

Free Flow of Skilled Labour Study

FINAL REPORT

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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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ACRONYMS

ABAC	ASEAN Business Advisory Council
ABTC	APEC Business Travel Card
ACPE	ASEAN Chartered Professional Engineer
AADCP	ASEAN Australia Development Cooperation Program
AEC	ASEAN Economic Community
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Area
ALM	ASEAN Labour Ministers
AMS	ASEAN Member States
ATM	ASEAN Tourism Ministers
ATPCM	ASEAN Tourism Professional Monitoring Committee
AUN	ASEAN University Network
BV	Business Visitors
CLMV	Cambodia, Lao PDR, Myanmar and Viet Nam
CS	Competency Standards
CSS	Contractual Service Suppliers
DGICM	Director Generals for Immigration and Consular Matters
FDI	Foreign Direct Investment
GFC	Global Financial Crisis
GMS	Greater Mekong Sub-region
ICT	Intra-company Transferees
IP	Independent Professionals
IT	Information Technology
LMT	Labour market tests
MC	Monitoring Committee
MNPCC	Movement of Natural Persons Coordinating Committee (proposed)
MRA	Mutual Recognition Agreement
MRAR	Mutual Recognition Arrangement
NQB	National Qualifications Board
NQF	National Qualifications Framework
NTPB	National Tourism Professional Board
NTPCB	National Tourism Professional Certification Board
OECD	Organization for Economic Co-operation and Development
PPA	Practising Professional Accountants
PRA	Professional Regulatory Authority
RQF	Regional Qualifications Framework
RTA	Regional Trade Agreement
S&T	Science and Technology
SEOM	Senior Economic Officials Meeting
SLOM	Senior Labour Officers Meeting
SOM-ED	Senior Officials on Education
TVET	Technical and Vocational Education and Training

EXECUTIVE SUMMARY

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.

1. BACKGROUND

1.1 Background to the study

The achievement of the free flow of skilled labour in ASEAN is a key element of the AEC Blueprint, focusing on managed mobility of facilitated entry for the movement of natural persons engaged in the trade in goods, services and investment. The AEC Blueprint explicitly addresses the need for the free flow of skilled labour. However, although the Blueprint identified four 'action' areas for working toward a freer flow of professionals and skilled labour, it does not offer a clear strategy or pathway that can enable cross-agency actions to facilitate this objective.

The current situation suggests there are varying degrees of commitment to the liberalisation necessary for paving the way to a freer flow of skilled human resources under AFAS across Member States. Key limitations in the commitments include definitions regarding categories of labour; criteria for the issuance of visas and work permits; the use of quotas; limited periods of stay, labour market tests; requirements to train local personnel; cost variations; mechanisms for facilitating locals' access to jobs; and differing implementation procedures.

While the ASEAN sectoral bodies have variously initiated efforts to facilitate the free flow of skilled human resources and AMS have worked toward packages of commitments, a comprehensive overview of the current status of these developments does not exist. Moreover, there is no clear picture of the linkages across the sectoral bodies involved nor yet a plan for addressing problems in an integrated, efficient and effective manner.

In order to gather insights about the current progress toward the free flow of skilled labour and to prepare inputs for future work programs, ASEAN has commissioned this study on *The Free Flow of Skilled Labour*. The study has been funded under the AADCP II program and commissioned to a team of Australian and Thai researchers contracted through MATES Pty Ltd.

1.2 Summary of expected outputs from the project

Under the project terms of reference, the following outputs were defined:

- identification and assessment of current issues and challenges facing the liberalisation of the free flow of skilled labour across AMS;
- identification of issues and options for the work-plans of relevant ASEAN cross-sectoral bodies as an approach for addressing issues and challenges related to the free flow of skilled labour across AMS; and,
- indicative recommendations and approaches for AMS to address issues and challenges towards the achievements of the free flow of skilled labour.

1.3 Project activities

The project has been undertaken under very tight time constraints. Through July, the team conducted a review of current literature regarding contemporary experiences and issues concerning skilled labour mobility in ASEAN as well as comparative literature relating to other parts of the world. The literature review is included in this report in Section 2.

Based on this review, the team prepared a set of questionnaires consisting of: a general questionnaire; questionnaires for each of engineering, information technology, medicine, and nursing, and one on tourism services. These were piloted in Indonesia and then used across the other AMS. They were used during interviews and in some cases sent

by email to informants for them to complete in their own time. Sets of additional questions were also prepared for in depth interviews with people representing CCS, SLOM, Education, DGICM and the ASEAN Business Advisory Council (ABAC).

In late July and August, the study team conducted over 59 separate meetings with key stakeholders engaged with the issues of skilled labour mobility across eight ASEAN Member States. In all, discussions were held with over 100 respondents. Myanmar was not included and Brunei Darussalam was contacted by email. A list of the agencies and personnel interviewed through the fieldwork phase is included as Attachment 1.

Immediately following the fieldwork phase a report outlining the study team's preliminary observations was prepared for the ASEAN Economic Minister's Conference scheduled for 24-27 August. That report identified the key issues emerging from the study and some initial options and recommendations for future work-plans directed toward facilitating a freer flow of skilled labour. An interim report that developed the issues and options was prepared in September. Comments on the interim report were received from ASEAN Secretariat sectoral body representatives and incorporated into a revised version. That revised report was used as a focus for discussion at a workshop of AMS representatives in Kuala Lumpur through October 11-12. Participants at the workshop included representatives from government agencies responsible for trade and industry, immigration, education, services, foreign affairs and home affairs. A key focus of the workshop was on the issues and proposed options for future action.

This final report provides a detailed analysis of the issues and rationale for the recommendations summarised in the earlier reports and discussed at the October workshop.

2. TRADE, INVESTMENT AND THE MOBILITY OF SKILLED LABOUR: AN OVERVIEW

2.1 Introduction

Economies today are being transformed via globalisation, economic integration and a shift to knowledge-intensive activities. An important aspect of this global knowledge-based economy is that it is underpinned by an international skilled and professional labour force that crosses national borders, increasingly on a temporary basis (Gera *et al.* 2004). Business is becoming ever more international in its outlook and activities and the exports of products, technology transfers and R&D investment across operations worldwide require the movements of key skilled personnel (PricewaterhouseCoopers 2006).

Until recently, the most sought after internationally mobile resource was capital in the form of foreign direct investment (FDI). That has now expanded to include access to R&D and highly skilled professionals. Indeed, location decisions regarding investment, R&D and FDI are jointly determined, with success at attracting one resource drawing more of the others (Head & Reis 2004).

Changes in the character of FDI are adding impetus to the growth of international migration of skilled and professional workers. Mergers and acquisition now are making up an increasing proportion of FDI (Kang & Johansson 2001). As is indicated by OECD data, this type of investment requires an ever growing flow of intra-company transferees in the form of managerial and specialist staff. Thus trade and investment flows in the increasingly globalised economy are underwritten by the international flow of skilled and professional manpower (Globerman 2000).

Global economic integration and the attendant migration of skilled and professional workers, in part, have been driven by the internationalisation of the production process (Feenstra 1998). Firms are outsourcing internationally a range of manufacturing or service activities, from product design to assembly, from R&D to marketing, distribution and after-sales service (Grossman & Helpman 2005). Outsourcing of inputs and business services is one of the rapidly growing components of international trade. It has been given added impetus in recent years as a result of new information and communication technologies.

2.2 International movement of skilled labour

The reality is that global labour markets now exist in many occupations and a person's skills are their greatest tradable asset. This is due in no small measure by some countries seeing skilled movement as a means of filling skilled labour shortages to ensure that economic growth is not held back in the short term or to meet social needs.¹ For others, it has come to be used as a means to improve the stock of 'brains' generally or to train locals. Thus, the Philippines has become a major port of call for countries looking for well-trained nursing staff, while Malaysian nurses and doctors find lucrative employment opportunities in Singapore and the Gulf States.

There are two broad categories of skilled movement and their prevalence depends on the policy framework of each country: permanent settlement policies and policies designed to enable short-term movement. The former are country-controlled and skilled human resources are eager to move to fill a particular niche or to simply participate in, and benefit from, the country's economic development. The latter partly rely on the internal labour markets of multinational corporations, recruitment agencies or government policies. Skilled

¹ Stahl (2001) examines the impacts of structural changes on the labour markets of APEC member economies and explores the implications of these changes for international labour mobility within the region.

labour partly follows international investment flows, and 'reflect the internationalisation of firms in the ongoing process of globalisation of the world economy' (OECD SOPEMI 1995). Garnier (1996) identifies another three short-term categories as well: individual service providers and specialists on specific assignments, short term or business visitors, and diplomatic and international personnel. Garnier also discusses the challenge governments confront in determining how much access they will grant international service providers to their domestic market when this involves the movement of physical persons. Even in relation to temporary movement, the arguments for easier access come up against those that argue against liberalisation.

Many labour importing countries, and particularly those in the Asian region, view temporary foreign labour movement as having the following advantages:

- i. It enhances the receiving country's labour market flexibility;
 - ii. It helps alleviate sectoral labour shortages;
 - iii. It avoids the sanctioning of permanent immigration with its attendant welfare costs and the necessity of implementing integration policies;
 - iv. It promotes the movement of managerial staff and highly skilled workers.
- (OECD 1999, 24)

The expansion of trade in higher education services has also contributed substantially to the internationalisation of highly-skilled/professional labour markets (Phillips & Stahl 2001). As business risks and opportunities increasingly transcend national and cultural boundaries, corporations are interested in finding productive new ways of preparing students to compete effectively in the international market place. Among the new skills, attitudes and sensitivities being demanded are personal and professional adaptability, language proficiency and improved cultural awareness (Mallea 1997). Thus, from the perspective of the international corporation, students who have acquired the common skills, language and values imbued by an international education are particularly attractive employees. This, in turn, reinforces the internationalisation process as students recognise the value of an international education and opt to pursue it (Lewis 1993).

The increase in student movements between developing and more developed countries must also be seen as part of highly skilled migration. The reality is that many students stay on in their destination and these countries view foreign students as an economic asset. There is a strong economic self-interest that underpins foreign student programs in the United States, Australia and other Anglo-Saxon countries (Christian 1999). Students not only bring much needed income into universities and colleges but they also provide a pool of student labour and then finally a skilled domestically-qualified labour supply and 'more easily assimilated immigrants'. In more recent years, Singapore has become a hub for higher education training that draws students from across the region.

2.3 Skilled labour movements within Asia

Movement of labour in the Asia-Pacific region has grown rapidly in the last two decades.² Within this context, contract labour mobility has received considerable attention while the movement of skilled human resources has attracted much less attention. In the 1960s research into the mobility of skilled human resources focussed on the 'brain drain' to developed countries, especially after the relaxation of Asian immigration restrictions by Canada, the United States, Australia and New Zealand. However, the mobility of skilled human resources has broadened out and now encompasses a wide search for greater

² A recent study edited by Hugo and Young (2008) provides a comprehensive overview of labour mobility in the Asia-Pacific region. See, in particular, the chapters by Hugo (pp. 1-63) and Chia Siow Yue (pp. 93-130).

opportunities and better life chances and lifestyle by skilled people from both developing and developed countries.

