☐	☐	☐	

10. Are foreign *individual* accountants *prohibited* from undertaking certain types of accounting services (eg auditing, taxation). Are they limited to certain types of services (eg consulting). Please describe the nature of the restriction.			
	Some services prohibited?	Only some services can be provided?	Nature of restrictions on services
Accounting	☐ No ☐ Yes	☐ No ☐ Yes	

I.C. Market Access – Outward movement of natural persons (mode 4) – Individual professionals

11. Are there policy restrictions on outward movement of *individual* accountants? Please state the type of restriction				
	Exit permit required?	Agency granting exit permit?	Fees/ procedures for exit permit? (please state)	Education or employment bond required after training (specify)?
Accounting	☐ No ☐ Yes			

12. Are there other restrictions on exit?	
Accounting	

I.D. Market Access – Inward movement of natural persons (mode 4) – Intra-corporate transferees

13. Are there *minimum requirements* to have nationals/residents in the following categories of position in foreign invested accounting firms (specify minimum number or percentage, state which):	
	Accounting
Members of the board of directors	
Executives	
Managers	
Professionals	
Unskilled workers	
Other staff (specify):	

14. Are there *prohibitions* or *maximum restrictions* on employing locally trained professionals in foreign invested accounting firms (specify maximum number or percentage, state which):	
	Accounting
Prohibition	
Maximum limit (specify):	
Other restriction (specify):	

15. Identify the categories of foreign intra-corporate transferees whose entry and stay is subject to *labour market tests* (eg need to establish that there is no qualified local candidate available before can appoint foreign person).	
	Accounting
Members of the board of directors	
Executives	
Managers	
Professionals	
Unskilled workers	
Other staff (specify):	

16. Identify the categories of managerial personnel who must be locally licensed as a professional accountant.	
	Accounting
Members of the board of directors	
Executives	
Managers	

17. Identify the categories of managerial personnel who must be locally domiciled.	
Members of the board of directors	
Executives	
Managers	

I.E Ownership

18. Is *private* (ie non-government) ownership in accounting service firms allowed?				
	Existing operators	Maximum private equity permitted (%)	*New* entrants	Maximum private equity permitted (%)
Accounting	☐ No ☐ Yes		☐ No ☐ Yes	

19. Is *foreign* ownership in accounting service firms allowed?				
	Existing operators	Maximum foreign equity permitted (%)	New entrants	Maximum foreign equity permitted (%)
Accounting	☐ No ☐ Yes		☐ No ☐ Yes	

20. Are *non-professional* investors (ie investors who are not professional accountants) allowed an equity stake in accounting service firms?				
	Existing operators	Maximum non-professional equity permitted (%)	New entrants	Maximum non-professional equity permitted (%)
Accounting	☐ No ☐ Yes		☐ No ☐ Yes	

I.F. Regulation – licensing

21. Which organization(s) are responsible for regulating (via licensing or otherwise) to ensure service quality?				
	Government Ministry(ies)	Professional body	Both	Other (specify):
Accounting	☐	☐	☐	

22. Indicate the requirements for licensing and accreditation of *local* individual accountants (tick all relevant requirements)					
	Compulsory membership of professional organization	Professional examination	Practical experience (give number of years)	Higher education (give number of years)	No licence required to practice
Accounting	☐	☐			☐

23. Are there any other requirements for the licensing and accreditation of *local* individual accountants (eg geographic location, as a condition of licensing, or proof of professional indemnity insurance)? Please specify:	
Accounting	

24. Indicate the requirements for *foreign* individual accountants to be licensed to practice locally (tick all relevant requirements)						
	Local retraining required for full licence	Local exam required in all cases	Case-by-case assessment of foreign licence and quals (eg under mutual recognition agreement)	Aptitude test or local practice (state which)	Foreign licence and quals sufficient to practice	No licence required to practice
Accounting	☐	☐	☐		☐	☐

25. Are there any other requirements for the licensing and accreditation of *foreign* individual accountants (geographical location as a condition of licensing)? Please specify: (NB Citizenship and residency requirements, whether as a condition of licence or not, are covered in Question 9 and 10)	
Accounting	

26. With which other ASEAN countries do you have a mutual recognition agreement to recognize the professional and academic credentials of foreign individual accountants? Were they negotiated by government, a professional body, or both?		
	Which ASEAN countries	Who negotiated them?
Accounting		

I.G. Regulation – restrictions on operation

27. Are there activities (eg auditing, tax advice) reserved by law to the profession (ie *only* qualified accountants can perform these activities)? Please specify what they are:	
Accounting	

28. Are there restrictions on partnership or other type of business association with other professions (eg lawyers)?		
	Prohibition:	Other (please specify)
Accounting	☐	

29. Are there restrictions on advertising, marketing or solicitation?		
	Prohibition:	Other (please specify)
Accounting	☐	

30. Are there restrictions on fee setting?				
	Minimum?	Maximum?	Which activities?	Set by govt. or professional body?
Accounting	☐	☐		

31. Is there a requirement for foreign invested accounting firms to train local staff? NB Please list any other hiring restrictions under Sections 1.B and 1.C on market access via mode 4.			
	Professional staff?	Managerial staff?	Other staff (please specify):
Accounting	☐	☐	

32. Are there restrictions on the participation of foreign accounting professionals or accounting service firms in government contracts? Please specify:	
Accounting	

33. Is there a requirement to have the work of a foreign accounting professional approved by a locally trained/licensed accountant?	
Accounting	☐ No ☐ Yes

34. Which of the following are consulted in advance of regulatory changes (eg licensing requirements)?				
	Service providers	Professional bodies	Users	Other (specifiy):
Accounting	☐	☐	☐	

35. How are laws and regulatory decisions made public?				
	Government website	Professional body's website	Official gazette	Other (specifiy):
Accounting	☐	☐	☐	

THANK YOU!

Appendix 2 — Policy Changes During 2008-10 — Country Reports

1. Brunei

For the four services sectors submitted in 2008 (medical, health, banking, insurance), there has been no change to any legislation or statutory laws that would have an impact on the responses for 2010. Although there has been a change in Cabinet Ministers in 2010, there have been no new policies issued.

However, with effect from 1 January 2011, the Monetary Authority of Brunei Darussalam (MABD) will be established as a Statutory Body to regulate the banking, finance and insurance sector. This includes Islamic financial institutions and International Offshore companies. The MABD will be totally independent of the Ministry of Finance. Hence the Financial Institution Unit under the Ministry of Finance will cease to exist on that date.

2. Cambodia

2.1. Banking

In banking, an amendment was made in September 2009 to liberalize interest rate setting. Prakas No-B7-09-213 issued on 9 August 2009 announced that "Banks and Financial Institutions have the right to determine interest rates on deposits and interest rates on loans both in local currency and foreign currencies according to each institution's ability and interest rate policy." In addition, minimum capital requirements were increased. According to the National Bank of Cambodia's Prakas of 19 September 2008 on new capital requirements and the criteria for licensing approval of banks, commercial bank reserves were raised from 50 billion riel (US$13 million) to 150 billion riel (US$36.5 million), and specialized bank reserves from 10 billion riel (US$2.5 million) to 30 billion riel (US$7.5 million). Banks that obtained their licence or principal letter before this Prakas was issued were required to increase their capital to the new minimum no later than the end of 2010.

2.2. Medical Professions

In the medical professions, a new mutual recognition agreement was signed with ASEAN countries in 2009.

3. Indonesia

3.1. Insurance

The only change in insurance regulation during 2008-2010 concerned prudential measures. The change was made late in 2008 when the impacts of the global financial crisis were thought to be severe. By issuing PP no. 81/2008, the government postponed the timeline for the implementation of minimum capital requirements for insurance companies (IDR 40 billion), sharia insurance (IDR 50 billion) and reinsurance companies (IDR 100 billion) from 2008 to 2010.

3.2. Banking

Similarly, changes to banking industry regulation concerned a few prudential measures. Early in 2011, Bank Indonesia (BI) introduced new regulation to require banks to publish their complete financial records in the media and commercial banks' websites in order to improve banking transparency. Banks must provide customers with sufficient guidelines to choose the most trustworthy bank to manage their funds. The regulation stated that transparency reports would be announced every six months. The report must be comprehensive and realistic at the same time, comprising all financial balance sheets, risks and good corporate governance. Commercial banks must also disclose their method of calculating the capital adequacy ratio (CAR) tier 1 for core capital and tier 2 for supplementary capital.

In addition, Bank Indonesia also pushes commercial banks to announce their prime lending rates,[1] starting from 1 March 2011. According to officials at the Central Bank, the announcement of banks' prime lending rates will enable the central bank to compare one bank to others. Thus, with a supervisory approach, Bank

[1] The prime lending rate is the base lending rate given to banks' prime customers with zero risk (The Jakarta Post, 10 January 2011).

Indonesia can monitor inefficient banks and encourage them to be more efficient and lower their costs, which in turn will lower their lending rates.

3.3. Health

Lots of laws in the health sector were issued during 2008-09. Law no. 36/2009 on health, article 35 required all foreign healthcare facilities to obtain an operating licence. Law no. 44/2009 on hospitals regulates establishment and management of hospitals in Indonesia. Coupled with PP no. 36/2010 on the negative investment list, healthcare services currently offered for foreign investments are:

- Hospital Services: specialist/subspecialist services (minimum of 200 hospital beds for ASEAN investors and 300 hospital beds for other foreign investors), maximum limit of foreign equity 67%, can be established throughout Indonesia. Establishment and operating licences for foreign-invested and domestic-owned hospitals are issued by the Ministry of Health upon recommendation from the provincial bureau (dinas kesehatan) under local government (pemda). The recommendation is based on spatial planning made by dinkes. Following Law no. 44/2009, the Ministry of Health released Permenkes 147/2010 on hospital licensing as implementing regulation. The latest data on the number of hospitals throughout Indonesia showed there was an increase from 1,312 hospitals (673 privately-owned) at the end of 2008 to 1,523 hospitals (768 privately-owned) in December 2009.

