

Free Flow of Skilled Labour Study

EXECUTIVE SUMMARY

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The views expressed in this report are those of the authors, and not necessarily those of the ASEAN Secretariat and/or the Australian Government.

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Background

This report presents the findings of the project contracted by the ASEAN Secretariat, under the ASEAN Australia Development Cooperation Program Phase II (AADCP II), to MATES Consulting Pty Ltd. The project, *Free Flow of Skilled Labour Study*, was designed to:

- identify the current issues and challenges facing liberalisation of the free flow of skilled labour across ASEAN Member States (AMS), and
- develop options for ASEAN cross-sector body work plans in order to address these issues.

An earlier draft of this report was presented to a workshop on the movement of skilled human resources, held in Kuala Lumpur through October 11-12, for discussion and further input from representatives from all ASEAN Member States (AMS). Participants at the workshop included those responsible for trade and industry, immigration, education, services and home affairs. Output from the workshop was taken into account in preparing this draft final report.

Section 1 of this report summarises the work undertaken through the study. This included: the preparation of a review of current literature; the preparation of six questionnaires and sets of additional questions for in depth interviews in AMS; meetings with representatives of the ASEAN sectoral bodies in Jakarta and 56 interviews with government officials, professional and industry associations across AMS. Following the fieldwork the data collected were analysed. Further work undertaken through to the conclusion of the project included preparation of inputs for the 11-12 October workshop, further analysis of data and completion of this draft final report.

The literature

Section 2 presents a review of the literature concerning the issues addressed by the study. The phenomenal growth in trade, investment and economic growth within the region has exposed structural shortages in the supplies of skilled human resources. This has driven growth in the movement human resources across international boundaries within the region. The process in ASEAN to liberalise trade in services will, over time, significantly augment this flow. The AMS have made considerable progress toward extending the width and depth of their commitments toward the liberalisation of trade in services beyond those scheduled under GATS. However, one of the areas of least progress is under Mode 4. A focus of the present study is on issues that need to be resolved to move this process forward.

Issues

Section 3 describes the major issues that have emerged through the study. These include definitional issues, and in particular, clarifying the focus of *skilled professional workers*. In some cases this concept is applied only to those engaged in knowledge-intensive professions such as physicians, nurses, engineers, and graduate specialists, scholars and researchers, and administrators and managers. This definition can be expanded to include workers with a special skill, knowledge, or ability in their work. They may have attended a

college, university or technical school or may have learned their skills on-the-job and been accredited by the relevant authority.

The focus for ASEAN in the present context could be just on 'professionals' or expanded to include skilled labour more generally. Many professional workers object to being called skilled workers and one way of overcoming the ambiguities inherent in the terms skilled labour or skilled workers could be to adopt the term *skilled human resources*. This term is used internationally, and is used throughout this report.

Much movement of skilled human resources is already occurring in ASEAN through the flexible interpretation of, or in spite of, existing regulations. These flows are hard to quantify but are a result of shortages of particular skills, foreign direct investment (FDI), surplus skills relative to demand or the export of skilled human resources as a deliberate policy of government.

Arrivals and departures data are at present patchy and limited. Some indicative data, however, have been gleaned from interviews. Singapore and Malaysia are currently the major destinations. Singapore and Malaysia are both much involved in international business and the consequent flow of Intra-company Transferees (ICT) is substantial but independent movement is also considerable. The Philippines is the major sender of independent workers but only a small proportion are highly skilled and less again are destined for AMS. Emerging economies, such as Cambodia, Indonesia, Laos PDR, Thailand and Viet Nam, are beginning to benefit from flows of skilled human resources associated with FDI.

It appears that most countries are happy for these flows to continue, or even expand, but they are still reluctant to enshrine the capacity to allow the free flow of skilled human resources in their commitments. Their concern is the potential *perceived* impact of liberalisation on domestic employment and the maintenance of occupational standards.

Barriers

Section 4 presents an analysis of the current barriers to the free flow of skilled human resources. These barriers are briefly summarised below:

- i. Limited progress in the liberalisation of Mode 4 commitments

As the literature points out one set of restrictions fall under the GATS Articles XVI and XVII and are inscribed in the various AMS horizontal and sector specific commitments. The prevalence of 'unbound' in most Mode 4 commitments is a major inhibiting factor. For some AMS the pace of change has exceeded their capacity to alter domestic laws and regulations and to monitor the impact on their local economies. A recognition of the potential benefits of free mobility is often countered by a fear that competition from more highly skilled foreigners will be greater than the perceived opportunities or desire by skilled locals to work abroad.