Any attempt to summarise the skilled labour flows within Asia is difficult. In 1992 Pang identified three streams of skilled labour movement that expanded rapidly in the Asia-Pacific region after 1985. The first stream was an intra-regional flow between industrialised Eastern Asia and developing South-Eastern Asia. It included the flow of skilled and professional workers from Japan, Taiwan and Hong Kong to southeast and southern Asia. The southward streams to Singapore, Malaysia, Indonesia, Thailand and the Philippines were part of the flow of trade, investment and technology. Professionals and skilled workers migrated temporarily to manage capital, to oversee multinational projects and to provide management and consulting services. They were joined by jobseekers and investors, as well as by European, American, Canadian and Australian professionals, junior and middle-level managers, and engineers and data-processing personnel. Over time, the movement of skilled Asians to service these investments increased as both the costs of maintaining western expatriates, the problems posed by different languages and cultures and the availability of local specialists increased. Some governments imposed restrictions on employing foreigners, except where no national was available. At the same time, as there were these movements from Japan and South Korea, there were complementary flows into these two countries from within the region as well as from outside.

The second stream was found within South East Asia and consisted of (a) the temporary flow of skilled and professional workers from Singapore to neighbouring countries (Indonesia, Malaysia, the Philippines, Thailand and the People's Republic of China) to service investments. In the 1990s, the Singapore government came to see this movement as beneficial for the internationalisation of Singapore's economy. Concern about the permanent outflow of professionals to the US, Canada and Australia was matched by attempts to improve the quality of life and education in Singapore and permanent emigration seemed to have decreased, and (b) a large reverse flow of skilled technical and unskilled labour into Singapore from neighbouring countries. The skilled inflow was not subject to any restrictions, unlike the unskilled intake. Special programs were in place to attract skilled workers (especially Chinese from Hong Kong) to offset permanent outflows.

The third major stream occurred within East Asia and consisted of (a) a large flow (much of it daily commuting) of professionals, managers and technicians from Hong Kong into the Pearl River Delta region and elsewhere, and (b) the short-term flow of professionals and managers from Taiwan into the People's Republic of China and Vietnam. Both of these skilled flows were associated with the division of labour in the region.

These three major patterns have continued, though with considerable broadening out to include most countries in the region. Most countries in Asia now permit the inflow of skilled temporary workers, although many still have policies to protect their own workers and ensure that nationals eventually displace expatriates. The predominant paradigm has been temporary migration and so the increasing mobility of skilled personnel involved in the provision of services is simply an amplification of the existing pattern. The information technology (IT) sector has fuelled much of the growth in high skilled mobility and host countries have adopted a range of measures to facilitate the admission of foreign scientists, IT professionals and engineers, while at the same time restricting the entry of other foreign skilled workers. It has not been a wide open door as far as nations seeking skilled human resources are concerned. A variety of recruitment and residence criteria apply in different countries.

The AMS have imposed a variety of restrictions on foreign skilled workers such as limits on duration of stay, labour market and/or economic needs tests, skills transfer and pre-employment conditions, qualifications recognition requirements, or have tied foreign skilled

labour to commercial presence (Wongboonsin 2008). In general, countries provide mechanisms to select or attract the people that their industries and employers require. At the same time, they have introduced mechanisms to exclude those skilled people who are trained in occupations in which they have an oversupply or a perceived oversupply. Often the oversupply may not be real but fears about a possible oversupply may be generated among professionals in the host country who are anxious about protecting their incomes and status.

What this discussion highlights is that a major difference between service activities and goods is that services are subject to much greater regulatory control, often for the purpose of consumer protection, but at other times reflecting basically protectionist policies. This fact makes deregulation and liberalisation for services more complex than that for goods (Feridhanusetyawan & Stahl 2001). Let us now focus specifically on the issues and challenges of the liberalisation of trade in services.

2.3.1 Liberalising trade in services

Research on the topic of trade in services has become a growth industry recently. A survey article written in 2006 (Hoekman 2006) cites 180 references, the bulk of which were published in the last decade. Along with the proliferation of literature in the area, there also has been a proliferation in the number of trade in services agreements. At the end of 2006, the WTO counted 54 such service accords. By February 2010, that number had risen to 86 (WTO 2010).³ Of course, this includes the ASEAN Framework Agreement on Services (AFAS) whose stated objective is to advance the liberalisation of trade in services by entering into commitments beyond those taken at the multilateral level under GATS (ASEAN 1995).

This increased interest in regional trade agreements (RTAs) in services can be attributed to several factors.⁴ First, broad success in tariff reductions has stimulated policymakers to search out other barriers to international commerce. Improvements in services infrastructure through trade and domestic reform can greatly enhance productivity in services industries with both upstream and downstream effects on the costs for goods producers. Second, technological advances have greatly increased the range of services that can be traded internationally. Third, many governments have privatised what were once government owned service industries, thus opening up the possibility of foreign participation in these industries (Fink & Jansen 2007). Fourth, RTAs are seen as a potential way around the problems associated with the multilateral negotiating framework (Drake-Brockman 2003). Fifth, because services are not storable, their exchange is often facilitated by proximity of consumers and suppliers. A services trade often involves a mix of cross-border supply and the movement of persons necessary to affect that supply (Hoekman 2007). This is often easier within in the context of close social and cultural ties that proximity brings.

The growing focus on services also derives from the fact that they do comprise a substantial proportion of national valued added and foreign trade, and this proportion rises with economic development (Francois & Reinert 1996). Balance of payments figures show that services are the fastest growing sector of the world economy (Mattoo & Stern 2008). For example for the ASEAN countries, services as a percentage of total value added range from 28.3% for Brunei Darussalam, to 42.0% for Malaysia and 72.2% for Singapore (World Bank 2010). Employment in the services sector ranges from 24.9% for Vietnam, to 57.4% for Malaysia, to 76.2% for Singapore (ILO 2010). For the low-income ASEAN countries as a

³ This number includes both bilateral and multilateral agreements.

⁴ We use the term RTA broadly to include what some call 'free trade agreements' (FTAs) and 'preferential trade agreements' (PTAs), both bilateral and plurilateral agreements.

group, commercial services exports accounted for fewer than 8.5% of GNP, whereas the figure for Singapore was 45.6% (UNCTAD 2009).⁵

These figures are mirrored across all countries at differing levels of development and reflect the fact that the services content of goods rise as economies become more complex. As service industries become more sophisticated, goods producers find it advantageous to out-source various service aspects of their operations, e.g. professional and IT services, advertising and marketing, financial services, distribution, and research and development (Hoekman 2006; Corbett 2007).

In sum, services play an important role in the process of economic development. Therefore, improvements in the efficiency and competitiveness of service industries through trade liberalisation and domestic reform can yield significant economic gains, both directly in terms of the service sectors affected and indirectly through the linkages that these sectors have to those sectors producing traded and non-traded goods.⁶

The typology of trade in services largely incorporated in GATS was that developed by Sampson & Snape (1985). They became known as the various modes of supply: Mode 1 'cross-border supply'-services supplied from one country to another; Mode 2 'consumption abroad'-consumers from one country using services in another; Mode 3 'commercial presence'-a company from one country setting up operations in another country, and Mode 4 'movement of natural persons'-person travelling temporarily from their own country to supply services in another country. Mode 4 underpins the first three, and particularly Mode 3. For example, a company engaging in 'cross border supply' in the form of a sale of banking software most likely will send staff to the customers' location to assist in the installation of that software and the training of local staff in its use. Even prior to the sale of the software the company's marketing team might visit to negotiate the sale. Tourists travelling to 'consume abroad' tourism services are often accompanied by tour guides. Most importantly, to establish a 'commercial presence' in a host country, foreign multinational companies will bring into the host country intra-company transferees to ensure the proper set up and operation of their new venture, or at least as many as restrictions and regulations permit.⁷ Regulations permitting, they may want to hire experts from their home and/or other countries to provide various services. All of these movements of service providers fall under Mode 4. Thus regulatory measures and restrictions pertaining to Mode 4 'movement of natural persons' (e.g. visa restrictions, quotas, economic needs tests) are an important determinant of the feasibility and extent of trade in services (Hoekman 2006).

There is much empirical literature on the subject of regulatory and other restrictions and their implication for services trade, investment and labour flows.⁸ Because services are generally intangible and largely incorporate the efforts of service providers, barriers to their trade take the form of prohibitions, quotas, and government regulations applying to foreign

⁵ For more detailed statistical overview see ASEAN 2007.

⁶ There is econometric evidence that liberalising trade in finance and telecommunications can be growth promoting (Matto, *et al.* 2006).

⁷ These examples highlight the complementarity of modes of supply. However, the modes can be substitutes as well. Thus 'commercial presence' may obviate the need for 'cross-border supply' and vice versa. The Mode 4 'movement of natural persons' in the form of self-employed contractual service suppliers to a host country may provide domestic service providers in that country with sufficient talent to preclude the need to engage in a joint venture with a foreign multinational ('commercial presence'). As can be deduced, restrictions on one mode of supply may force service providers to use another, possibly less efficient mode of supply.

⁸ Identifying and measuring trade barriers in the service sectors is complex. Nonetheless, there have been numerous studies that employ different methods of measurement of these barriers. They include frequency measures and indices of restrictiveness, price-effect and quantity-effect measurements, gravity-model estimates, and financial-based measurements. Deardorff & Stern (2008) and Hoekman (2006) review some of these studies. Also see Nordas & Kox (2009).

service products, foreign firms and foreign service suppliers (Copeland & Mattoo 2008).⁹ Drawing on numerous studies, Dee (2007, 422) summarises some of the key regulatory restrictions in seven services sectors in East Asia. In three of the sectors she found regulatory entry barriers that discriminate against foreign firms. While these can be and often are dealt with in RTAs, of greater concern are regulations that restrict market access and affect both domestic and foreign suppliers. These impose high costs on the economy but are difficult to liberalise under RTAs. They require a commitment to reform non-discriminatory impediments as part of a thorough and ongoing program of unilateral domestic regulatory reform.

2.3.2 Service supplier mobility and Mode 4

Mode 4, the presence of natural persons, occurs when a person is present in an economy other than his/her own in order to supply a commercial service. The GATS explicitly specifies that the agreement does not apply to persons seeking access to another country's employment market, and it does not apply to labour mobility other than on a strictly temporary basis.

There are several major categories of natural persons that fall under the scope of Mode 4 (Magdeleine & Maurer 2008). The ones listed here overlap with other categories used in trade negotiations.

The first category is *contractual service suppliers - self-employed*. Such a person enters another member country in the context of a service contract with a service consumer in that country. This category of Mode 4 temporary migrants is elsewhere referred to as *independent professionals*.

The second category is *contractual service suppliers as employees of a juridical person*.¹⁰ The juridical person is actually a firm that supplies services to another member economy under Mode 1 (without a 'commercial presence' – Mode 3). So these CSS are employees of the firm who travel to another member economy to facilitate the 'cross-border' supply of services.