- Other hospital services: mental rehabilitation clinic (maximum limit of foreign equity 67% throughout Indonesia), Clinic Specialized Medical Services (maximum limit of foreign equity 67% throughout Indonesia), Clinic Specialized Dental Services (maximum limit of foreign equity 67% throughout Indonesia)

- Nursing Service (CPC 93191): maximum equity limit for foreign investment is 49% throughout all Indonesia. However, services established in Medan and Surabaya are allowed foreign equity of up to 51% maximum limit.

- Healthcare supporting services: rental service of medical device is allowed to have 49% foreign investment, throughout Indonesia.

- Other healthcare supporting service: medical labs, check-up clinic are open for up to 67% foreign equity throughout Indonesia.

Law no. 44/2009 requires hospital to undergo a routine accreditation program once every three years. Prior to 2009, there were no sanctions on hospitals that did not join an accreditation program, although a program was already regulated by Permenkes no. 436 issued in 1993 (hospital and medical service standards) along with implementing regulation Decree of Directorate Yanmedik no YM.02.03.3.5.2626 on hospital and other health facilities' accreditation committee.

The method of funding universal service obligations has also changed recently. The previous method was via a subsidized insurance scheme. In 2008 the government opted for a direct assistance scheme where funds were disbursed directly to participating Jamkesmas hospitals. Law no. 36/2009 and Law no. 44/2010 now specify that hospitals must have social functions — providing health services to poor patients, emergency cases and natural disasters. Law no. 36/2009 similarly defines the universal services obligations for medical laboratory and ambulance services

There is a 'World-class hospital' initiative and a medical tourism initiative. The World class hospital initiative was issued in 2009 (Permenkes no. 659/MENKES/PER/VIII/2009).

3.4. Medical Professions

As in healthcare services, many regulations on medical professionals were issued during 2008-10. Section 5 Law no. 44/2009 covers medical professionals for hospitals. In article 14, it was stated that a hospital could employ foreign medical professionals. However, the employment must be intended for the purpose of knowledge and technology transfers. It must also consider availability of local medical professionals. Since 2007, foreign medical professionals must register and obtain a licence to practice. They must also take a retraining (sometimes called adaptation) process and pass an Indonesian language test.

Following Law no. 44/2009, the Ministry of Health issued a number of Permenkes (Peraturan Menteri Kesehatan/Ministry of Health Regulations) as implementing regulations to the Law. They are:

- Permenkes no. 1438/2010 on medical service standards;
- Permenkes 317/2010 on employment of foreign health professionals in Indonesia;
- Permenkes 161/2010 on registration of health professionals;
- Permenkes 148/2010 on operating licensing and administration of nurse's practice;
- Decree of Indonesian Medical Council no. 17/2008: directive guidelines of temporary registration and conditional registration of foreign medical doctors and foreign dentists; and
- Decree of Indonesian Medical Council no. 157/2009 on registration of ASEAN medical doctors and dentists to conduct medical practice in Indonesia.

According to a new regulation, Permenkes no. 028 issued on 4 January 2011, clinics (defined as healthcare facilities performing individual healthcare service and providing basic medical and/or specialized services, conducted by more than one type of healthcare professional and led by medical professionals) cannot hire foreign healthcare workers.

Law no. 36/2009 states that organ transplants, the implant of medical devices into the human body, plastic surgery and reconstruction, and the prescription of narcotic and psychotropic drugs are reserved to qualified medical professionals.

4. Lao PDR

4.1. Insurance

The Insurance Law of Lao PDR was approved in 1990. It has the function of promoting and preserving the socio-economic basis of the Lao People's Democratic Republic, regulating insurance relationships, ensuring the exercise of rights and the performance of duties between enterprises conducting insurance business and insured individuals or legal entities, enhancing the responsibilities of enterprises conducting

insurance business in implementing the laws of the State, and ensuring State inspections of insurance business undertakings. According to the 1990 insurance law (1990), only joint ventures and foreign branches were allowed. Thus 100% foreign ownership was not allowed.

There is no permanent policy restriction on the entry of domestic or foreign insurance providers and intermediaries (i.e. brokers) as insurance companies. But according to the insurance law (Article 27), "individuals who will undertake the practice of the profession of insurance intermediaries must be a Lao national". This is to make sure that the individual intermediaries understand the Lao situation and can better contact Lao customers and the Lao Government. In addition, the Prime Minister's Decree on Guidelines for Implementation of the Law on Insurance issued in 1992 stipulates that "In case of necessity due to the situation of the insurance market, the Minister of Economy, Planning and Finance (now Ministry of Finance) has the right to restrict or suspend the issuance of further insurance business permits in one, several or all branches." As of 2007, there were 6 insurance companies, of which 4 were joint-venture companies between the Lao Government and foreign investors, and 2 were foreign branches. However, according to the Ministry of Planning and Investment, the Government now wants to suspend new entry in this business as there are already 6 insurance providers in Laos and the market is small.

Currently, the insurance law is expected to be amended to be more appropriate to the current situation of an economy more liberalized and open to the world and integrated with the region. In the meantime, the amendment of this law is on the way. The National Insurance Office was set up in 2009 but it is yet to produce any policy papers until the new Law on Insurance is promulgated.

Insurance activities are also regulated by the relevant laws on foreign investment. According to the old Law on the Promotion of Foreign Investment (2004), there had to be at least 30% foreign ownership in a joint venture establishment (Article 7). The new 2009 Law on Investment Promotion has reformed the 2004 law in the following respects:

- the 2004 law on FDI promotion was separated from the law on domestic promotion, whereas now there is only one law on investment promotion which is equal for foreign and domestic investors;

- the minimum share of foreign investment in joint ventures has been lowered to 10%, replacing the 30% under the 2004 law;

- according to the 2009 Law on Investment Promotion, insurance business is classified under the concession criteria. It states that the investment term of any concession depends on sector regulation, but with the maximum period of 99 years. According to the old 2004 Law on Investment Promotion, the investment term of a foreign enterprise would not exceed 50 years and could be extended with the approval of the Government, up to a maximum of 75 years (Article 11).

- according to the general forms of investment determined by the new law, it can be 100% foreign owned.

In the institutional framework, there are two key agencies in Lao PDR responsible for supervising financial services — the Ministry of Finance and the Bank of the Lao PDR. The Ministry of Finance is the main agency for insurance supervision. In the banking sector, Bank of the Lao PDR is the agency responsible for banking supervision.

Beside insurance services, the government has established two social security systems to guarantee the wellbeing of employees in both the public and private sectors. The social security system for the public sector is compulsory for all public employees nationwide, whereas the social security system for the private sector is a statutory scheme for enterprises employing 10 or more workers. Those companies with less than 10 employees can also join this system on a voluntary basis. However, in the coming years, this compulsory coverage will be extended to all employers with one or more employees. It is significant to note that targeted companies must comply with social security regulations. This means that having workers insured only with insurance firms is not sufficient for the employers and employees to escape their obligations in joining the social security system. Moreover, insurance companies that

are themselves in the group targeted by the social security system have to join the social security scheme for private sector employees.

4.2. Banking

As of December 2009, the banking system consisted of four state-owned commercial banks, two joint venture banks, seven domestic and foreign private banks, and 10 branches of foreign banks. Other financial institutions under the supervision of the Bank of Lao PDR consist of one Lao postal saving institution, 22 pawnshops, five deposit taking micro institutions, eight non-deposit taking institutions, 13 credit cooperatives and saving deposit institutions and two saving funds, all of which are registered at the Bank of Lao PDR. Besides that there are village development funds and a poverty reduction fund, established by mass organizations and local society organizations, with the participation of villagers and financial assistance provided by the non-government organizations. These are not directly under the supervision of the Bank of Lao PDR.

The financial system has steadily expanded, with the total assets of the banking system (excluding Nayoby Bank) rising to 3,595.6 billion Kip or up by 25.98 per cent as compared to 2008, the capital adequacy ratio achieving 13.44 per cent on average, non-performing loans being only 2.99 per cent of total net credit and financial liquidity being maintained in line with the standards set.

Bank of Lao PDR has continued to create and improve the regulatory framework for the supervision of banks and financial institutions to ensure that those operating in Laos are financially sound, viable and move towards international standards. Some key supportive legislation and progress on the development of banking services are summarized as follows.

- Bank of the Lao PDR Law, dated 14 October 1995, determines the characteristics, role, scope of rights and duties, organization and operations of the Bank of the Lao PDR in carrying out its monetary policy, maintaining stability of the value of Kip and contributing to the growth and efficiency of the socio-economic development of the Lao PDR.

- Law on Commercial Bank, dated 26 December 2006, sets the requirements for supervision of Commercial Banks.