- ii. The widespread prevalence of labour laws and regulations

Another set of barriers is the various rules and regulations that fall outside of these articles. As pointed out in the literature review, the Annex on the Movement of Natural Persons gives wide scope to impose measures to regulate the entry of natural persons. The non-recognition of foreign professional qualifications/skills has

been a controversial issue globally and is no less so in ASEAN. In the absence of international standards in most professions, other mechanisms have come into play internationally to try to establish equivalence or comparability of professional training standards. ASEAN has developed its own mechanisms, (MRARs), but as yet they are not working. The use of quotas and labour market and economic needs tests is still widespread in many AMS. A table is included in this section that shows the major immigration and employment regulations across AMS. Most AMS still treat foreigners, including those from other AMS differently. Specific requirements pertaining to the hiring or training of local professionals by foreigners place additional conditions on them. They may not want to incur the financial and human costs that this inevitably involves and they may opt to forego the move.

iii. Other regulatory restrictions

Many other regulatory restrictions can operate to inhibit foreigners from entering a local labour market. They include nationality, residency and length of stay requirements; investment regulations; and language requirements for practising professionals. The mobility of skilled human resources involves many agencies and it will take some time to amend domestic legislation that controls these elements.

iv. Differences across AMS in levels of development and policy coordination capacity

The CLMV, in particular, but also some other member states need technical and training assistance to enhance their policy making and management capacity, if they are going to be able to meet the targets of the Blueprint. There is a need in particular to educate their own people about policy for managing skilled human resources mobility; to set up the many bodies that are required by the MRARs; to change domestic laws and regulations as required to open up sectors and occupations, and to set up or enhance their skills recognition and training systems to bring them to an acceptable regional standard.

v. Communication and coordination within AMS for dealing with cross-border flows of skilled human resources

There is a need to deepen the level of understanding about the aims and intentions of ASEAN leaders in relation to the AEC. Many in government, in particular, but also in private industry, still do not understand the potential economic and social benefits that can flow from the ASEAN Economic Community (AEC). AMS need to embark on appropriate communication and education campaigns to inform their populations of the gains that may accrue from a more flexible labour market and a more highly trained labour force.

vi. Communication and coordination across ASEAN sectoral bodies.

There is a need for better overall coordination at the ASEAN level across sector-body working groups. Based on interviews carried out through the present study it does not yet appear to be clear as to who has overall responsibility for coordinating initiatives directed toward facilitating a free flow of human resources, nor how the sectoral bodies can best work together to achieve this outcome.

vii. Mutual recognition arrangements (MRARs)

MRARs have provided the motivation and fora for discussing training, common competencies, ethics, professional regulations and labour laws across ASEAN. They represent an improvement on the model suggested by the WTO for developing Mutual Recognition Agreements (MRAs) under GATS where countries were encouraged to develop MRAs if they wanted to exchange service providers. But many developing countries do not have guaranteed occupational standards, regulatory mechanisms, professional and other bodies that accredit and register practitioners and mechanisms for ensuring continued competence. Some AMS are in this situation but as a result of the MRARs they have started talking and have become aware of deficits that need to be remedied. This process has been beneficial in many ways in a move toward the mobility of professionals. Nevertheless, the process has been onerous in terms of setting up new structures and there is still no common agreement on core competencies or harmonisation of training. To date, the MRARs have achieved little mobility of skilled human resources.

Options for dealing with the issues

Section 5 outlines a set of options for ASEAN Sectoral Bodies (CCS, SLOM, SOM-ED and DGICM) to consider in developing future work plans. Some options overlap and involve a number of sectoral bodies. In these cases, the options are included below under each of the sectoral bodies.

5.1 CCS options

1. Form a high level MNP coordinating committee (MNPCC) for a period of 2 years to meet twice yearly on the mobility of skilled human resources—with one representative from CCS, SLOM, SOM-Ed and DGICM representatives from each AMS. Its main task is to coordinate across all sectoral bodies involved in the mobility of skilled human resources and to monitor the implementation of all actions proposed in this report. Reports from the sectoral bodies should be provided to this committee in advance of their meetings.
2. Promote consistency in the use of terminology relevant to the ASEAN commitment toward the free mobility of skilled human resources. These terms could be posted onto an ASEAN website.
3. Begin a process of liberalising Mode 4 commitments by implementing the following stages:
 - a) Start by liberalising commitments in all seven occupations with MRARs and the priority sectors identified in the Blueprint;
 - b) Each AMS to liberalise occupations where they identify a shortage in their labour markets, using an agreed transparent mechanism;
 - c) Liberalise all remaining sectors, with limitations only in exceptional circumstances.
4. CCS to work closely with SLOM and AUN to improve negotiation mechanisms/processes. CCS/SLOM, through the AUN, could look towards the development of on-line short course modules and a series of in-country workshops that could be made available to all AMS officers concerned with managing policy processes for achieving the free flow of skilled human resources.