The third category is *intra-corporate transferees and foreign employees directly recruited by foreign established companies*. In this situation the movement is the result of a supply of services under Mode 3. That is, a company in member A sets up an affiliate firm or joint venture in member B and then sends some of its own staff to work in the affiliate/joint venture. It also applies to foreign employees directly recruited to work in the affiliate/joint venture. Intra-corporate transferees are a particularly important sub-group as most of the commitments to liberalise Mode 4 movements focus specifically on this group.

The fourth group is *service sellers*. These are natural persons who are trying to acquire contracts for the cross-border supply of services (Mode 1) or are negotiating the setting up of a commercial presence (Mode 3). In trade negotiations, these persons are often referred to as *Business Visitors*.

Restrictions imbedded in horizontal and sector specific commitments have ensured that service providers moving under Mode 4 are principally skilled and professional workers

⁹ Barriers to trade in services may be of two types: (1) discrimination against *foreign* suppliers either through restrictions on entry or on operations (national treatment), and (2) by protection of incumbent service providers by discriminating against *all* new suppliers, domestic or foreign, by either restricting entry or restricting the nature and scope of operations via commitments (market access) (Dee 2005).

¹⁰ A juridical person is an entity (such as a firm) other than a natural person (human being) created by law and recognized as a legal entity having distinct identify, legal personality, and duties and rights (BusinessDictionary.com).

who are largely intra-corporate transferees.¹¹ The movement of low-skilled service workers is virtually non-existent while the movement of skilled service providers other than intra-corporate transferees is circumscribed by political, regulatory and enforcement concerns that are manifest in impediments that include stringent visa requirements, quotas, the application of economic needs/labour market tests, limits on recognition of professional qualifications and licensing requirements (Jansen & Piermartini 2004; Mamdouh 2004). In other words, the movement of natural persons is constrained by limitations on market access and national treatment.

The political sensitivities implied by the imposition of these restrictions are reflected in the structure and content of commitments under Mode 4 compared to Modes 1-3. As Adlung & Roy (2005, 11) observe, commitments under Modes 1-3 are based on a 'top down' approach whereby full liberalisation is the starting point to which limitations are added that are deemed necessary for whatever political, economic or social policy grounds. In contrast, virtually all of Mode 4 commitments are 'bottom up' in nature, i.e. the horizontal commitment provides for a general 'unbound' across all sectors, subject to narrowly defined exceptions for certain types of natural persons. Most Mode 4 commitments are contingent on some form of commercial presence and confined to a few well-qualified staff.

In general, progress on Mode 4 labour mobility is constrained by the fact that governments are reluctant to make permanent commitments when employment demand varies with economic cycles. In addition, governments prefer bilateral labour agreements untied to trade policy as they provide greater flexibility to adjust programs to changing demographic trends and labour market needs. MFN based liberalisation of labour mobility would undermine this flexibility (World Bank 2004).

The fact that country commitments to labour mobility under Mode 4 have been both highly circumscribed and skewed toward highly skilled and professional service providers has raised the ire of those less developed countries that see their comparative advantage in the export of low- and medium-skilled service providers. As Stahl (1999) points out, it has not escaped the attention of these countries that the GATS Mode 4 appears designed to favour the industrially advanced countries by ensuring that their investment forays into the less developed countries will not be hampered by barriers to the transfer of the necessary skills to support that investment. Tullao & Cortez (2006) concur, positing that because Mode 4 movement has been linked mostly to intra-corporate transfers of highly skilled professionals of multinational companies it has been interpreted by the developing countries as an extension of Mode 3 and hence favourable to the interest of the capital rich countries.¹²

However, the political reality is that those countries that import low- and medium-skilled workers are not going to provide open access to their labour markets in the near future, even if those workers are legitimate GATS defined service suppliers. Concerns about the impact of migrants on social cohesion, ghettos and crime, and public infrastructure are regularly aired in the popular press in labour-importing countries. Indeed, it would take strong political will to negate these misplaced fears and liberalise Mode 4 movement to be inclusive of low- and medium-skilled service providers.¹³ This is particularly true in the

¹¹ This was the intention of GATS since WTO negotiators at the time had reservations over broader coverage.

¹² Chaudhuri *et al.* (2004) concur, stating that 'unless the movement of unskilled and semiskilled workers is given parity of consideration along with the movement of persons with professional qualifications, many developing countries will be deprived of an opportunity to participate in the global provision of services, and will have less interest in these negotiations' (p. 386).

¹³ Chaudhuri *et al.* (2004) summarise the dilemma: 'Venturing too far down the skill ladder may unfortunately undermine the political feasibility of the whole endeavour, because few countries are today willing to assume multilateral commitments on unskilled labour. Choosing a skill threshold that strikes the appropriate balance

ASEAN countries where regional labour market asymmetries have led to the movement of hundreds of thousands of low- and medium-skilled workers on a largely temporary basis from Indonesia, Cambodia, Laos, Myanmar, Philippines, and Vietnam to the labour importing countries of Brunei, Malaysia, Singapore and Thailand.¹⁴ These movements of personnel have been going on for decades, and to a large extent are controlled through bilateral agreements (Bhatnagar & Manning 2005). Because of the numbers involved and the control mechanisms in place, it is unlikely anytime soon that in the ASEAN region Mode 4 movement of natural persons will be liberalised to include low- and medium-skilled workers. Indeed, it would seem that the only possibility of progress on liberalisation of the movement of low-skilled service providers would be contingent on major progress in relation to the liberalisation of the movement of skilled service suppliers.

As noted above, even though it is clear that member countries restrict Mode 4 movement of natural persons to highly skilled and professional service suppliers, that has not made them shy away from imposing a wide range of market access and national treatment impediments to the movement of these service suppliers. Let us now look more closely at those impediments and priority areas for liberalisation of Mode 4 with particular reference to the ASEAN member countries.

The goals of the ASEAN community in relation to trade in services liberalisation are enshrined in AFAS. Its stated objective is 'to eliminate substantially restrictions to trade in services among Member States' and 'to liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the GATS with the aim of realizing a free trade area in services'. In 2005, ASEAN Economic Ministers' meeting agreed to set 2015 as the deadline for the free flow of services within the region, although flexibility in some sub-sectors shall be taken into consideration.

While the AFAS goal is ambitious, a number of studies of services trade in ASEAN indicate that there is a long way to go, particularly in relation to liberalising and facilitating the movement of individual service providers under Mode 4.¹⁵

Manning & Bhatnagar (2004) provide details on the width and depth of AMS commitments under the various modes of supply for various service sectors.¹⁶ Averaged across the 10 AMS, they found that out of the total of 104 services for which commitments could have been made under the seven priority sectors of AFAS only 41 commitments had been made, ranging from a high of 70 for Malaysia to a low of 20 for Cambodia.¹⁷ More concerning was the finding that for the more developed ASEAN economies the number of commitments over and above those already established under GATS had been marginal. The authors were also concerned that a lack of quality and depth of Mode 4 commitments could serve as a drag on the services trade under the other modes of supply. They found that in the vast majority of cases, the AMS had only made partial commitments to enhanced mobility under Mode 4, i.e. most commitments were subject to conditions that restricted free

between economic gains and wider participation on the one hand, and political feasibility on the other, is perhaps the greatest challenge in the current negotiations.' (p. 386).

¹⁴ Manning & Bhatnagar (2004) provide an estimate of the stocks of registered and estimated illegal migrant workers in the ASEAN labour importing countries. Their estimate is based on data presented by Stahl (2003).

¹⁵ It merits noting that ASEAN also encourages skilled labour mobility in relation to its efforts to liberalise investment flows within the region. The recently concluded ASEAN Comprehensive Investment Agreement states that each Member State shall grant entry, temporary stay and authorisation to work to investors, executives, managers and members of the board of directors of a juridical person of any other Member State, for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Member State of an investment to which they, or a juridical person of the other Member States that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources.

¹⁶ At the time of their study the AMS had concluded 3 packages of commitments from two rounds of negotiations.

¹⁷ See their Table 5, p.21.

market access and national treatment.¹⁸ Manning & Bhatnagar (2004, 26) listed 11 principal restrictions imposed by the AMSs on their Mode 4 commitments under AFAS, along with the frequency of their application, viz.

- i. Entry restricted to skilled/senior workers
- ii. Numerical quotas
- iii. Labour market/economic needs test
- iv. Pre-employment (foreign workers must be employees of the firm in the firm's home country)
- v. Transfer of technology (usually in the form of a requirement to train local workers to eventually take over the work done by an expatriate)
- vi. Restrictions on purchase of real estate
- vii. Limited period of stay (while Mode 4 stay is by nature temporary, the time limits vary across countries)
- viii. Subject to commercial presence
- ix. Linked to the creation of local employment
- x. Subject to domestic regulations
- xi. Subject to recognition of qualifications

They found that all of the countries restrict entry to skilled service providers; most of the countries impose restrictions on duration of stay; another common restriction is local counterpart training to eventually replace foreign workers; half the AMS will not allow temporary foreign service suppliers to purchase land; a third of the countries make entry subject to labour market or economic needs tests or link entry to commercial presence; a similar proportion have placed pre-employment conditions or make entry contingent on recognition of professional qualifications. Four of the countries have subsumed all or many of their commitments under the generic 'domestic regulations', which dilutes the 'sanctity' of their commitments (Manning & Bhatnagar 2004, 25).

Manning & Bhatnagar (2004) make a number of policy recommendations for facilitating mobility under Mode 4 within AFAS. As a longer-term strategy, they recommend that the AMS should devise a strategy for expanding the scope of Mode 4 AFAS commitments to cover an increasing number of sectors and subsectors with each round of negotiations, subject to country level manpower needs and comparative advantage. AMS also need to review the limitations they have placed on their commitments in their sector specific and horizontal schedules. They say the AMS should consider doing away with labour market tests and certification for highly skilled foreign workers, leaving certification responsibilities to professional organisations. Moreover, pre-employment and transfer technology preconditions need to be minimised, and a review of restrictions on occupations open to foreign service providers needs to be undertaken. Looking specifically at the business services sector the AMS should work towards the development of an 'ASEAN business card' and a single window or one-stop centres for processing of documents. They also recommend that AMS seek to reduce and harmonise administrative arrangements regarding visas and work permits. In the case of visas, there is a strong argument for setting up a separate structure to deal with the applications by foreign service suppliers. Finally, fees for visas and work permits need to be harmonised, and the AMS need to move to a uniform system where the employer can obtain a work permit on behalf of the employee.