- Prudential Regulations provide instruction and monitor Commercial Banks' activities. They include:

– Regulation on the commercial Banks' Capital Adequacy (No. 01/BOL 28/08/2001);

– Regulation on Use of Registered Capital (No, 129/BOL 16 May 2001);

– Regulation on Lending to Large Customers of Commercial Banks and Financial Institutions which are under the supervision of the Bank of the Lao PDR (No 03/BOL, dated 15/01/1996);

– Regulation on Protecting Soundness Practices among the Commercial Banks and Financial Institutions which are under the supervision of the Bank of the Lao PDR (No 04/BOL 15/01/1996);

– Regulation on the Credit Policy of the Commercial Banks and Financial Institutions to the Executive Officer and Credit Related People (No 05/BOL, dated 15/01/1996);

– Regulation on the Treatment of Failed Banks (No 06/BOL, dated 15/01/1996);

– Regulation on Foreign Currency Exposure (No 05/BOL, dated 10/09/2003);

– Proposed Revisions to the Implementation of the Regulation on Foreign Currency Exposure (No.02/BFSD, Vientiane, 25 January 2002);

– Regulation on Loan Classification Requirements for Commercial Banks which are under the supervision of the Bank of the Lao PDR (No 06/BOL, dated 11/05/2004);

– Decree on the Accounting of the Bank of the Lao PDR and Financial Institutions under the authorization of the Bank of the Lao PDR (No.03/PM January 8, 1996);

– Business Law (No.42/CPR, August 13, 1994);

– Final Draft of the Microfinance Regulation for the Lao PDR; and

– Decree on Anti-Money Laundering (No.55/PM, City of Vientiane, 27/03/2006).

4.3. Health and Medical Services

The Lao Government has formulated a long term health care development strategy as follows.

Health Strategy by 2020

- full health care service coverage and health care service equity;
- development of early integrated health care services;
- demand-based health care services; and
- self-reliant or financially autonomous health services.

Health Development Plan 2006-2010

- strengthen health providers' ability;
- improve community-based health promotion and health prevention;
- improve and expand hospitals at all levels;
- promote and strengthen the use of traditional medicine and integrate it with modern care;
- promote operational health research;
- ensure effective administration and management, and financial self-sufficiency;
- establish a health insurance fund.

According to the Law on Domestic and Foreign Investment of Lao PDR, there is no policy restriction on the entry and operation of foreign and domestic private-owned operators in health services and medical professionals.

Despite no restriction to foreign health services and medical professionals, there are so far only a few foreign investors coming to invest in these sectors, in particular a small share of laboratory services from Thailand and Vietnam — Untrasonography, X-Ray, and a CT Scanner from Vietnam.

The reason for this small market share of foreigners is not because of policy restrictions, but because of the small market demand in the country. In addition, relatively rich Lao patients prefer to seek health care in neighbouring countries, in particular Thailand and Vietnam. However, domestic private investment in this sector has developed relatively well. Currently, there are 254 private clinics, of which only two are foreign (a Chinese and a Vietnamese), and 1,945 private pharmacies, of which only one is foreign (a Chinese).

5. Malaysia

5.1. Banking and Insurance

In general, the rules and regulations governing both banking and insurance remained relatively unchanged since 2008.

In November 2010, the central bank announced several measures to curb property speculation as well as to address the rising household debt problem.[2] These policy changes came after various research houses voiced their concerns to the policymakers.[3]

Specifically, the monetary regulator imposed a maximum loan-to-value (LTV) ratio of 70%, which will be applicable to the third house financing facility taken out by a borrower.[4] Financing facilities for purchase of the first and second homes are not

[2] Household debt to GDP rose from 66.7% in 2004 to 77.6% in 1H2010. This can be attributed to increasing diversification by banks away from risky business loans to less risky household loans, and accommodative monetary policies.

[3] It is worthwhile to note that the recent Budget 2011 did not contain any measures to address the rising household debt issue. This is probably due to the upcoming election, as measures to curtail household debt would be detrimental to the ruling party.

[4] The impact of this measure is expected to be reasonably small since individuals who purchase third and subsequent houses are small. As a result, a lower LTV should not serve the purpose of addressing rising household debt. Market participants expect more measures will be announced

affected and borrowers will continue to be able to obtain financing for these purchases at the present prevailing LTV level applied by individual banks based on their internal credit policies. The measure aims to support a stable and sustainable property market, and promote the continued affordability of homes for the general public.

At the national level, residential property prices have increased steadily in tandem with economic development and the rise in income levels. This aggregate growth trend remains largely manageable and has not deviated from the long term trend in residential property prices. In the more recent period, however, specific locations, particularly in and around urban centres, have experienced faster growth, both in the number of transactions and in house prices. This is further supported by an increase in financing provided for multiple unit purchases by a single borrower, suggesting increasing investment activity that is of a speculative nature.

The targeted implementation of the LTV ratio is expected to moderate the excessive investment and speculative activity in the residential property market, which has resulted in higher than average price increases in such locations. This has also led to increases in house prices in surrounding locations, thus contributing to the declining overall affordability of homes for genuine house buyers. This measure therefore remains supportive of the objective of encouraging home ownership among Malaysians which continues to be an important national agenda.

As part of the continuous efforts to raise the level of financial literacy and to promote sound financial and debt management by Malaysians, the regulator also announced the introduction of the Financial Capability Programme.[5] This Programme will be offered by Agensi Kaunseling dan Pengurusan Kredit (AKPK) through its establishments nationwide and will commence from January 2011. The Programme is aimed at equipping individuals with important knowledge for responsible financial decisions by gaining practical understanding and skills in money and debt management. This in turn will contribute towards preserving the sound financial positions of households and ensure that debt accumulation is commensurate with household affordability, including their ability to absorb interest rate adjustments and

---

only after the general election.

[5] Anecdotal findings show that individuals with financial difficulties are young Bumiputra. This is controversial due to the fact that Bumiputra is the ruling party in Malaysia.

potential volatility to income and expense levels. Individuals, particularly new prospective borrowers and young adults, are strongly encouraged to participate in this specially designed programme.

The Central Bank of Malaysia is currently preparing for a 'new' Financial Sector Masterplan, which would further liberalize the banking and securities markets.

5.2. Medical and Health Services

Healthcare in Malaysia is under the responsibility of the federal government's Ministry of Health. Malaysia generally has an efficient and widespread distribution of health care. It implements a universal healthcare system, which co-exists with a private healthcare system. The infant mortality rate — a standard in determining the overall efficiency of healthcare — in 2006 was 6.6 per 1 000 live births, comparing favourably with that of the United States and Western Europe. Life expectancy at birth in 2006 was 71.8 years for males and 76.3 years for females.

Even though healthcare in Malaysia is provided by both public and private providers, the government is still the main provider as healthcare in the country is still heavily subsidized. Private healthcare costs are fully borne by patients themselves or through their insurers, or they may be financed through charity organizations. Although the government does not finance the private sector, it is still very supportive, as the private sector supplements the public sector in meeting the demand for health services. Doctors are required to perform three years of service with public hospitals throughout the nation, ensuring adequate coverage of medical needs for the general population. Foreign doctors are encouraged to apply for employment in Malaysia, especially if they are qualified to a higher level. The public sector is the main provider, accounting for approximately 60% of the total health care expenditures. However, during the last two decades the private sector has developed significantly. The government wants gradually to shift from its role of a provider to that of a regulator, which sets norms and standards for both the public and private healthcare.

The 9th Malaysian Plan (9MP) outlines the government strategies and focus for the healthcare industry for the current five-year period (2006-2010). Under 9MP, the thrust towards achieving greater health will be through various goals, including preventing and reducing disease and enhancing healthcare delivery.

Will this mean that within this period the Malaysian National Healthcare Financing Scheme (similar to Australia's Medicare system) will finally be implemented? According to industry feedback, the government will have to do so very soon as the escalating healthcare costs is creating a burden too great for them to bear.

The latest government initiative to improve public healthcare coverage is the '1Malaysia' clinics program, launched in early 2010. Currently, there are around 50 such centers in Malaysia.

In 2010-14, the government will give some prominence to its efforts to maximize the use of information technology in medical care, medical education and health services management. The government is keen to push 'telemedicine', which allows for the transmission of medical images, virtual consulting and virtual medical training. In recent years the government has also been promoting 'medical tourism', and aims to attract more patients from Asia, the Middle East and the West for treatment.

There has been rapid growth in number of private hospitals in the last two decades. The majority are located in urban areas and unlike many of the public hospitals they are equipped with the latest diagnostic and imaging facilities. This is possible because they provide services for the rich segment of the population and are not financed by the government and thus have no restrictions when it comes to procurement of equipment. The fact that the private hospitals do not have restrictions when it comes to remuneration also means that the doctors at the private hospitals are paid much more than at the public hospitals. The growth of private hospitals has contributed to the shortage faced by the public sector. Almost 40 per cent of practising doctors serve in the private sector. The larger private health groups in Malaysia are the Johor Healthcare Group and the Pantai Group of Hospitals.

The current ratio of doctors per population is 1:1200, which is still far from the national target of 1:600 by 2020 and similarly ambitious targets for nurses (current ratio 1:560) and other medical personnel. To achieve this, a number of expansion strategies are being pursued. This includes:

- the recruitment of foreign doctors and specialists;

- acknowledging foreign medical degrees formerly not recognized (with conditions attached);

- increasing the number of scholarships for local and foreign training of Malaysian doctors;

- the establishment of new medical colleges and twinning programs (the tie-up of Australian universities offering health and medical-related courses in Malaysia is an excellent example).

There are 200 plus private medical laboratories in the country. Aspects of the quality of tests, equipment and healthcare professionals in the labs are regulated, and there are controls on advertisements too. Among the major players include names like BP Labs Healthcare, BSS Medical Lab, Clinipath, Gribbles Malaysia, LabLink, Medi-Vance Healthcare and Pathlab.

Private ambulance service providers do exist and they fall under the purview of the Private Healthcare Facilities and Services Act 1998. However, what the public fear is that the impending privatization of this service means replacing one monopoly with another. They hope it is not the case of the transfer of government monopoly to a private monopoly.