5. Streamline the operation of MRARs and renegotiate with AMS. Move to common competency standards.
6. CCS with SLOM should identify technical experts to assist AMS with the processes of establishing new bodies or incorporation of existing professional bodies into the accreditation and recognition processes of the MRAR. MRARs should be renegotiated with AMS in order to achieve the above and to enable AMS to utilise existing bodies or multifunction bodies as MCs or PRAs.
7. Complete all NQFs and SRAs. Move to a comprehensive ASEAN skills/qualifications recognition mechanism.
8. Support and promote the operations of the Tourism WG currently under CCS as a model of Mode 4 liberalisation or move it to a working group under the Senior Officials Meeting of the Tourism Ministers.
9. Together with SLOM & DGICM, explore options for (i) an ASEAN visa for MRAR occupations and (ii) for an ASEAN business visa for multiple entries to any AMS over a specified period of time.

5.2 SLOM Options

1. Form a high level MNP coordinating committee (see CCS-1, above).
2. Finalise skills recognition arrangements in all AMS as per the 2004-8 recommendations of the AADCP 1 *Enhancing Skills Recognition Arrangements (SRA) Project* and SLOM work plan.
3. Reach agreement on an ASEAN Regional Qualifications Framework (RQF) or, alternatively, on benchmarking national qualifications frameworks against a standard regional qualifications framework.
4. Develop core competency standards (CS) and training modules for a range of skilled occupations at certificate 3 and 4 levels – for all AMS.
5. Promote the sharing of expertise and sets of existing CS/training standards already in use in some AMS, to assist other AMS to develop their core competencies.
6. Move to a comprehensive skills/qualifications recognition mechanism jointly with CCS (Option 7). Accreditation and recognition should be managed in all other occupations by a general agreement based on a regional qualifications framework and national accreditation and certification systems or benchmarking of national qualifications frameworks. National certificates, stating occupation and competence level, should be issued by national skills standards authorities.
7. Complete and circulate each AMS with a detailed summary of all AMS requirements for entry and visas for skilled human resources. (Table 3)
8. The above compilation could provide the starting point for developing a common set of requirements for work permits. This would need to be done over a period of time and involve DGICM and other relevant agencies.
9. Oversee the development of a common definition and criteria for Labour Market Tests (LMTs), with a sunset clause of 5 years. Identify specific occupational skills shortages via common economic needs tests (ENTs)
10. Explore ways to amend domestic legislation to loosen the nexus between work contracts and work permits to enable movement between employers in special circumstances.
11. SLOM should be given prime responsibility for Mode 4 in each AMS but with a coordination committee similar to that recommended for ASEAN in CCS and SLOM Option 1.

12. Collaborate with DGICM to establish 'one stop shops' for both visas and work permits. This will require a 'whole of government' approach and top level commitment to handling the flow of skilled human resources and the centralisation of decision-making and issuance in one office or set of offices located in each AMS.
13. In collaboration with DGICM, develop a mechanism for collecting relevant and accurate information concerning outgoing skilled human resources.
14. Collaborate with DGICM to collect information on incoming skilled human resources.

5.3 AUN Secretariat options

1. Information about AUN should be circulated to all sectors. There is very little awareness of AUN outside of the education sector.
2. Exchange programs of academics should be used as a means of upgrading the knowledge and skills of lecturers from CLMV in many fields. A strategic plan should be developed by the AUN Secretariat, based on need.
3. Develop a means of incorporating professional bodies into the AUN.
4. Initiate credit transfer and student exchanges.
5. Encourage internship placement in other AMS. These should include internships in firms/governments in other AMS.
6. The emphasis on harmonising training, as per the Bologna process in Europe, should be given a very high priority.
7. There is an urgent need for training through the AUN (as outlined in CCS options for their work plan).

5.4 SOM-ED options

1. Where TVET is partially or totally administered by Ministries of Education there needs to be much closer coordination with Ministries of Labour. The two now need to be brought together.

5.5 DGICM options

1. Encourage the dissemination of information on immigration requirements of each AMS.
2. In the current context immigration officials are not responsible for deciding on or issuing work visas. However, it was clear from interviews that there is a need for on-going discussion between labour and immigration officials about procedures and the collection of data. Increased coordination and dialogue is needed with SLOM on:
 - a) the issuance of work visas within ASEAN;
 - b) establishing a 'one stop shop' for all visas and work permits;
 - c) collecting relevant information concerning outgoing skilled human resources; and,
 - d) collecting relevant information concerning incoming skilled human resources.