Another more recent comprehensive study of services trade liberalisation under AFAS has been undertaken by Vo and Bartlett (2006). They analysed both the width and depth of AMS country commitments under AFAS and compared those with AMS commitments under GATS. They found that successive rounds of negotiation under AFAS have resulted in a

¹⁸ See their Table 6 and 7.

greater width of sectoral coverage compared to what the AMS have achieved under GATS, and hence a greater degree of liberalisation of trade in services for the AMS compared to that achieved under GATS.¹⁹ They found that almost 60 percent more sectors were covered under AFAS in comparison to GATS. While the AMS have extended the sectoral coverage of their commitments, a wide range of limitations, in terms of both market access and national treatment, have been applied to these commitments. Fully 40 percent of the various modes of supply in each of the scheduled sectors are unbound and of the remainder have partial restrictions. While the study does not focus specifically on Mode 4 supply, it is evident from an inspection of the package of commitments in currency at the time of their study that by far the largest proportion of 'unbound' limitations were applied to Mode 4 supply. Not much has changed since. In relation to Mode 4 supply, the latest AFAS sectoral commitments, almost without exception, are 'unbound' and make reference to horizontal commitments which specify the types of persons allowed to enter, which are largely persons to support a Mode 3 commercial presence, i.e. intra-corporate transferees, managerial staff and necessary specialists. However, even within the context of these horizontal commitments to Mode 4, there are often restrictions in terms of labour market tests, duration of stay and numbers involved. Hence there is considerable scope for improvement in the quality and depth of AMS commitments under Mode 4 in AFAS.

Vo and Bartlett (2006) make a number of recommendations for moving the AFAS forward in terms of service trade liberalisation in ASEAN. All have either direct or indirect implications for Mode 4 movement of natural persons. Their principal recommendation is that each AMS should develop an Individual Action Plan (IAP) that would focus attention on what needs to be done across the whole spectrum of services trade. The IAPs will allow the individual AMS to schedule commitments in accordance with their own development priorities, rather than being forced to adhere to rigid, formula based ASEAN wide targets for sectoral liberalisation commitments, but with the over-riding objective of meeting the 2015 deadline for ASEAN wide free flow of services trade. These country commitments should be published and disseminated amongst stakeholders to improve transparency and predictability of AFAS. The IAPs could also contain action plans in relation to the deepening of commitments, such as timelines to establish 'none' in commitments for each mode of supply, abolish ceiling bindings and freeze existing non-conforming measures. Outside of the IAPs, commitment needs to be made to progress the development of MRAs. They see MRAs as being at the core of improving mobility under Mode 4. Further Mode 4 measures suggested by the authors are the reduction and harmonisation of administrative arrangements regarding visas and work permits. Moreover, they posit that one entity in each AMS should be solely responsible for driving forward the agenda of Mode 4 liberalisation.

2.3.3 Sector specific studies of services trade liberalisation in ASEAN

The two studies reviewed above assessed the width and depth of AMS commitments to services trade liberalisation across all of the scheduled services sectors. There also have been a couple of sector specific studies whose findings are important with regard to the both delineating restrictions on the various modes of supply, and Mode 4 in particular, and their recommendation for rectifying the situation.

The Center for the Advancement of Trade Integration and Facilitation *et al.* (2007) undertook a study of restrictions pertaining to AMS' commitments in five professional services sectors, viz. accountancy, architecture, legal, management consulting, and computer and related services. In contrast to professional services, they found that most business services faced few impediments. If they did exist they usually applied to forms of

¹⁹ At the time of their study the AMS countries had concluded 4 packages of commitments from three rounds of negotiations.

establishment and foreign equity ceilings-Mode 3 issues. In some cases, as we learned above, business services can face Mode 4 constraints in the form of various restrictions applied to intra-corporate transferees and contractual service suppliers, whereas Mode 1 trade is restrained by residency requirements imposed on service providers. In contrast, according to the authors, professional services providers face a host of trade-inhibiting policies and domestic regulations. For example:

- i. Restrictions that impede or limit the relationship between an international firm and domestic affiliate. (Constraints applying to Mode 3)
- ii. Restrictions that relate to the practice of a profession, e.g. nationality and residency requirements, limits on the size and form of establishment, discriminatory government procurement rules. (Constraints applying to Mode 3).
- iii. Lack of transparency and unpredictability in regulatory decision-making and rule making. (Constraints applying mainly to Mode 3, but to some extent Mode 4)
- iv. Restrictions on the movement of professional service providers into and out of the country, e.g. difficulties, delays and red tape associated with obtaining visas and work permits. (Constraints applying to Mode 4).
- v. Restrictions that prevent foreign professionals from practising in the local market, e.g. non-recognition of foreign professional qualifications, quotas, or economic needs tests, requirements on hiring local professionals. (Constraints applying principally to Mode 4).

Although such restrictions reduce competition and raise the price and costs of services, most are perceived by countries as serving social and economic objectives. This makes it a challenge to modify or remove them. The authors point out that some member countries see an advantage in maintaining such restrictions for trade negotiation purposes.

The Centre authors recommend various strategies to overcome services trade liberalisation constraints:²⁰ (1) suggestions for improving the quality and depth of AFAS commitments; (2) changes in commitments and market reform to be monitored using an index measure, as do Vo and Bartlett (2006); (3) AFAS should shift from the 'positive list' to a 'negative list' approach to negotiating liberalisation commitments; (4) improving transparency and predictability of domestic regulations and use international standards to achieve harmonisation; (5) with specific application to supply via Mode 4 they argue that there should be separate policies on temporary service providers from normal immigration procedures; (6) MRAs should be vigorously pursued in all regulated professional sectors, while in the interim reciprocity agreements should be pursued, and (7) professional associations in AMS should be encouraged to become more actively involved in negotiations.

Another sector specific study that focused on the mobility of health and IT professionals in ASEAN countries was undertaken by Manning & Sidorenko (2006).²¹ The authors developed measures to assess the extent of regulation of inward mobility in recipient countries and the depth of commitments to the mobility of professionals under Mode 4. The health care and IT sectors were chosen because they represented two extremes in terms of regulation – health care being highly regulated and IT much less so. Also, health care and e-ASEAN are two priority sectors in ASEAN for the completion of MRAs, for the harmonisation of technical standards and for cooperation in training and skill

²⁰ See pp. 83-90.

²¹ Manning & Sidorenko's paper derives from a broader study undertaken for the ASEAN Secretariat under the auspices of the Research on Economic Policy Support Facility. See ASEAN-ANU Migration Research Team (2005).

transfer between the more and less developed AMS. They found that restrictions embedded in AMS horizontal commitments were not the major factor in limiting professional mobility. Rather, they found numerous regulatory impediments to professional mobility that varied across the AMS, including such things as visa arrangements, language tests, citizenship requirements, minimum salary requirements, levies on the employment of foreign workers, the requirement for employment to be linked to a specific company or a specific geographic location/office, the requirement of pre-employment with a company, minimum education and job experience, lack of recognition of education/professional training, and economic needs/labour market tests.

Following on from their findings, the authors recommended that AMS should (1) make a greater effort to standardise visa and work permit regulations for professionals, including short-term entry of independent professionals; (2) move toward regional MRAs in various health occupations with safeguards based on improved education and professional standards; (3) foreign trained doctors/nurses should be exempt from language tests if employed in organisations that target overseas patients; and (4) the IT sector should be promoting self-regulation and certified training programs that are recognised across the AMS.

2.4 Harmonising competency standards in ASEAN

The discussion above clearly indicates that ASEAN needs to improve and possibly harmonise standards of training so as to enable greater mobility. Whether this will be taken up and how it will be achieved deserves analysis. A series of projects, agreed to by all ASEAN Ministers, have been implemented recently. These projects included harmonisation in the tourist industry, improving procedures to enable professional recognition across ASEAN through mutual recognition arrangements, developing common standards in the fishing industry and enhancing skills recognition arrangements (SRAs). In this paper, the first two projects will be used as a basis for examining how ASEAN's concern with economic policy cannot be extracted from broader social policy issues.

The ASEAN Economic Ministers' Meeting in Phnom Penh in early 2003 agreed that two or more member countries could conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors and other countries may join at a later date. Effectively, therefore, bilateral agreements could be reached within the wider sphere of ASEAN. Later the ASEAN Summit in Bali in October 2003, agreed to Mutual Recognition Arrangements (MRARs) based on agreed common competency standards being developed for accountants, architects, surveyors and engineers in the region by 2008, on an ASEAN 'Minus-X' basis. Later three more occupations were added.

The decision in 2004 to move towards greater economic integration has led to seven occupation-specific Mutual Recognition Arrangements (MRARs) being developed. However, ASEAN's history of negotiating these MRARs has shown this to be a difficult process. While they are all referred to as Arrangements in their titles, the acronym MRA is commonly used. This acronym is used internationally to refer to Mutual Recognition Agreements. The ASEAN MRARs are not MRAs where intense negotiations have led to a signed agreement that standards, ethics, regulation and maintenance of ongoing competence are comparable and professionals are able to move readily between the relevant countries. They are Mutual Recognition Arrangements (MRARs) that operate as a mechanism for bringing AMS together to discuss professional standards, regulations, ethics and other aspects involved in the practice of a profession. To date, there have been no common sets of core competencies developed and agreed upon for any of the seven professions, as was anticipated in the Bali 2003 announcement.

Various types of MRARs have been developed and Table 1 shows that there are two types of arrangements in ASEAN, (A) and (B):

- A) Standard MRAR—there are five MRARs of this type in ASEAN. They require AMS to meet and discuss and then put in place bodies and laws/policies/practices, or adapt existing bodies/laws/policies/practices, to fulfill the major roles of domestic professional regulation and monitoring. Once they have done this, they are in a position to notify that they are ready to join or implement the MRAR. At the same time, the MRAR also requires new ASEAN-wide bodies to be established to oversee the process, handle disputes and monitor progress. Once these two steps have been undertaken the MRAR should start to work to fill the objectives outlined in Table 1. These MRARs do not lead to increased mobility but they are a first step in moving towards the harmonisation of standards.²²
- B) Framework MRAR—there are two MRARs of this type in ASEAN. As Table 1 shows they are quite different in that they provide a clear starting point, only, for the discussion of standards, regulations, rules and requirements for mobility and they leave it up to individual AMS to negotiate firm MRAs. They do not propose to increase mobility of their own accord.

Table 1 summarises the key elements of ASEAN MRARs emphasising the objectives and mutual exemptions, the implementation requirements, the signatories and state of progress.

²² One MRA in architecture was signed between Malaysia and the Philippines, before the MRAR process began in ASEAN.