Over the past few years, the trend of Australian health/medical offerings has shifted towards provision of services. The tie-up of Australian universities offering health-related courses in Malaysia is one of the best examples. Other notable examples include allied health skilled training, ambulance service operations and retirement village planners.

5.2.1. Market Trends

There are two new areas of interest to the Malaysian government in the health care sector. The two areas are the Telehealth project under the Multimedia Super Corridor and health tourism.

The essence of telemedicine is the exchange of information at a distance, whether the information is voice, an image, elements of a medical record, or commands to a surgical robot. The Malaysian Telehealth project or integrated Telemedicine is one of

the seven flagships of the Multimedia Super Corridor (MSC), which is a geographical area set aside for information and communication technology and multimedia development in Malaysia. The telemedicine project, which started in October 2000, aims at transforming Malaysian health care from a physical and facility-based environment to a virtual environment. If the project is successful it should be able to reduce health care spending by up to 20%.

There are currently about 40 private hospitals involved in health tourism. The number of foreign tourists seeking treatment in Malaysian private hospitals increased almost tenfold from 39,000 in 1998 to 341,288 in 2007. Revenue generated by health tourism rose substantially from US$ 2.5 million in 1998 to US$ 39 million in 2002. Healthcare services for foreign tourists accounted for 3% (US$ 66 million) in 2006 and the government targets to generate revenue of US$ 188 million the next 5 years.

Health tourism promotions are targeted at less-developed countries like Indonesia, Bangladesh, Vietnam, and countries in the Middle East. Nevertheless recently, there has also been an increase in arrival of health tourists from developed countries such as the United Kingdom and the United States. Common treatments are in cardiology, cardio thoracic surgery, radiotherapy, and radiology. The private sector is allowed to advertise their services to the public.

The Malaysian government is actively promoting medical tourism in Malaysia for private health and medical requirements. Many hospitals in Malaysia have set up international departments to cater especially to the international patients. As a result the number of private hospitals providing quality healthcare to international patients has increased over the years. The association of private hospitals estimated that the medical tourism grew by about 25% in 2009 to about 625,000 medical tourists, compared to 501,000 in 2008.

The Malaysia Healthcare Travel Council (MHTC) was established under the Ministry of Health Malaysia (MOH) on 3rd July 2009 upon the approval of the Malaysian Cabinet. MHTC has been set up as the primary agency to develop and promote the healthcare travel industry and to position Malaysia as the healthcare destination of choice in the region. Members of the Committee are appointed from representatives of the government and the private sector involved in healthcare travel.

The Committee is responsible for advising on policy issues and setting directions for the healthcare travel industry. With the establishment of MHTC, promotional efforts will be more focused, and issues impacting industry growth will be addressed in a concerted manner.

6. Myanmar

6.1. Insurance

Myanma Insurance is an organization that exercises its monopoly in insurance business and the only organization financially backed up by the government by law. Although foreign companies have been allowed to open their representative offices to look after the interest of companies of their respective nationality, they have not been allowed to fully operate their insurance business. Japanese firms such as Mitsui Sumitomo and Sompo have operated in this category.

Although reinsurance had been in practice since 1937, it had never achieved its aim for high bracket policy amounts. Reinsurance was bought mostly from New India Insurance Company and some from Lloyds. There were other insurance companies based in Myanmar who took the reinsurance commitments from Myanmar insurance firms. They were American Underwriter Insurance, Rube Federal Insurance, New Zealand Insurance and Indo-Burma Insurance. At the time, Myanmar companies were acting only as commissioned agents of these insurance firms but later on they took the responsibility for proportional insurance up to Kyat 500,000. Fire excess loss was taken by F.G. Watts brokers backed by Lloyds mostly. Engineering reinsurance was carried out under a contract signed with Munich Re in 1958. It was renewed every year and has stayed in the hands of Munich Re since the execution of the first contract.

The present practice is for the Management Committee of Myanma Insurance headed by the Managing Director of the same organization to invite quotations on a tender basis from broking firms including but not limited to Aon, Jardine, Willis and TRS. The quotations are assessed by the management committee which gives a share quota to each broking firm under excess loss treaties. Assessment is done with a view

to getting the widest cover at the lowest premium rates. The premium is paid to the broking firms by Myanma Insurance in US$ at the official rate and the same exchange rate is used to pay claims if there are any. This payment system is an attempt to bypass any problem that might arise due to the parity between official and market rates. The claims have been mostly in the retention region of Myanma Insurance and very seldom came into the reinsurance layers. Myanma Insurance also has a retention contract signed with a foreign firm for amounts over its retention. In accordance with the Foreign Investment Law, foreign companies that come into Myanmar have to buy insurance cover from Myanmar Insurance only. Foreign insurance companies who want to sell policies to such companies have to pay what is known as fronting commission to Myanma Insurance. This commission would be as high as 15 per cent of the premium they would get.

To look after all these processes, a supervisory board known as Insurance Business Supervisory Board has been formed with the Managing Director of Myanma Insurance as its chairman and the General Manager as its secretary. Since all the administrative requirements of the board would be financed and provided by Myanma Insurance, the industry naturally has to be in the hands of Myanma Insurance. When the right time comes, the Insurance Business Supervisory Board and Myanma Insurance would become two separate entities with the Board having its own budget and other necessities; when that time comes, the privatization process would certainly begin.

Another insurance organization operating under a defence decree had been Myanma International Insurance Corporation (MIIC). It had a broking arm under the name of Myanma International Insurance Services Corporation. They worked under Myanma Economic Corporation. Both were ordered to stop renewing any policies written, but were responsible for policies issued until their expiry. This took place due to the fact that there was some financial problem with these companies.

Recent changes and future vision

Although privatization has not been seen up to now, there has been an introduction of new types of insurance recently. The most coveted form of cover is that arranged for seamen on vessels both foreign going and domestic. Seamen are

always at risk of losing their lives, especially at a time like this when storms of various levels are rampant all over the world. This cover is arranged for those seamen from sixteen to sixty years of age. The maximum insured amount is five million Kyats and the fixed premium is Kyat 25,000 for an insured period of one year. Myanma Insurance can also supply insurance services including quasi-medical insurance for expatriates going abroad. In 2008 quasi-medical insurance did not exist.

Myanma Insurance up to now has been the sole authority and the only organization through which insurance cover has to be placed by foreign investors in Myanmar. The new economic situation will demand choice of insurance companies for this requirement. The current situation of having only one government-owned agency would not satisfy the need of future business people. Although there was once an invitation for applications to form insurance companies, the permission never came about. The reason given was that the capital required did not fully belong to Myanmar nationals due to the fact that foreign companies wanted to have some foothold in this industry. This process should be reactivated for the benefit of everyone concerned — the policy holders as well as the insurance cover providers. Of course, the applicants would be given special training for handling the requirements of the situation. Privatization of the industry has to be definitely implemented under the new government after the election. Requirements previously imposed for a new company may be updated by raising the capital amount needed by a private company.

Present regulatory measures could also be toned down so that the newly formed companies would have a freer hand in their operations. However, the capital requirement of a company might be increased so that the companies would be always ready to pay the claims if they occur. Licence fees and other requirements might also be raised to adjust to the prevailing monetary status.

The composition of the Insurance Business Supervisory Board might have to be changed. The members except the board's secretary should be people from other relevant corporations so that whatever the board decides would be fair and balanced.

The promulgation of The Insurance Business Law, a new law that would help the process of liberalizing the industry to be carried out smoothly and quickly, brings out

a different picture. The usual procedure followed by the organizations under the Ministry of Finance and Revenue is to start with representative offices of the foreign finance-related firms here. It would then be followed by permission to form joint ventures between foreign firms and Myanmar organizations — both from public and private sectors. The ultimate stage would be for the foreign companies to get involved in direct underwriting business themselves.

6.2. Banking

In order to facilitate the conduct of a market-oriented economic system, the banking and financial system in Myanmar has been restructured by new bank laws, namely, the Central Bank of Myanmar Law, the Financial Institution of Myanmar Law, the Myanmar Agricultural and Rural Development Law since 1989-1990. The Union of Myanmar Foreign Investment Law, enacted on 30 November 1988, is indeed a very significant change in the Myanmar economic history and is considered to be liberal in economic resource mobilization, including international financial resources. According to the Directorate of Investment and Company Administration, all permitted enterprises under the Union of Myanmar Foreign Investment Law (FI Law) are allowed to bring in cash/in kind contributions. However, there are no provisions for capital outflows under the FI Law. Some observers have said there are flaws in that in some cases the provisions of the Law on paper can be different from the practical application of the Law.

The Central Bank of Myanmar is implementing a banking sector development strategy with three phases as follows:

Phase 1: promoting the institutional development; promoting the skills and efficiency among the domestic banks within the medium term, while foreign banks are allowed to open their representative offices in Myanmar; initially foreign banks are allowed to open their representative offices which may work only as liaison offices of their headquarters.

Phase 2: permitting selected domestic banks to run joint ventures with foreign banks;

Phase 3: permitting foreign banks to open branches and operate banking activities in Myanmar.

At present, there are four state-owned banks, 12 representative offices and 19 private and/or semi-government banks. There are no foreign invested banks in Myanmar. The development of the banking sector has stagnated at the phase 1 for a couple of years. There are restrictions not only on entry by foreign-invested banks but also on entry by domestic banks. The reason given for the restriction on entry by foreign-invested banks is that state-owned or national banks require time to prepare for competition. The reason for the domestic banks is that excessive entry is believed to threaten financial stability. Another possible reason is that some restrictions are related to the country's political and economic condition.