Table 1: Key Elements of ASEAN MRARs

Title	Date of Signing	Objectives and mutual exemptions	Implementation requirements and process	Signatories and progress
1. ASEAN Mutual Recognition Arrangement (referred to as MRA) on Engineering Services	Dec, 2005	<p>1.1 facilitate mobility of engineering services professionals; 1.2 exchange information in order to promote adoption of best practices on standards and qualifications.</p> <p>Article 5 Mutual exemption provision 5.1. The participating AMS recognise that any arrangement, which would confer exemption from further assessment by the Professional Regulatory Authority (PRA) that control the right to practice in each country, could be concluded only with the involvement and consent of the Professional Regulatory Authority (PRA) and the relevant government agencies.</p>	<p>1) PRA and MC (responsible for ACPER) to be established in each AMS to accredit and register professional engineers (PEs). 2) Nationally accredited PE meets requirements (training plus 7 years experience) to become ASEAN Chartered Prof. Engineer. 3) ASEAN Chartered Professional Engineering Co-ordinating Committee (ACPECC) and Secretariat established. 4) PE works as Registered Foreign Professional Engineer (RFPE) in another AMS – but not in independent practice.</p>	<p>Signed by all and came into force immediately.</p> <p>Notification of date of participation to be provided to ASEAN Sec-General.</p>
2. ASEAN Mutual Recognition Arrangement (referred to as MRA) on Nursing Services	Dec. 2006	<p>1.1 facilitate mobility of nursing professionals within ASEAN; 1.2 exchange information and expertise on standards and qualifications; 1.3 promote adoption of best practices on professional nursing services; and 1.4 provide opportunities for capacity building and training of nurses.</p> <p>5.1 Mutual exemption provision 5.1.1 Participating AMS recognise that any arrangement, which would confer exemption from further assessment by the NRA of the Host Country could be concluded only with the involvement and consent of that NRA and/or the relevant government agencies.</p>	<p>Nursing Regulatory Authority (NRA) identified in each AMS by MRA as follows: Brunei Darussalam – Nursing Board of Brunei Cambodia - Ministry of Health Indonesia - Ministry of Health Lao PDR - Ministry of Health Malaysia - Malaysia of Health & Midwifery Boards Myanmar – Ministry of Health & Myanmar Nursing and Midwifery Council Philippines - Professional Regulation Commission, Board of Nursing Singapore – Singapore Nursing Board Thailand – Thailand Nursing Council Viet Nam - Ministry of Health</p> <p>2) Nationally accredited nurse who meets requirements (qualification plus practice for not less than three (3) years can go on ASEAN register. 3) ASEAN Joint Coordinating Committee on Nursing to be established. 4) Nurse can work as Foreign Nurse in another AMS</p>	<p>Implement in 3 months from signing unless notify – but must implement not later than 1/1/2010.</p>

Table 1: Key Elements of ASEAN MRARs (continued)

Title	Date of Signing	Objectives and mutual exemptions	Implementation requirements and process	Signatories and progress
<p>3. ASEAN Framework Arrangement (referred to as MRA) for The Mutual Recognition of Surveying Qualifications</p>	<p>Nov. 2007</p>	<p>1.1 identify the framework and establish the basis for Competent Authorities to observe while negotiating MRAs between or amongst each other to facilitate the mutual recognition and mobility of Surveying Professionals as it is recognised that ASEAN Member Countries may have different nomenclatures and requirements; 1.2 exchange information in order to promote trust and adoption of best practices on surveying standards and qualifications.</p>	<p>1) Competent Authorities (CAs) identified by MRA as follows: Brunei Darussalam – Land Surveyors Board Cambodia - General Department of Cadastre and Geography Ministry of Land Management, Urban Planning and Construction Indonesia - National Coordinating Agency for Surveys & Mapping Lao PDR - 1. National Geographic Department, Prime Minister's Office, 2. Department of Housing and Urban Planning, Ministry of Public Works and Transportation Malaysia - Land Surveyors Board, Ministry of Natural Resources and Environment Myanmar – Survey Department, Ministry of Agriculture and Irrigation Philippines - Professional Regulation Commission, Board of Geodetic Engineering Singapore – Land Surveyors Board, Ministry of Law Thailand – Council of Engineers Viet Nam - Department of Survey and Mapping, Ministry of Natural Resources and Environment. 2) Standards must relate to International Federation of Surveyors' standards and guidelines. AMS applicant must have met the educational requirements in effect in home country granting the original recognition at the time that such recognition was granted plus a period of experience (equal to host country requirement). Applicant's educational credentials may be assessed by the host country and accepted as having satisfied the educational requirements of the host country. Host country may administer part or full examinations to test knowledge of domestic legislation, standards and practices. Should be competency-based assessment. 3) ASEAN Coordinating Committee on Services to monitor.</p>	<p>Implement in 3 months from date of signing. AMS encouraged to then negotiate and conclude bilateral or multilateral MRAs</p>

Table 1: Key Elements of ASEAN MRARs (continued)

Title	Date of Signing	Objectives and mutual exemptions	Implementation requirements and process	Signatories and progress
<p>4. ASEAN Mutual Recognition Arrangement (referred to as MRA) on Architectural Services</p>	<p>Nov. 2007</p>	<p>1.1 facilitate mobility of Architects; 1.2 exchange information in order to promote adoption of best practices on standards of architectural education, professional practice and qualifications; 1.3 conform to the spirit of ASEAN co-operations based on fair distribution of resources and benefits through collaborative researches; and 1.4 encourage, facilitate and establish mutual recognition of Architects and set up standards and commitment of technological transfer among AMS.</p> <p>Article 5 Mutual Exemption 5.1. The participating AMS recognise that any arrangement, which would confer exemption from further assessment by the Professional Regulatory Authority (PRA) that control the right to practice in each country, could be concluded only with the involvement and consent of the Professional Regulatory Authority (PRA), and the relevant government agencies.</p>	<p>1) PRAs and MCs identified (mostly the same body): Brunei Darussalam – Ministry of Development Cambodia - Ministry of Land Management, Urban Planning and Construction Indonesia - National Construction Services Development Board Lao PDR - Ministry of Public Works and Transportation Malaysia - Board of Architects Malaysia Myanmar – Ministry of Construction Philippines - Professional Regulation Commission, Board of Architecture Singapore – Board of Architects Singapore Thailand – Council of Architects Thailand Viet Nam - Ministry of Construction</p> <p>2) Nationally accredited - approach does not restrict participation to countries in which architectural programs are accredited, or examinations set, by an independent professional body, and does not imply that acceptable academic achievement can be demonstrated only within the context of an architectural degree program, plus minimum of not less than ten (10) years of continuous architectural practice after graduation, of which at least five (5) years shall be after licensure/registration and 2 years in charge of major project.</p> <p>3) ASEAN Architect Council (AAC) to be established 4) Registered Foreign Architect (RFA) can work independently.</p>	<p>Came into force on signing.</p> <p>Notification of date of participation to be provided to ASEAN Sec-General.</p>
<p>5. ASEAN Mutual Recognition Arrangement (referred to as MRA) on Dental Practitioners</p>	<p>Aug. 2008</p>	<p>1.1 facilitate mobility of ASEAN dental practitioners; 1.2 exchange information and enhance cooperation in respect of mutual recognition of dental practitioners; 1.3 promote adoption of best practices on standards and qualifications; and 1.4 provide opportunities for capacity building and training of dental practitioners.</p> <p>Article VII Mutual Exemption 7.1 The AMS recognise that any arrangement which would confer exemption from further assessment by the PDRA of the host country may be concluded only with the involvement and consent of the PDRA. 7.2 The AMS note that PDRA of the host country may require Foreign Dental Practitioners seeking the right to practice in the host country to submit themselves to some form of supplementary requirements or assessment.</p>	<p>1) Professional Dental Regulatory Authorities (PDRA); Brunei Darussalam – Brunei Medical Board Cambodia - Cambodian Dental Council and Ministry of Health Indonesia - Indonesian Medical Council and Ministry of Health Lao PDR - Ministry of Health; Malaysia - Malaysian Dental Council Myanmar – Myanmar Dental Council, Ministry of Health Philippines - Professional Regulation Commission, Board of Dentistry and Philippine Dental Association Singapore – Singapore Dental Council and Dental Specialists Accreditation Board Thailand – Thailand Dental Council and Ministry of Public Health Viet Nam - Ministry of Health</p> <p>2) Must possess dental qualification, registration in home country, five (5) years minimum professional experience, CPD, ethics, etc. 3) ASEAN Joint Coordinating Committee on Dental Practitioners 4) Foreign Dental Practitioner (FDA) may need to undergo further assessment.</p>	<p>Signed by all. Implementation within 6 months unless notify ASEAN – but all to implement by 1/1/2010.</p>

Table 1: Key Elements of ASEAN MRARs (continued)

Title	Date of Signing	Objectives and mutual exemptions	Implementation requirements and process	Signatories and progress
6. ASEAN Mutual Recognition Arrangement (referred to as MRA) on Medical Practitioners	Feb, 2009	<p>1.1 facilitate mobility of medical practitioners within ASEAN;</p> <p>1.2 exchange information and enhance cooperation in respect of mutual recognition of medical practitioners;</p> <p>1.3 promote adoption of best practices on standards and qualifications; and</p> <p>1.4 provide opportunities for capacity building and training of medical practitioners.</p> <p>Article VII Mutual Exemption</p> <p>7.1 AMS recognise that any arrangement that confers exemption from further assessment by the PMRA of the host country may be concluded only with the involvement and consent of that PMRA.</p> <p>7.3 AMS recognise that such requirements or assessment shall provide the PMRA of the host country with a sufficient degree of confidence in Foreign Medical Practitioners.</p>	<p>1) PMRA and MC identified in each AMS to accredit and register medical practitioners nationally:</p> <p>Brunei Darussalam – Brunei Medical Board</p> <p>Cambodia - Cambodian Medical Council and Ministry of Health</p> <p>Indonesia - Indonesian Medical Council and Ministry of Health</p> <p>Lao PDR - Ministry of Health</p> <p>Malaysia - Malaysian Medical Council</p> <p>Myanmar – Myanmar Medical Council, Ministry of Health</p> <p>Philippines - Professional Regulation Commission, Board of Medicine and Philippine Medical Association</p> <p>Singapore – Singapore Medical Council and Specialists Accreditation Board</p> <p>Thailand – Thailand Medical Council and Ministry of Public Health</p> <p>Viet Nam - Ministry of Health</p> <p>2) Nationally accredited doctor who meets requirements (degree plus practice as a general Medical Practitioner or specialist for not less than five (5) continuous years), registration, CPD, can go on ASEAN register.</p> <p>3) ASEAN Joint Coordinating Committee on Medical Practitioners (AJCCM) to be established.</p> <p>4) Doctor can work as Foreign Medical Practitioner in another AMS but may be subject to assessment by host country PMRA.</p>	Signed by all. Implementation within 6 months unless notify ASEAN – but all to implement by 1/1/2010.
7. ASEAN Mutual Recognition Arrangement Framework on Accountancy Services	Feb, 2009	<p>1.2.1 facilitate the negotiations of MRAs on Accountancy Services between or among ASEAN Member States by providing a structure towards the conclusion of such MRAs; and</p> <p>1.2.2 exchange information in order to promote and take into consideration the development of the best practices on standards and qualifications in the accountancy profession.</p>	<p>1) National Accountancy Body (NAB) and/or Professional Regulatory Authority (PRA) grants recognition to Practising Professional Accountant (PPA) to work in another AMS.</p> <p>2) PPA should have met the educational requirements in effect in the Country of Origin – encouraged to take into account the standards of the International Federation of Accountants (IFAC)</p> <p>3) No ASEAN body.</p> <p>4) PPA can work independently in another AMS.</p>	Came into effect 3 months following signing, AMS encouraged to negotiate and conclude bilateral or multilateral MRAs on Accountancy Services.

The confusion in terminology between MRA and MRAR within ASEAN has led to some confusion in expectations, as will be pointed out in the findings (see section 4.7 below). Moreover, the 2010 situation on the implementation of these MRARs and MRAs needs to be investigated.