6.3. Health Services

The health care sector is a rapidly growing sector in the world economy. New kinds of health care organizations over the past decade have emerged with the globalization of health services. There has been a significant development in the forms of trade and foreign direct investment (FDI) in health services in recent years. The Law Relating to Private Health Care Services in Myanmar was enacted in April 2007. One of the aims is to develop private health care services in accordance with the national health policy. Private health care services include private clinic and hospital services and private general health care service among others.

In the private sector, 36 hospitals, 52 medical laboratories and 70 ambulances are already allowed to operate in the Yangon area. Health service firms are required to establish as non-profit organizations to assist the high health care cost.

In principle, commercial presence is allowed according to the Union of Myanmar Foreign Investment Law (FI Law) 1988. According to FI Law, 51 % foreign equity participation for foreign health services firms is allowed. According to the FDI rule and the rule of the Ministry of Health, mode 1, 2 and 3 in healthcare services are allowed in the following sub-sectors: general and medical services, specialized medical services, dental services, hospital services, deliveries and related services, nursing services, physiotherapists and para-medical personnel, ambulance services, and residential health facilities services other than hospital services and other human health services. Liberalization of Mode 4 is now under discussion in the ASEAN Coordinating Committee on Services (CCS).

In practice, recognized foreign-invested firms do not yet operate. However, there are a few foreign health service organizations such as NGOs and volunteer organizations.

Nevertheless, there have been some recent developments since 2008. Pan Hlaing Hospital in Hlaing Tha Ya township is really a joint venture hospital, composed of stakeholders from a foreign country as well as of Myanmar nationality.

Another development is more access to health clinics in Bangkok, Singapore, India (via Mode 1). Those clinics are already linked or in joint venture with Myanmar National Services providers (agents). Some procedures such as renal transplants, cardiac operations, and treatments for breast cancer, brain tumours and strokes have been investigated in foreign countries through Myanmar agents. Some patients have received treatment from there.

6.4. Medical Professionals

One third of medical practitioners in Myanmar are employed in public hospitals and the other two thirds are professionals employed in their own clinics, in private hospitals or by international NGOs. The proportions for dental surgeons and laboratory technicians are similar to those for medical practitioners.

Systematic private medical services are said to be not well developed in Myanmar. Most General Practitioners (GPs), whether medical or dental, practice on their individual own account, without elaborated clinic facilities, just following the principles of private clinic manuals and guidelines and local authority's instructions.

Although foreign ownership in medical professional service firms is allowed in accordance with the FDI rule and the rule of the Ministry of Health, recently there are no existing foreign medical professional service firms in Myanmar.

Since 2008 Myanmar has signed two new Mutual Recognition agreements with Malaysia and Bhutan.

7. Philippines

7.1. Banking and Insurance

While services in the Doha Round are still at the negotiation stage, the commitments of the Philippine finance industry, both banking and insurance sectors, remain the same, with no new commitments being considered. All commitments of the Philippines are within allowable limits provided for by the law and its implementing rules and regulations.

The Philippine finance sector is not expected to enter into new commitments, particularly those that would require legislation. Unless there is a compelling reason driven by the banks and the insurance companies, such as very strong demand from majority of the players from these sectors to have greater access to other markets, the Philippine commitments will be within the bounds of existing laws, its implementing guidelines, rules and regulations.

7.2. Health Services

7.2.1 On New Entry of Hospitals

A major policy change in the trade in health services is the suspension for one year of the need to obtain a Certificate of Need (CON), the only restriction on new entry of private hospitals. The suspension was due to appeals made by various stakeholders to reconsider the criteria for CON. The Department of Health (DOH) through the Bureau of Health Facilities and Services (BHFS) is currently evaluating the guidelines for CON to address healthcare needs in a community, decrease healthcare costs and control duplication of services.

Some government officials also believe that entry of private hospitals must not be restricted since private enterprises must be entitled to free market access as long as standards for quality of facilities and services are met. Moreover, they believe that removing restrictions on entry will allow the government to maximize its resources and target providing public health services in areas with limited access to healthcare.

Since the suspension of the need to obtain CON in May 2010, the BHFS has observed an increase in the number of applicants for the establishment of new

hospitals. If these applicants will be able to fulfil the basic requirements for the licensing of new entrants, it can be expected that there will be an increase in the number of healthcare providers in areas that are profitable for such ventures. Increased competition will likewise encourage private hospitals to provide better facilities and services at more competitive prices.

7.2.2 On New Entry of Laboratories

The DOH Administrative Order No. 2007-0027 created the improved quality assurance and monitoring program for clinical laboratories in the Philippines and rendered the DOH-BHFS Circular No. 3 Series of 2003, which suspends issuance of permit to new entry of laboratories, obsolete. The devolution of some regulatory functions of the BHFS to the Centre for Health Development (CHD) facilitated the implementation of an improved quality assurance and monitoring system for laboratories.

The new system enhanced the monitoring capacity of the DOH and improved the quality of services of laboratories nationwide.

7.2.3 On Issuance of Alien Employment Permits

The process for the issuance of employment permits to foreign nationals has been extended from 1 to 3 working days due to inclusion of 2 working days for publication of all applications for new Alien Employment Permit (AEP), change or additional position. The publication period is used to determine the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform services for which the alien is desired. This is to comply with Article 40 of the Labour Code of the Philippines. The reference is the Department of Labour and Employment Department Order No. 97-09 Series of 2009.

Other than lengthening the application for employment permits of foreign nationals, the extension of the processing period for the issuance of AEPs has no significant impact on the sector.

7.2.4 On Medical Tourism

In 2009, the Health and Wellness Alliance of the Philippines (HEAL Philippines) was established to organize the industry stakeholders along with partner government agencies involved with global healthcare and wellness services, tourism and retirement. By virtue of the DOH Administrative Order No. 2009-0015, interim policies and guidelines for endorsement of applications for registration of medical tourism projects under the Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA) were also put in place.

It is estimated that the Philippines received more than 300,000 foreign patients since 2006, which generated an estimated revenue of USD350 million to USD500 million. The HEAL Philippines targets to reach 1 million tourists for the period 2006 to 2012, which is equivalent to cumulatively USD1 billion in revenue.

However, aside from the above-mentioned progress, the development of the medical tourism industry in the Philippines has been sluggish for the past years. The lack of progress may be attributed to the absence of a national policy for the Philippine medical tourism and a law that will institutionalize the Philippine Medical Tourism Program (PMTP). The development of the industry has not been the priority of the past administration. Although the 2011-2016 DOH National Objectives for Health that was drafted in 2009 includes a section on general plans for the development of medical tourism, the new administration has no concrete plans on it yet. There have also been problems with data gathering as private companies involved in the industry are not very cooperative in divulging critical information.

7.2.5 Other Issues

There are emerging demands for the amendment of the Republic Act 4226 or the Hospital Licensure Act to expand the coverage of the law to include health facilities other than hospitals.

The DOH is currently encountering problems with monitoring the secondary and tertiary hospitals. Hence, there are plans of re-centralizing the regulatory functions of the CHD with respect to secondary and tertiary hospitals back to BHFS.

7.3. Medical Services

7.3.1 On Issuance of Alien Employment Permits

As noted above, the process for the issuance of employment permits to foreign nationals has been extended from 1 to 3 working days due to inclusion of 2 working days for publication of all applications for new Alien Employment Permit (AEP), change or additional position. Other than lengthening the application for employment permits of foreign nationals, the extension of the processing period for the issuance of AEPs had no significant impact on the sector.

7.3.2 On the AFAS Mutual Recognition Arrangement

Except for negotiations and signed Mutual Recognition Arrangements (MRA) on medical and dental practitioners that have been completed in February 2009, there have been no major developments in the easing of restrictions to entry of foreign practitioners in the country. Based from the horizontal commitments of the Philippines in the AFAS, non-resident aliens may only be admitted to the Philippines for the supply of a service after determining the non-availability of a Filipino who is competent, able and willing, at the time of application, to perform services for which the alien is desired. The barrier to entry of foreign individuals originates from the constitutional provision that the practice of all professions in the Philippines shall be limited to Filipino citizens. Hence, unless constitutional amendments are made, entry of foreign practitioners in the country will remain limited.

Completion of the assessment statements for the medical and dental practitioners and nurses has also been sluggish due to constitutional barriers and cultural, political and religious disparities among the ASEAN member countries. Moreover, the absence of established licensing systems in some of the member countries also contributes to the delay of the completion of the statements. The target is to finish the assessment statements by 2015.

7.3.3 On the Japan-Philippines Economic Partnership Agreement

The Japan-Philippines Economic Partnership Agreement has been progressing since 2009. The Philippines was able to deploy a total of 283 nurses and caregivers in 2009,

the first year of deployment, and 118 nurses and caregivers in 2010, the second year of deployment. The decline in deployment of nurses and caregivers is due to the reduction in the number of vacancies for nurses and caregivers in 2010.

The number of deployed health personnel is significantly less than the number of matched Filipino candidates to vacancies in Japan. The discrepancies in the number of matched and visas issued were due to the following reasons: application withdrawal of candidates, candidates disagreeing with the matching, some were not accepted by institutions, were medically unfit or did not complete their visa requirements.

7.3.4 On Lack of Progress in the Liberalization of the Sector

The Philippine Regulatory Commission (PRC) notes that the lack of progress in the liberalization of the sector stems from the constitutional provision that the practice of all professions in the Philippines shall be limited to Filipino citizens. Despite significant pressures to liberalize the sector from the international community, the constitution almost always supersedes policies and trade agreements that aim to free up trade in services of medical professionals.