The SLOM *Enhancing Skills Recognition Arrangements* (Turpin *et al.* 2004-08) project's overall aims were to keep skills recognition arrangements under review in order to improve labour flexibility and comparability. A second aim was to facilitate the mobility of workers at a range of skill levels within ASEAN. The first phase involved describing and comparing skills development and SRAs in place in the 10 countries of ASEAN. The second phase examined the role of industry in skills recognition systems. A selection of 20 sub-professional occupations was chosen to examine detailed skills development and recognition strategies in each of the 10 countries.²³

In the light of the special needs of the newer ASEAN member countries, a third stage was undertaken to work specifically on developing a consistent skills recognition framework across Cambodia, Lao PDR, Myanmar and Vietnam. Thailand was later incorporated into this group since it is inextricably linked with these countries. The group decided to pilot the development of model sets of regional competency standards in five occupational areas: arc welder; air conditioning technician; concreter; poultry worker, and tour guide. This was done but unfortunately the project was not continued after funding from the Australian Government ceased.

Singapore and Malaysia are major receiving countries that will be increasingly reliant on skilled workers. Sending countries, such as Cambodia, Lao PDR, Myanmar and Viet Nam, are keen to develop their technical and vocational education training (TVET) and SRAs quickly, and possibly in cooperation with others countries in ASEAN. Their systems are on the verge of significant structural reform as they hope to improve their stock of skilled workers and benefit from sending out more of these skilled workers. But they need assistance in developing their skills recognition arrangements.

The Philippines has already undergone some such reform but many of the flow-on benefits from the mobility of skilled human resources have not yet accrued. Remittances certainly are a financial benefit to the sending countries, but other flow-on benefits such as skill acquisition through work experience abroad are not evident.

Another AADCPI project focused on the tourism sector, under the ASEAN Ministers of Tourism, and developed a common regional qualifications framework for tourism and lists of common core competencies and training modules in 33 occupations. This project has continued, under the shepherding of Indonesia, and has led to the development of an MRAR. The outcomes of this project are discussed further in section 4.7 below.

The piecemeal, project-based approach in ASEAN contrasts with the Bologna process undertaken in Europe. At a meeting of 29 European Ministers of Education in 1989 it was agreed to establish a European Higher Education Area (EHEA) by 2010. The EHEA was designed to create a common higher education framework among the signatory states

²³The following model was used as a benchmark. For any skills supply system to work effectively, it is necessary to have the following three components: qualifications and competency framework with defined competencies established jointly by government and industry groups; individuals prepared to invest time and resources in developing skills and having these skills recognised; and industry and commerce willing to use the frameworks, select staff on the basis of skills and appropriately compensate those who meet recognised skill standards.

by: implementing a system of easily readable and comparable degrees; standardising degree structures (Bachelor/Masters/Doctorates); implementing a system of credits; promoting greater mobility by overcoming obstacles; promoting European cooperation in quality assurance; and promoting European dimensions in higher education (closer international cooperation and networks). It took the EU 20 years or so to reach this decision and so it is not surprising that ASEAN Ministers have not resolved this situation.

2.5 Some concluding observations

The international mobility of labour within the Asian region, generally, and amongst ASEAN countries particularly, has been a significant feature of the economic and demographic landscape of the region. There has been a considerable volume of literature that addresses low-skilled movements in the region, but much less so with regard to the mobility of skilled human resources. The growing significance of the mobility of skilled human resources derives from the phenomenal growth in trade, investment and economic growth within the region. Trade and investment induced growth has exposed structural shortages in the supplies of skilled labour that has spawned a growing flow of skilled workers across international boundaries within the region. The process in ASEAN to liberalise trade in services will, over time, significantly augment this flow. Of course, there are issues that need to be resolved to move this process forward.

The ASEAN specific studies reviewed above were based on AFAS accomplishments under the second and third rounds of negotiations. Even within the context of those earlier rounds of negotiation, and certainly in subsequent rounds, 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. AMS have restricted Mode 4 movement of natural persons to highly skilled service providers but they have still imposed a wide range of market access and national treatment impediments to the movement of these persons. One set of restrictions fall under the GATS Articles XVI and XVII and are inscribed in the various AMS horizontal and sector specific commitments. Another set are various rules and regulations that fall outside of these articles. Indeed, the Annex on the Movement of Natural Persons gives wide scope to impose measures to regulate the entry of natural persons. These types of regulatory restrictions need just as much attention in the reform agenda as do restrictions inscribed in horizontal and vertical commitments if the free flow of skilled labour is to be achieved within the AEC.

With regard to Mode 4 mobility of skilled workers, some progress has been made under AFAS, but more needs to be done. It is the aim of this study to identify and assess the current issues and challenges facing the liberalisation of the flow of skilled labour, and to make recommendations on how the goal might be progressed.

3. MAJOR ISSUES CONCERNING THE FREE FLOW OF SKILLED HUMAN RESOURCES

3.1 Definitional issues

Skilled professional workers are often defined as those individuals who are engaged in knowledge-intensive professions such as physicians, nurses, science and technology (S&T) workers, engineers, information technology (IT) specialists, graduate and postdoctoral students, scholars and researchers, and administrators and managers (Gera, Larvea & Songsakul 2004). These are professional level workers.

This definition can be expanded to include workers who have some special skill, knowledge, or ability in their work. Skilled workers, according to this expanded definition, 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.

ASEAN needs to agree on its focus for skilled mobility. The focus can be 'professionals' as per the above or it can be 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 more acceptable to professionals, is widely used internationally, and is used through this report.

3.2 Current status of demand and supply

Labour mobility is a major factor for many AMS and while a few are mainly receivers or senders, most now experience both inflows and outflows. Migration systems are global, regional and local, and it is not only ASEAN from which AMS are experiencing pressure to liberalise their borders. Several AMS are also being courted by India and other countries to open their borders to their national skilled service providers. This is often part of a concerted strategy to export service providers. The Philippines and India have taken this path, though the Philippines has largely looked outside of ASEAN to send its skilled human resources.

Much movement is already occurring in ASEAN through the flexible interpretation of, or in spite of, existing regulations. Most flows tend to consist of less skilled workers but there has been an increasing trend towards the mobility of the more highly skilled. These flows are hard to quantify but are a result of shortages of particular skills, FDI, surplus skills relative to demand or the export of skilled human resources as a deliberate policy of government.

Table 2 summarises AMS skilled flows. These data are mostly gleaned from interviews and arrivals/departures data and they are incomplete. No comprehensive comparative data are available but the table provides a starting point for future expansion. Some options for achieving this are included in Section 5.

Table 2 shows that Singapore with 115,000 and Malaysia with 31,311 are currently the major destinations for skilled workers, in line with their economic growth trends. Singapore and Malaysia are both very involved in international business and the flow of Intra-company Transferees (ICT) is very substantial and independent movement is also considerable. The Philippines is the major sender of independent workers (new hires plus re-hires numbered 1,092,162 in 2009) but only 47,886 (14.4%) were registered as highly skilled (professional, medical, technical and related workers). Of these, only 1,785 (3.7%) departed for other AMS. Emerging economies, such as Cambodia, Indonesia, Laos PDR, Thailand and Viet Nam, are beginning to benefit from skills flows associated with FDI.

Table 2: Overall mobility of skilled human resources in AMS, 2010

AMS	Scale and nature of inward mobility of skilled human resources	Scale and nature of outward mobility of skilled human resources	Perceptions of future skilled mobility prospects																
Brunei Darussalam	Skilled human resources mainly come from traditional source countries in certain sectors – oil and gas, academia, health area.	Very little.	N.A.																
Cambodia	<p>3000/yr skilled foreigners. Mainly from China (textile industry), Philippines (construction engineers), Malaysia. Over 50 nationalities.</p> <p>ICTs (executive, managers, specialists) coming in for 5 years. BVs also come easily. IPs are beginning to increase as it is possible to convert from a tourist to a work visa after finding a job.</p> <p>A few highly specialised doctors coming in from Viet Nam, Thailand and France.</p> <p>Internship students may return to work here.</p>	<p>Few skilled personnel have the possibility of working abroad.</p> <p>Exception is IT professionals going to Singapore, Canada/US, Japan/Korea.</p>	<p>Accept that free flow of business and service suppliers will happen. How to protect jobs for locals who are less skilled?</p> <p>How to get return from people 'stolen' by foreign companies on a permanent basis?</p>																
Indonesia	<p>Data on total no. of service suppliers available for 2009 by country of origin.</p> <p>Total number 35,457. Major sources:</p> <table border="0" data-bbox="415 824 743 1036"> <tr> <td>PRC</td> <td>6939</td> </tr> <tr> <td>Japan</td> <td>2943</td> </tr> <tr> <td>India</td> <td>2416</td> </tr> <tr> <td>Malaysia</td> <td>2394</td> </tr> <tr> <td>Australia</td> <td>2284</td> </tr> <tr> <td>South Korea</td> <td>2248</td> </tr> <tr> <td>South America</td> <td>2166</td> </tr> <tr> <td>AMS total</td> <td>7473</td> </tr> </table> <p>Healthcare service suppliers totaled 236: 79 from PRC, 26 from South America. AMS supplied 18.</p>	PRC	6939	Japan	2943	India	2416	Malaysia	2394	Australia	2284	South Korea	2248	South America	2166	AMS total	7473	Very little outward mobility of skilled human resources.	Some accept that skilled human resources are needed in some areas – a long as they come in temporarily.
PRC	6939																		
Japan	2943																		
India	2416																		
Malaysia	2394																		
Australia	2284																		
South Korea	2248																		
South America	2166																		
AMS total	7473																		

Table 2: Overall mobility of skilled human resources in AMS, 2010 (continued)

AMS	Scale and nature of inward mobility of skilled human resources	Scale and nature of outward mobility of skilled human resources	Perceptions of future skilled mobility prospects
Laos PDR	An estimated number of 110,000 foreigners are now working in the country, raising concerns about work opportunities for locals. There are no overall data on proportion that is skilled but increasing number coming as ICTs.	No data available on Lao skilled professionals working abroad. Official figures released by Thailand's Department of Employment in 2008 indicate that some 104,111 regular migrant workers from Lao PDR have been verified (54%), received work permits (40%) and recruited (6%). There are no data on the proportion of this figure that are skilled human resources.	An inducement for foreigners to come and work in Laos is that there is a rapid increase in job opportunities created by foreign investment projects. The number of foreign workers, both regular and irregular, has been trending upwards over the last few years but no specific numbers available on skilled human resources.
Malaysia	Malaysia is a major destination country for immigrant workers. There are currently at least two million foreign workers in the country. Only a small proportion can be defined as skilled human resources. The number of skilled passes issued to skilled expatriates was 36,794 in 2008 and 31,311 in 2009. Of these 66% were in the services sector and 22% in the manufacturing sector. No information is available on country of origin.	Malaysian nurses and a few doctors take up contracts in the Gulf States and Singapore. Many Malaysian IT specialists and engineers find work in Singapore, although the exact number is unknown.	Inward mobility of skilled professionals awaits reform of the various Acts that restrict their entry into Malaysia. Progress on this front will be uneven as some professional groups will seek more protection than others. However, high levels of FDI in Malaysia are accompanied by large numbers of ICTs.
Philippines	All foreign nationals who intend to engage in gainful employment must obtain an Alien Employment Permit (AEP). Exemptions apply to diplomatic staff, those employed by international organisations, visiting professors, and business visitors. The number of AEPs issued peaked in 2007 at 13,592. In 2009 it was 12,218. The largest number was in the manufacturing sector (4,623) and would likely be intra-company transferees. The next two equally important sectors were transport, storage & communications (2,134) and finance, insurance, real estate & business services (2,150). Korea and Japan dominate as source countries, with Malaysia the only ASEAN country with significant numbers (between 500 and 600 annually over the past three years).	The Philippines is a major exporter of labour globally. In 2009 the number of deployed land-based workers, new hires plus rehires, numbered 1,092,162. Twenty-four percent of these were destined for other Asian countries, of which 67,680 went to other AMS. In terms of new hires, 47,886 (14.4% of the total) were professional, medical, technical and related workers. Of these, 1,785 found employment in other AMS.	With regard to in-migration, there are currently formidable legal barriers to skilled workers finding employment in the Philippines. The POEA has a tried and tested a marketing system for placing Filipinos in employment overseas. Even the GFC has not reduced the annual rise in overseas placements. Over the last decade, the average annual growth in overseas deployments has been 7 percent. Numbers of PTK deployments to AMS should rise with liberalisation of Mode 4 under AFAS.

Table 2: Overall mobility of skilled human resources in AMS, 2010 (continued)

AMS	Scale and nature of inward mobility of skilled human resources	Scale and nature of outward mobility of skilled human resources	Perceptions of future skilled mobility prospects
Singapore	The total number of skilled and mid-skilled foreign workers (i.e. Employment Pass and S Pass holders) in Singapore was 197,000 at the end of 2009. Of these 115,000 are professionals, managers, executives or specialists.	Some Singaporeans migrate permanently to the developed western countries, but many more move as ICTs to accompany Singaporean FDI, particular FDI within the Asian region. The number of Singaporean foreign affiliates set-up abroad at the end of 2008 was 13,501, of which 5,020 were in other AMS. The total stock of Singaporean FDI in other AMS was \$69.4 billion at the end of 2008.	The Singapore economy grew at an average rate of 5.1% over the last decade. Continued growth at this level will need to be underwritten by labour imports. As the economy moves increasingly towards a knowledge-based economy, the country will need to draw increasingly on foreign supplies of skilled workers.
Thailand	In 2009, there were a total of 75,106 foreign skilled workers in Thailand compared with 58,597 in 2002 – a 28 percent increase over a period of 7 years. In 2009, half of skilled workers came from Japan (14%), U.K. (10%), China (9%), India (9%) and the Philippines (8%) – the only AMS that has significant presence in Thailand's skilled labour force.	No significant migration to other AMS economies (other than professionals and intra-corporate transfers) In 2008, there were a total of 161,852 Thais working abroad—mostly skilled labour in manufacturing and services sectors (65%). Some 2.7% are professionals, 1.3% legislators, senior officials and managers, 3.6% technicians, 3.5% skilled agricultural & fishery workers, and the rest (elementary occupations, clerks), 24%. The number of Thai workers abroad did not change significantly during 2005-2008, except for a year-on-year growth of 15% in 2006:	In the short run, the labor market in Thailand would continue to rely on import of foreign labour. In the medium run, the country would need to produce a clear direction on all related policies, on how to soften the demand for immigration. In the longer run, sectors such as hi-tech manufacturing, or professional occupations would need to become self-dependent. This could be done through training, re-training and the reform of the formal education system.
Viet Nam	Doctors and nurses coming in to work in private hospitals.	Doctors and nurses have been going to work in Africa since 1995. Plan to improve human resources for nation but free to go if they want to work abroad. Often limited by language requirements.	Unemployment in some sectors e.g. doctors and nurses. No list of occupations where shortages exist but need more foreign experts for the services sector – auditing, finance, lecturers, lawyers, consultants. May not be ready for free mobility, though committed. Five stage process: 1) set up bodies; 2) set standards; 3) design curriculum; 4) establish recognition system; and 5) co-operate with other AMS. Obligations to own population means protect jobs and develop human resources. Will open up when others do and eventually seek to send high skilled workers offshore, like Philippines and India.

Each AMS is responding to their economic needs, therefore information is only available with respect to each country's unique labour force position. 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 commitments. At this stage they are apprehensive about the impact of liberalisation on domestic employment and the maintenance of occupational standards. The former is the greatest concern as they fear the political backlash of opening up to foreign skilled human resources and having their own people displaced. There is also the perception that unless and until they can bring their own occupational training and standards up to international standards many of their skilled workers might be displaced by more highly skilled foreigners if the free mobility of skilled labour prevails.

This concern underpins many of the rules and regulations pertaining to the cross border movement of skilled human resources among AMS. Table 3 summarises the major immigration and employment regulations that are in place in nine AMS. Throughout the interviews carried out for this project it was often mentioned that the specific rules and regulations of other AMS were not known, and that it would be advantageous to have a summary table across ASEAN. Lack of transparency and unpredictability in regulatory decision-making and rule-making were highlighted as a major barrier in the literature review. This table is a starting point and the intention is to ask AMS to expand and elaborate on it during the run-up to the project workshop. Table 3 will be updated at the forthcoming workshop.

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Brunei Darussalam	<p>All foreign employees must possess a work pass. Each work pass is valid for 2 years and then foreign workers must return home for a period (no set time).</p> <p>Under the Employment Order, 2009, guidance on rights of repatriations is the only inclusion stated with direct reference to foreign human resources. Aside from this, the Employment Order, 2009, outlines rules and regulations on benefits and protective rights of employees and obligations of employers in Brunei Darussalam.</p>	<p>The Department of Labour is responsible for issuing licences (quotas) and work passes for employment of foreign workers. Each work pass is valid for 2 years; after which, the foreign workers is required to return his/her country of origin for a period of time. Each employer of foreign human resources is required to apply for a quota but there is no restriction on the number of foreign human resources that may be applied for and DOL will consider each employer's/organisation's project needs.</p> <p>No formalised labour market tests; foreign workers are expected to understand and communicate in either English or Malay.</p>	<p>There are 17 highlighted jobs where employers are discouraged from hiring foreign human resources but this discouragement is waived where there is a significant shortage in that highlighted job.</p>
Cambodia	<p>1) If employer sponsors, person gets work permit prior to or on entry and stay permit on arrival.</p> <p>2) If independent arrival (eg tourist visa) receives job offer, they must leave country and then return on a business visa and apply for work permit (Labour) and stay permit (Ministry of Interior). Work permits can be 1 or 2 years.</p>	<p>Labour Law of 1997 allows employers to request employees from o/s, up to 10% of most workplaces or 18-20% where necessary.</p> <p>Some professions, eg. medicine, nursing and engineering, are regulated and procedures exist for assessing and recognising foreigners.</p> <p>No quota and flexibility with numbers if find need for more workers from o/s.</p>	<p>Very open approach in some sectors and encouraging of new investments and immigrant professionals.</p> <p>Other areas are largely closed to locals, except where shortages of specialist skills prevail.</p>
Indonesia	<p>Business visit visa for 60 days up to 180 days. Multiple business visit visa valid for 1 yr but individual visits of only 60 days.</p> <p>Semi-permanent visa can be obtained once company sponsorship has been acquired – by Immigration. Can stay 1 year plus, three renewals of one year each (total of 4 years).</p>	<p>Many agreements need to be opened up – eg law limits foreigners in broadcasting, postal services, etc.</p> <p>Foreigners must have company sponsorship before issuance of a semi-permanent visa and work permit. Dept of Manpower issues work permit.</p>	<p>Some respondents expressed concern about foreigners coming in, except in areas of high skills shortages.</p> <p>Others have a more open perspective and see the benefits that could be gained.</p>

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010 (continued)

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Laos PDR	<p>The following types of visas are applicable to foreign workers:</p> <p>Business visas (N1 B2), (ST B2): Business visas are issued to foreign experts sponsored to perform assignments under projects provided by loan agreements and as provided by employment contracts or projects, to experts or volunteers of non-government agencies, experts of education and medical staff members of diplomatic mission, general consulates, the United Nation agencies and other international organisations holding ordinary passport for the countries or from third countries, as well as foreign business persons.</p> <p>Business visas (B2) are subject to payment of mandatory visa and service fees. Multiple entry visas may be obtained for a period of one year, six months and three months and may be renewed every year, six months, or three months until completion of assignments.</p> <p>Journalist Visas (M B2). Journalist visas are issued to the foreign media who will collect the news in Lao PDR.</p>	<p>Expatriates with B2 visa apply for work permit and resident card.</p> <p>All foreign investors and foreign employees must obtain work visas and work permits.</p> <p>Foreign investors are obliged to upgrade the skills of their Lao employees. Under the Decree on the Business Law, Annex III, certain professions are closed to foreign workers.</p> <p>Tour guides and tour companies are both restricted to those with Lao nationality only.</p>	<p>Following the Lao PDR National Consultation on the Protection and Promotion of the Rights of Migrant Workers the government is seeking to improve the flow of workers, mostly unskilled and semi-skilled, between Thailand and Lao PDR.</p> <p>No mention has been made of skilled or high skilled workers in government announcements.</p>

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010 (continued)

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Malaysia	<p>Professional Work Permit is an Employment Pass (DP10 Visa). Professional Work Permit can be obtained by an expatriate from another country who is highly skilled and is offered a skilled job in Malaysia. Examples of skilled categories include IT Professionals, Teachers, Doctors, Nursing and Managers. The initial validity of the pass is 2 years but it can be extended for 12 years.</p> <p>Professional Worker - Visit Pass (Professional) issued to a foreigner who holds acceptable professional qualifications or specialist skills and enters Malaysia to take up professional work for short term period not exceeding twelve (12) months. Applicant must be outside Malaysia at the time of application. There are four categories: 1) Expert/Volunteer; 2) Artist; 3) Mubaligh (Muslim); 4) Missionary/worker of other religions.</p>	<p>In some professions, foreigners must meet the professional standards of relevant organizations.</p> <p>Limited number of foreign specialists/ experts per institution subject to registration and fulfillment of residency requirements. In wholesale & retail trade, foreign managers/ executives must have been employed by the company outside Malaysia for a minimum of three years.</p> <p>Some professionals (e.g. architects and engineers) can work immediately but require 180 days of residency before they can register and practice as fully-fledged professionals.</p>	<p>Increased inward mobility of skilled people will rely on reform of the various Acts that restrict entry. Progress will be uneven as some professional groups continue to seek protection.</p>

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010 (continued)