8. Singapore

8.1. Banking

Since 1997, the Monetary Authority of Singapore (MAS), Singapore's central banks, has been gradually liberalizing the banking sector. This has encouraged more competition from foreign banks.

Financial institutions are typically not categorized into domestic and foreign-invested but into the types of banking licences they received.

Commercial banks in Singapore operate as full banks, wholesale banks or offshore banks. Full banks may provide the whole range of banking business approved under the Banking Act. There are currently 121 commercial banks in Singapore where 30 of them are full banks. Out of the 30, six of them are locally-

incorporated entities under the three local banking groups, and one is a locally-incorporated subsidiary of a foreign bank. The remaining 23 banks are branches of foreign-incorporated banks.

Seven of the foreign banks operating in Singapore have been awarded Qualifying Full Bank (QFB) privileges. As such, they may operate a total of 25 locations. They may also share ATMs among themselves, and relocate their sub-branches freely. QFBs are allowed to negotiate with the local banks on a commercial basis to let their credit card holders obtain cash advances through the local bank's ATM networks. QFBs may provide debit services through an EFTPOS network, offer Supplementary Retirement Scheme and Central Provident Fund Investment Scheme accounts, and accept fixed deposits under the Central Provident Fund Investment Scheme and Minimum Sum Scheme.

Wholesale banks may engage in the same range of banking business as full banks. The only difference is that they do not carry out Singapore Dollar retail banking activities. All wholesale banks in Singapore operate as branches of foreign banks. There are currently 50 wholesale banks in Singapore.

Offshore banks can engage in the same activities as full and wholesale banks for businesses transacted through their Asian Currency Units (ACUs). However the scope of business for offshore banks has slightly more restrictions on dealings with residents as compared to wholesale banks. Under the banking liberalization programme, offshore banks were given greater flexibility in Singapore dollar wholesale business. Offshore banks had their Singapore dollar lending limit raised to S$500 million. They are now allowed to engage in Singapore dollar swaps in respect of proceeds arising from the issue of Singapore dollar bonds managed or arranged by them. All offshore banks in Singapore operate as branches of foreign banks and there are 38 of them here.

The industry is regulated by the Monetary Authority of Singapore (MAS), which acts as the central bank of Singapore. Like most central banks, MAS is independent from the government, though it does work with various ministries when it comes to macroeconomic policies. The functions of MAS include the conduct of monetary

policy, the issuance of currency, the oversight of payment systems and serving as banking to and financial agent of the Government.

Foreign-invested banks are subjected to the same licensing requirements as domestic banks. Therefore they will pay the same licence fees as based on the type of licence held. MAS will also take into consideration other factors such as financial soundness, rating, track record and risk management processes of the bank applicant before granting a banking licence to a new entrant. The differing point between domestic and foreign-invested banks for new entrants is the minimum amount of capital required. Domestic banks required a paid-up capital of S$1.5 billion while foreign-invested banks just need S$200 million in capital funds at their head office.

Currently, there is no issuance of new licences for full or wholesale banks. Thus foreign banks that may meet the prudential requirements will still not be able to enter Singapore due to the cessation of new full or wholesale banking licence. This has been the case since 1999. But they may still be allowed to enter the market via the offshore banking licence, after meeting the prudential requirements.

8.2. Insurance

Insurers may conduct insurance activities in Singapore as registered insurers, authorized re-insurers or foreign insurers.

Registered insurers are approved under Section 8 of the Insurance Act to conduct life and/or general insurance business in Singapore. In addition to the registered insurers, re-insurers without an operating presence in Singapore can conduct re-insurance business in Singapore as authorized re-insurers under Section 8A of the Act. Such re-insurers may be authorized as general insurers and/or life re-insurers. Foreign insurers are approved under the law of another country or territory to carry on insurance business in that country or territory. These insurers operate in Singapore under a foreign insurer scheme established under Part IIA of the Act. Currently the Lloyd's Asia scheme is the only foreign insurer scheme in Singapore.

There are currently 150 registered insurers, 6 authorized re-insurers and 21 foreign insurers under Lloyd's Asia Scheme.

Similar to banking services, MAS is regulator for insurance services in Singapore. Insurance companies must be registered and authorized by MAS before they can provide insurance services in Singapore. There are no restrictions on entry by domestic or foreign-invested insurers as long as they are able to meet the admission criteria.

There is no law preventing the freedom of choice of domestic residents when it comes to choosing insurance products. However, domestic residents are required to purchase motor insurance and work injury compensation insurance only from Singapore-registered insurers. Other than that, they are free to purchase any insurance policies from a foreign insurer in Singapore or based abroad.

8.3. Health and Medical Services

Healthcare in Singapore is mainly under the responsibility of Singapore's Ministry of Health (MOH). The universal healthcare system comprises a dual system of healthcare delivery supported by both public and private sector players.

There are currently six public hospitals, with one more public hospital scheduled to open in 2015, and 13 private hospitals in Singapore. According to total admissions data for 2008, government hospitals account for 76% of the total. The remaining 24% is accounted by private hospitals. In addition to hospital facilities, primary health care is provided through an island network of 18 outpatient polyclinics and some 2000 private medical clinics.

The Ministry of Health and its statutory boards (e.g. Health Science Authority) regulate all health services providers to ensure adequate standards and patient safety. Private health service providers must apply for a practice licence in order to provide such services in Singapore.

The procedure to set up a medical hospital or clinic is rigorous. Health service providers are not restricted in the legal entity to be registered under. They may register as a business entity, a partnership or a non-profit. Foreign firms are subjected to the same licensing requirement as the domestic firms. Both domestic and foreign firms have performance and quality assurance obligations to adhere to when providing health services.

Emergency ambulance service (EAS) is under the purview of the Singapore Civil Defence Force (SCDF), Ministry of Home Affairs (MHA). SCDF manages the private ambulance providers in order to augment its own emergency ambulance service.

All doctors and nurses are required to be registered with the respective professional bodies where they will be accredited. Foreign healthcare professionals are also subjected to the same requirements.

9. Thailand

9.1. Horizontal Measures — the New Working of Alien Act

All of the services sectors under study remain relatively restricted to foreigners under related rules and regulations. Most of rules and regulations have not been changed in the past two years. Nevertheless, one distinctive change is the replacement of the Working of Alien Act 1978 by the new act, Working of Alien Act 2008. The act governs the employment of foreign nationals in Thailand. All foreign employees require a work permit under the act except the work permit under the investment promotion law or other specified law. Under this new act, there is an establishment of the Alien out-of-kingdom repatriation fund as a guarantee to cover the expenses in repatriating a worker out of the Kingdom. All workers receiving a work permit under this act must send in the money as contributions to the fund. Employers have the duty to deduct such money from wages to the fund. There is also an expansion in validity period of the work permit from not exceeding one year to not exceeding two years. A period for a renewal of the work permit is also expanded from not exceeding one year to not exceeding two years. With the new act, an alien from neighbour countries may be permitted to do some certain work in the certain area.

Under the Working of Alien Act 1978, there is mention of *prohibited* occupations and professions, which are listed in the royal decree stipulating work in occupations and professions prohibited to alien under the act. Under this act, an alien who desires to work in occupations and professions that are not in the prohibited occupations and

professions is required to obtain the licence from the Director-General of the Department of Labour Protection and Welfare. In contrast, under the Working of Alien Act 2008, there is only mention of occupations and professions *allowed* to the foreigners and not the prohibited occupations. The list of allowed occupations and professions will be included in the ministerial regulations. The announcement of ministerial regulation is supposed to be issued within two years from the date on which this new act has been put in force, yet there are no such announcements as of now. Nevertheless, the transitory provisions under the new act mention that during the absence of ministerial regulations, the registrar can permit aliens to do any work except the work prescribed by the royal decree under the Working of Alien Act 1978. This permits the law to replace the prohibited list of occupations in the future with an allowed list of occupations, which can more easily be included in any trade commitments.

9.2. Banking

After the Thailand's financial crisis in 1997, the financial sector has been restructured. While many finance companies were closed down or merged with others and the number of those companies has decreased significantly from 91 to 7, the number of the commercial banks did not change much (Menkhoff and Suwanaport, 2007). Thailand's banking system currently consists of 14 Thai commercial banks, 15 foreign banks branches and 1 foreign subsidiary. According to the Bank of Thailand, the overall banking system in 2010 is resilient. The banking system's loan expanded 11.3 per cent in 2010 from the previous year, while corporate loans, constituting 71.3 per cent of total loans, rose 9 per cent.

In 2003, Bank of Thailand introduced the Financial Sector Master Plan (FSMP) in order to enhance the efficiency, strength and access of the financial institutions. Authorities agreed that the FSMP should be done in three phases to ensure prudent implementation and allow for the future review on the results of implementation. The Financial Sector Master Plan Phase I (FSMP I) was implemented from 2004 to 2008. The key measures under the FSMP Phase I included upgrading of financial institutions through voluntary mergers and broadening of commercial bank business scope to 'Universal Banking', which allows them to serve all groups of customers and to carry out almost all types of financial transactions. In addition, new licences were

also granted, including a new subsidiary licence for a foreign commercial bank and a new retail banking licence. A 'one presence' policy was also introduced to reduce unnecessary duplication and to increase economies of scale within the financial institutions system.

The Financial Sector Master Plan Phase II, which implements from 2010 to 2014, consists of measures to reduce system-wide operating costs, promote competition and financial access, and strengthen financial infrastructure. It is expected that this will produce an efficient financial system that has good risk management and corporate governance and is not burdensome for the country. It is also expected that this will reduce the cost of services and provide greater access to diversified financial services appropriate to the demand. Lastly, it is also expected that the legal framework will allow greater opportunity for qualified individual debtors and small business debtors to apply for a business restructuring process.

Banking services are regulated by the Bank of Thailand, which is independent from the Ministry of Finance.

Only financial institutions, domestic and foreign, that obtain licences from the Ministry of Finance can operate in Thailand. However, licences are granted periodically, depending on economic needs and the financial conditions in Thailand. According to the Financial Institution Business Act 2008, the operation in commercial bank business is only allowed for a public limited company that is granted a licence from a Ministry of Finance with the advice of the Bank of Thailand. Likewise, a foreign commercial bank is eligible to establish a branch operating in commercial bank business when it is granted a licence from a Ministry of Finance with the advice of the Bank of Thailand. A commercial bank must have Thai-national shareholders holding not less than 75% of the total shares and have Thai-national directors not less than three-fourths of the total number of directors. However, the Bank of Thailand may allow non-Thai nationals to hold 49% of the total shares and the number of non-Thais directors to be more than one-fourths but less than one-half of the total directors, where the Bank of Thailand deems it appropriate.

In the royal decree under the Working of Alien Act 1978, banking personnel are not in the occupations restricted for foreigners. Thus to be employed as banking

personnel, an alien can obtain a work permit from the Director-General of the Department of Labour Protection and Welfare. To be eligible to apply for a permit, an alien must also have a residence in Thailand or must be authorized to enter the Kingdom of Thailand temporarily in accordance with the law governing the immigrant. The permission for a non-immigrant visa will be granted for a period of not more than one year at a time, but the work permit issued under the Working of Alien Act 2008 is valid for a period not exceeding two years at a time.

Among the services covered here, banking services seem to have made the most progress towards liberalization. Recent changes in policy in banking services are that the Bank of Thailand has permitted commercial banks to employ personnel of ASEAN nationality with unlimited numbers in any positions[6] but foreign institutions must propose an employment plan and necessity to the Bank of Thailand, which it will consider on a case-by-case basis. This policy change follows the protocol to implement the 3rd package of commitments on financial services under the ASEAN Framework Agreement on Services (AFAS) to remove the quantitative quota on the number of foreign personnel allowed in the banking sector.

Furthermore, a foreign bank that is already eligible to establish a branch in Thailand under the Financial Institution Business Act 2008 and has established branches in Thailand is allowed to establish up to 2 additional branches by the approval of the Bank of Thailand.[7] This follows Thailand's commitments under the General Agreement on Trade in Services (GATS) that existing foreign banks which already had the first branch office in Thailand prior to July 1995 will each be permitted to open no more than two additional branches.

Note that domestic banks also face restrictions on the expansion of bank branches. According to notifications from the Bank of Thailand for the rules on bank outlets, only a 'qualified bank' is able to open bank outlets freely and to be qualified bank, it must maintain a certain standard and get approved by the Bank of Thailand. Other domestic banks desiring to open new outlets must get approval from the Bank of Thailand on a case-by-case basis.

[6] This is according to the notification from the Bank of Thailand No. BOT. 1556/2552. The positions are except for executives or members of the Board of Directors, which still have to be Thai nationals not less than three-fourth of the total number of directors.
[7] This is according to the notification from the Bank of Thailand No. FPG. 1/2553.

9.3. Insurance

Insurance services are divided into life insurance business and non-life insurance business. All insurance services are regulated by the Office of Insurance Commission. The Life Insurance Act 1992 (as amended by No.2, 2008) and the Non-life Insurance Act 1992 (as amended by No.2, 2008) regulates any insurance business in Thailand. The life and non-life insurance business may be undertaken only by a public limited company under the Law on Public Limited Company. A foreign life (non-life) insurance company is allowed to establish a branch office to conduct the life (non-life) insurance business by acquiring the licence from the Minister with the approval from the Cabinet. The Life (Non-life) Insurance Act limits the foreign equity participation up to 24% and not less than three-fourth of the directors of the company must be Thai nationals; however, the foreign equity participation may be relaxed up to 49% and may permit persons with non-Thai nationality to serve as directors more than one-fourth but less than one-half of the total number of directors. The foreign insurance company is required, under the ministerial regulations, to have at least three-year operating history and to place securities with the Office of Insurance Commission (OIC) as a security deposit in the value not less than 20 million baht for the life insurance business and not less than 3.5 million baht for each category[8] of non-life insurance business, respectively.

A person desiring to be an insurance agent or broker for life or non-life insurance must acquire a licence from OIC. A person applying for a licence for an insurance agent must be, among other qualifications, locally domiciled and have studied the life/non-life insurance business at the institute prescribed by OIC or pass the examination by the OIC. Brokerage and agency work (excluding brokerage and agency work in international trade business) is one of the 39 occupations restricted for foreigners, according to the royal decree under the Working of Alien Act 1978.

There is no recent update in policies or regulations with regard to services trade barriers in insurance services over the past two years.

[8] The Ministerial regulation has classified non-life insurance business into four categories — fire insurance, marine cargo insurance, car insurance, and other insurance (excluding the first three categories).

9.4. Health Services

Health services in Thailand are provided by government healthcare providers (government hospitals, medical schools, health centres) and private healthcare providers (private hospitals, clinics). Government healthcare providers have major role to serve Thai nationals.

Since 2004, the government has launched a five-year strategic plan to develop Thailand as 'Centre of Excellent Health Care of Asia'. The plan has focused on three key areas — medical services, health promotion services, and Thai herbal products. This strategic plan has led to an increase in foreign visitors availing themselves of medical services in Thailand in past years. In 2007, there were about 1.37 million foreign visitors, which were mostly Japanese, following by Americans and English. According to the TDRI (2009) study, the number of patients from ASEAN obtaining medical services in private hospitals in Thailand has increased from 36,708 in 2003 to 115,561 in 2007. It is expected that the patients from ASEAN countries will be higher, especially when the ASEAN Economic Community (AEC) come into force in 2015.

Following from the first plan, the government has continued with another five-year strategic plan to develop Thailand as a World Class Health Care. The plan has continued to focus on the original three key business areas, but has added Thai Traditional Medicine and Complementary and Alternative Medicine.

In the Draft 11th National Economic and Social Development Plan (2012-2016), the health services are included in the fifth strategy, a strategy of strengthening economic and security cooperation in the region. The aim is to upgrade health services, both personnel and service standards, to be a medical hub centre of the region.

In addition, Thailand's Board of Investment (BOI) has approved tax incentives to investors in the medical sector, including:

- exemption from import duties on machinery throughout the period of promotion, regardless of zone;

- priority activities such as the manufacture of medical supplies, medical equipment, and scientific equipment to receive the maximum corporate income tax exemption for 8 years, regardless of zone and with an unspecified ratio of corporate income tax.

Moreover, the BOI provides non-tax incentives such as land ownership rights for foreign investors, permission to bring in foreign experts and technicians, and work permit and visa facilitation for expatriate employees.

Health services are listed in the List 3 under the Foreign Business Act 1999 which is prohibited to aliens unless receiving permission from the Director-General of the Commercial Registration Department (CRD). In case of a limited company with a majority of the Thais shareholders, it is regarded as a Thai company and therefore not subject to the Foreign Business Act 1999. This implies that aliens are generally allowed to join up to 49% in an accounting company but need approval if higher than that. Aside from that, a person engaging in a sanatorium business in Thailand must obtain a licence from the Ministry of Public Health, according to the Sanatorium Act 1998. To be eligible to apply for a licence, a person must be, among other qualifications, locally domiciled. Upon the application for the licence, the applicant must submit an action plan for the establishment of the sanatorium, including the sanatorium type, instrument, medical supplies and number of practitioners as prescribed by the ministerial regulations. After acquired the licence, the licensee must arrange a manager to supervise and be responsible to the management of the sanatorium. The manager is required to obtain a licence from the Ministry of Public Health and must be practitioner (medical, medicine, dentistry, midwifery, or nursery).

There is no recent update in policy or regulations in health services over the past two years.

9.5. Medical Professionals

Medical professional services include medical, dental and services provided by midwives, nurses, physiotherapists and para-medical personnel outside of a hospital environment. But in Thailand, a clinic or the premises of the individual professional are listed in the same category as hospital, thus they are subject to the Sanatorium Act 1998. In addition, each professional service is subject to its own law. Medical

practitioners are subject to the Medical Council under the Medical Profession Act 1982. Dentistry practitioners are subject to the Dental Council under the Dental Profession Act 1994. Para-medicals such as midwives, nurses are subject to the Nursing and Midwifery Council under the Professional Nursing and Midwifery Act 1985. Each act prohibits anyone to practice related medical profession activities unless the person is registered and has obtained the licence from the associated regulator. There is no requirement of Thai nationality to practice medical professions in Thailand. The licence to practice medical professions in Thailand are granted to anyone that (i) is a member of associated council, (ii) has a degree or certificate from a reputable institution recognized by the associated council and, in case of an alien, has also a licence to practice medical profession in the country he/she has completed the course of medical education, and (iii) has successfully passed the examination required by the associated council. The examination is conducted in Thai.

Nonetheless, foreign individual medical professionals desiring to do work in Thailand are still subject to the Working of Alien Act 2008 and Immigration Act 1979. In the royal decree under the Working of Alien Act 1978, medical professions are not in the occupations restricted for foreigners. Thus, an alien desiring to practice in a medical profession must obtain a work permit from the Director-General of the Department of Labour Protection and Welfare. To be eligible to apply for a permit, an alien must also have a residence in Thailand or must be authorized to enter the Kingdom of Thailand temporarily in accordance with the law governing the immigrant. The permission for a non-immigrant visa will be granted for a period of not more than one year at a time, but the work permit issued under the Working of Alien Act 2008 is valid for a period not exceeding two years at a time.

There is no recent update in policy or regulations in Medical Professionals over the past two years.

10. Vietnam

10.1. Insurance

10.1.1. The Health Insurance Law

The Health Insurance Law was passed by the National Assemble on 14 November 2008 and took effect on 1 July 2009. It aims to ease the load on provincial and central hospitals, and to expand policyholder categories to include drug addicts and people with congenital defects who were previously excluded. Every Vietnamese child under six years old will be totally covered under the new health insurance law, instead of being granted free health examination cards.

Under the decree 62/2009/ND-CP on the details and guidance for the new Health Insurance Law, the health insurance fee increases from 3 per cent to 4.5 per cent of employees' basic monthly salary.

10.1.2 The Draft Amendment and Supplement to the Law on Insurance Business

The draft amendment and supplement to the Law on Insurance Business is proposed with some following changes.

Cross-border provision of insurance service

In accordance with Vietnam's WTO commitments to recognize the cross-border provision of insurance services by foreign insurance organizations and individuals, the amendment and supplement to the Law on Insurance Business proposes that foreign insurance organizations and individuals selling insurance services from outside Vietnam through its border shall be responsible for all risks arising out of and relating to such cross-border insurance policies. Disputes arising from such insurance policies shall be settled in accordance with provisions of the Civil Code 2005 on civil relations with foreign elements and the laws of the concerned foreign country. Since this is a sensitive matter, the amendment and supplement to the Law on Insurance Business merely proposed the basic principles. The Government shall then set out detailed guidelines for its implementation based on prudential management rules permitted by the WTO, such as conditions applicable to foreign insurance enterprises, deposit requirements in Vietnam equivalent to their insurance liability in Vietnam and other

related matters in order to protect the legitimate rights and interests of individuals and organizations purchasing overseas insurance.

Branch of foreign non-life insurance enterprise

In accordance with Vietnam's WTO commitments to recognize the right to set up branches of foreign non-life insurance enterprises in Vietnam after five years from the date of its WTO accession, the amendment and supplement to the Law on Insurance Business proposes to include an additional regulation that foreign non-life insurance enterprises having their head offices located in one of the WTO Member countries shall be permitted to operate in Vietnam, amongst other permissible forms, in the form of a branch. The issuance of the permit for establishment and operation of such a branch shall be under the authority of the Ministry of Finance.

Reinsurance

According to the Law on Insurance Business in 2000, insurance enterprises wanting to reinsure overseas must also reinsure part of the liability for which insurance has been accepted with a domestic reinsurance enterprise in accordance with the regulations of the Government. However, under the WTO commitments of Vietnam, the mandatory reinsurance with a domestic reinsurance enterprise is no longer valid. Therefore the amendment and supplement to the Law on Insurance Business proposes to remove this provision on mandatory reinsurance with a domestic reinsurance enterprise. Accordingly, insurance enterprises may cede to and take over reinsurance from other insurance enterprises, including insurance enterprises inside and outside Vietnam.

Types of insurance products

The Law on Insurance Business in 2000 stipulates two types of insurance products including life insurance products (with five basic products) and non-life insurance products (with eleven basic products), although many other insurance products have evolved after the issuance of the Law and are being marketed, but are not yet stipulated in this Law (e.g. investment-related insurance, guarantee insurance). Thus, in order to be consistent with international practices, the amendment and supplement to the Law on Insurance Business proposes a broader range of insurance

products, including various forms of life insurance and retirement insurance, non-life insurance, and (voluntary) health care insurance.

Forms of insurance enterprises

Based on the old laws on enterprises in general, and state-owned and foreign-invested enterprises in particular, the Law on Insurance Business in 2000 provides for five forms of insurance enterprises, including state-owned insurance enterprises, shareholding insurance companies, mutual insurance organizations, joint venture insurance enterprises, and 100% foreign owned insurance enterprises. However, to make the Law fully consistent with the new Law on Enterprises (which superseded all provisions of the old laws on enterprises, state-owned enterprises and foreign investment in Vietnam), the amendment and supplement to the Law on Insurance Business proposes to recognize five forms of insurance enterprise, including shareholding insurance companies, mutual insurance organizations, limited liability companies with one member (the investor is an insurance enterprise), limited liability companies with two members and more (a 100% foreign capital insurance enterprise or a joint venture company between foreign insurance enterprise and one or more Vietnamese legal entity(ies)), and branches of foreign insurance enterprise.

Condition for issuance of licences for establishment and operation

Apart from the current conditions as provided by the Law on Insurance Business in 2000 (such as that the amount of paid-up charter capital is not less than the level of legal capital prescribed by the Government, the form of the enterprise and its charter must comply with the provisions of laws, and the management personnel must have management skills, expertise and professional qualifications in insurance, etc.), the amendment and supplement to the Law on Insurance Business proposes to include a provision that the organizations and individuals participating in the contribution of capital to set up an insurance enterprise or insurance broker must have suitable financial capacity, and the organizations must have experience in insurance business. It may be seen that the additional conditions have been stipulated in some legal instruments under the Law. However, the amendment and supplement to the Law on Insurance Business proposes to further include this issue into the Law to ensure its stronger legal validity.

10.2. Banking

10.2.1. The Amended Law on Credit Institutions

The 7th session of the 12th National Assembly approved the amended Law on Credit Institutions on 16 June 2010, which will then take effect on 1 January 2011. The law includes a number of new provisions relating to the operations, organization and management of credit institutions that aim to guarantee the security of the banking system.

The most remarkable change from the 1997 law is the abolition of the prime interest rate structure. Under the new law, the State Bank of Viet Nam (SBV) will announce interbank and other rates to manage monetary policy. The prime rate was eliminated as unreflective of the supply-demand relationship on the market and was viewed as interventionist by financial markets.

The law no longer requires commercial banks to maintain a compulsory reserve ratio of 20 per cent of total deposits. Instead, the SBV is granted the power to set the compulsory reserve rate.

Another new point is that, from now on, the SBV will have the right to invest and buy shares in other credit institutions and serve as the representative of State capital in credit institutions. It also gains the right to use its legal capital for the establishment of enterprises to carry out the functions and obligations of the State Bank as assigned in the Decision of the Prime Minister.

In addition to that, the amended Law on Credit Institutions promulgates provisions on management and administration applicable to credit institutions being micro-finance institutions.

10.2.2. Circular 13 of the State Bank of Vietnam on Prudential Ratios

Circular 13/2010/TT-NHNN of the SBV dated 20 May 2010 regulating prudential ratios in the operations of credit institutions replaces a number of decisions and circulars of the SBV on prudential ratios. Certain higher requirements on prudential ratios are set out in Circular 13. The minimum capital adequacy ratio (CAR) applicable to credit institutions, excluding foreign banks' branches, is increased to 9%

from 8%. However, foreign bank branches are not going to be excluded from such a CAR when the New Law on Credit Institutions takes effect. Credit institutions are also required to maintain the capital adequacy ratio of at least 9% between the consolidated capital and credit assets of the parent company and their subsidiaries. According to the SBV, such a new requirement is to cope with the current practice in the banking sector where more commercial banks are operating under the model of parent/subsidiary bank. This is also to comply better with the 25 standard inspection rules of the Basel Committee. New insolvency ratios and ratios of lending over raised capital are included in Circular 13.

10.2.3. Circular 09 of the State Bank of Vietnam on Licensing

Circular 09/2010/TT-NHNN of the State Bank of Vietnam issued on 26 March 2010 regulates issuance of licences for establishment and operation of commercial banks and takes effect from 10 May 2010, replacing Decision 24/2007/QD-NHNN dated 07 June 2007. Circular 09 sets out stricter requirements for shareholders, especially founding shareholders, who wish to establish a joint stock commercial bank, and new longer timeframes of the application process for a licence.

10.3. Health Services

Health is one of the sectors where the Vietnamese Government encourages the participation of foreign partners (Decree 108/ND-CP, 2006). There have been no policy changes between 2008 and 2010.

10.4. Medical Professionals

There have been no policy changes between 2008 and 2010.

References

Barth, J., G. Caprio and R. Levine (2004). “Bank Regulation and Supervision: What Works Best?” *Journal of Financial Intermediation* 13: 205-48.

Blundell-Wignall, A., P. Atkinson and S. H. Lee (2009) “The Current Financial Crisis: Causes and Policy Issues.” *OECD Journal: Financial Market Trends* 2(95), 9-28.

Dee, P. (2008) “Services Liberalization toward the ASEAN Economic Community.” In *Deepening East Asian Economic Integration*, eds J Corbett and S. Umezaki. ERIA Research Project Report No. 1. Jakarta: Economic Research Institute for ASEAN and East Asia.

Dinh, H. (2011) “On Regulatory Barriers to Trade in Banking Services.” Unpublished PhD Thesis. Canberra: The Australian National University.

Menkhoff, L. and C. Suwanaporn (2007) “10 Years After the Crisis: Thailand’s Financial System Reform.” *Journal of Asian Economics* 18(1), 4-20.

Nguyen-Hong, D. (2000). “Restrictions on Trade in Professional Services.” Productivity Commission Staff Research Paper. Canberra: Ausinfo.

TDRI (Thailand Development Research Institute) (2009) “Study on Formulating Services Sector Development Strategy.” Proposed to the Office of the National Economic and Social Development Board. April.