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Philippines	<p>Once an Alien Employment Permit (AEP) is received by Immigration from DOLE, they recommend to Foreign Affairs that a visa be issued. The relevant consular office in the expatriate's place of residence will issue the Pre-arranged Employment Visa.</p> <p>Approval is given by Foreign Affairs for 1 year or for the length of time of the employment contract.</p> <p>A visa to take up pre-arranged employment will only be issued if it is established that no person can be found in the Philippines willing and competent to perform the labour or service for which the non-immigrant is desired and that the non-immigrant's admission would be beneficial to the public interest.</p>	<p>All positions are subject to a labour market test to determine if there is a qualified and willing Filipino to fill an advertised vacancy.</p> <p>Companies/employers that wish to hire a foreign professional must first locate the future employee and then apply for an Alien Employment Permit (AEP) to Dept of Labour and Employment (DOLE). AEPs filed with DOLE are advertised by DOLE in the relevant regional newspaper. If various criteria are met and no objections are raised, the AEP will be issued.</p> <p>Foreigners who are employed are tied to a specific project and must have an offer of employment to acquire a temporary work permit. These are usually intra-company transferees. There is little, if any scope for IPs or CSS workers to enter.</p> <p>There are currently formidable legal barriers to skilled workers finding employment in the Philippines. There are 42 professions that are covered under existing laws that restrict employment in these professions to Filipinos. The laws governing the professions are constitutionally based and hence very difficult to change in order to promote liberalisation.</p>	<p>While there is doubt that laws protecting the professions will be changed any time soon, there may be scope for manoeuvring around these legal restrictions.</p> <p>Professional bodies could become more involved in setting standards, making decisions on accreditation matters, and developing codes of conduct.</p> <p>Once these bodies see advantage in trade in their professional services then pressure will be put on legislators to craft exceptions to existing laws.</p>

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010 (continued)

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Singapore	<p>Foreigners with acceptable degrees, professional qualifications or specialist skills and are seeking professional, managerial, executive or specialist jobs must acquire an Employment Pass (EP). There are 3 categories of EPs: P1, P2 and Q1. Foreigners must earn a minimum S\$7,000, S\$3,500 and S\$2,500 to qualify for the P1, P2 and Q1 passes, respectively.</p> <p>A Personalised Employment Pass (PEP) allows foreigners to have a longer and more flexible work stint in Singapore. Unlike the EP, the PEP is tied to the individual instead of a specific employer and is granted based on the strength of the PEP holder's individual merits. PEP holders are able to remain in Singapore for up to 6 months in between jobs to evaluate new employment opportunities. They must earn an annual fixed salary of at least S\$30,000.</p> <p>All nationals of ASEAN Member States, with the exception of Myanmar nationals, are not subject to visa requirements and hence do not need entry visas for short-term stay.</p> <p>Foreigners coming for short durations do not need a work pass — includes the provision of specialised skills (e.g. commissioning or audits of new plant and equipment, or the installation, dismantling, transfer, repair or maintenance of any equipment, process or machine), performances, exhibitions, tour facilitation, etc. These activities broadly correspond to services provided by CSS, BV and IP. Foreigners can perform these activities for the duration of their short term visit passes subject to a maximum of 60 days. However, they are required to notify MOM after they have arrived in Singapore and obtained a Short Term Visit Pass issued by ICA.</p>	<p>No numerical restrictions, no economic needs tests and no sectoral restrictions imposed under the EP framework.</p> <p>In some professions, foreigners must meet the professional standards of relevant organizations before an EP is issued.</p>	<p>Despite a lackluster performance over the last couple of years, the Singapore economy grew at an average rate of 5.1% over the last decade. Continued growth at this level will need to be underwritten by labour imports.</p> <p>As the economy moves increasingly towards a knowledge-based economy, the country will need to draw increasingly on foreign supplies of skilled workers.</p>

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010 (continued)

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Thailand	<p>Relevant types of non-immigrant visas applicable to aliens entering on a temporary basis for a specific purpose: Business (B): For foreigners engaged in general business. Length of stay: max 1 year. For obtaining type 'B' visa, the following requirements apply:</p> <p>Thai company must have 4 Thai employees, valid work permit, registered capital of THB 2 million, audited balance sheet, with minimum of THB 1 million equity and meet minimum salary rate (for managers at least 50,000 Baht/month)</p> <p>Research & science (RS): Aliens engaged in scientific research or teaching in a research or educational institution. Length of stay: max 90 days</p> <p>Experts (EX): For performing skilled or expert work. Length of stay: max of 90 days.</p> <p>The Board of Investment coordinated the establishment of a One-Stop Service centre for Visas and Work Permits. Through joint cooperation with the Immigration Bureau and the Ministry of Labour, the centre can process applications or renewals of visas and work permits within three hours, upon receipt of proper and complete documentation. The centre handles other transactions, including the issuance of multiple re-entry stamps, changes in visa status (to non-immigrant from tourist or transit), and payment of fines, all within three hours or less.</p>	<p>Most foreigners who intend to work in Thailand are subject to the Alien Employment Act B.E. 2521 (A.D. 1978). Under the provisions of this Act, a foreigner cannot perform any act of work or service unless a work permit has been issued by the Department of Employment, Ministry of Labour, or unless the individual, or the work performed, falls within an exception to the Act.</p> <p>Working without a valid work permit even for a day is a criminal offence. The validity period of a work permit is governed by the holder's immigration status, i.e. a work permit usually expires on the last day of the period of stay allowed by immigration officials as shown on the alien's visa.</p> <p>The Department of Employment establishes criteria for the approval of a work permit which can be summarised as follows:</p> <ul style="list-style-type: none"> • Job or profession must not be prohibited; • Whether the job can be done by Thai national. • Amount of invested capital. • Whether the transference of technical knowledge is of benefit to Thai nationals. • Whether the salary paid to foreigner is at a high rate, in which case a work permit is more likely. • Other special circumstances. <p>Royal Decrees 1973&1979 listed 39 occupations and professions prohibited to foreigners. Most are less skilled occupations with the exception of: specialised work in primary industries; supervising, auditing or giving services in accountancy; engineering work in civil engineering branch concerning designing and calculation, organisation, research, planning, treating, construction supervision or advising (excluding specialised work), architectural work concerning designing, drawing of plan, estimating, construction directing or advising; guide or sightseeing tours & legal services.</p>	<p>The number of laws that would need to be changed is very high and the perception is that in the short term it is better to work within existing laws.</p>

Table 3: Comparative immigration and employment regulations in relation to skilled human resources in 9 AMS, 2010 (continued)

AMS	Major immigration regulations affecting incoming skilled human resources	Major labour regulations affecting foreign (ASEAN) skilled human resources	Perceptions of future prospects for change
Viet Nam	<p>Must have work contract to get work permit. Qualifications and experience assessed by DOLISA or relevant government department.</p> <p>Maximum working permit is for 36 months.</p>	<p>Decree No 34 (2008) on foreign workers.</p> <p>Foreigners must satisfy all of the following conditions in order to work in Vietnam:</p> <ol style="list-style-type: none"> 1. Must be eighteen (18) years of age or older. 2. Must be in good health as necessary to satisfy the job requirements. 3. Must be a manager, executive director or an expert. 4. Must not have a criminal record for a national security offence; and must not currently be subject to criminal prosecution or any criminal sentence in accordance with the law of Vietnam and foreign laws. 5. Must have a work permit issued by the authorized State body of Viet Nam. <p>In terms of Intra-corporate transferees at least 20% of employees and management must be Vietnamese.</p> <p>Employers have to prove that they need a specific skill or not enough local people are available to bring in a high skilled person.</p> <p>LMT required. LMT requires at least thirty (30) days prior to recruiting employees, the employer must publish its need to recruit employees in a central or local newspaper notifying the following matters: the number of employees to be recruited, the work, the specialist qualifications, the salary level, the working conditions.</p> <p>ICTs must have worked for 12 months with company before coming.</p>	<p>Decree 34 being revised. No scope currently for waiving provisions for other AMS.</p> <p>Obligation to own population means protect jobs and develop human resources. Will open up when others do.</p> <p>Eventually want to send high skilled workers offshore, like Philippines and India.</p>

		<p>Work contract - linked to employer based on length of work permit. Work contract also can be extended to 36 months. Work permit requires:</p> <ol style="list-style-type: none">1. Registration form2. Legal record3. Curriculum vita4. Health certificate5. Certificates of specialist [or] highly technical qualifications of the foreigner [or] five years experience in an occupation or trade, in operating production or in managerial work.6. New employer requires new work permit. <p>After issuance of a work permit, the foreigner and the employer must sign a written labour contract in accordance with the labour law of Vietnam, and the employer shall be responsible to forward a copy of the signed labour contract to the body which issued the work permit for such employee. The contents of the labour contract must not be inconsistent with the contents of the issued work permit.</p>	
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4. BARRIERS TO FREE FLOW OF SKILLED HUMAN RESOURCES

4.1 Exploring barriers through an analytical framework

On the basis of the literature review attached to this report and a preliminary review of the AMS 7th packages of commitments, an analytical framework was developed to guide the analysis of current barriers to the freer flow of skilled labour. Three categories of barriers were identified: the inadequate liberalisation of commitments; the prevalence of domestic regulations in relation to entry to and participation in the labour force; and other regulatory restrictions such as investment and residence requirements. The purpose of the framework was to guide fieldwork activities and the collection of available data from each AMS. A summary of the three areas across eight AMS is shown below in Table 4 and a discussion of each area is included in 4.2, 4.3 and 4.4 below.

Besides the above three sets of factors, a fourth set of factors have been identified during the study as having a major effect on the free flow of skilled human resources. They are the absence of adequate policy capacity with AMS and poor coordination and communication both across ASEAN sectoral bodies and within AMS. These specific issues are discussed later in 4.6. Before this, section 4.5 contains a discussion of the specific barriers in nine occupations. This has been undertaken to flesh out the reality of the barriers in these occupations.

4.2 Lack of liberalisation of Mode 4 commitments

The liberalisation of restrictions of Modes 1 and 2 has been unfolding progressively through the commitments identified in packages 1 – 7. Progress with respect to Mode 3 has been somewhat more limited with some restrictions remaining in place as exceptions to the general removal. Mode 4 commitments, however, are still mostly ‘unbound’. One of the objectives of the present study was to investigate some of the barriers toward further progress through commitments to liberalisation under Mode 4.

Interviews with relevant AMS stakeholder organisations through the present study drew attention to some of the issues. First, in many cases Mode 4 commitments given in previous packages are unworkable due to the limitations attached to them. For example the requirement to train locals that is attached to some commitments can be unrealistic. This has delayed the implementation process in many AMS.

Second, these limitations inhibit further identification of subsequent commitments required for the liberalisation of mobility under Mode 4. Some AMS see no point in making further commitments when existing ones are not operational. They are also unwilling to liberalise commitments further unless all AMS manifest the same willingness. The issue of reciprocity in liberalising commitments is high on the agenda of all AMS.

Third, the pace of change has been too rapid for them to accommodate in terms of changing domestic laws and regulations.

Fourth, the continued high prevalence of the notion of protecting skilled labour markets for locals is militating against opening up Mode 4 commitments.

This is not to suggest a lack of commitment to the broader AEC goals but rather to draw attention to the need to communicate information about the potential advantages to AMS of a freer flow of skilled human resources. At the moment the perceived benefits of free mobility are often outweighed by political, social and economic desires to protect jobs for locals. Information at the AMS level or at the macro ASEAN level about the impact of

liberalisation on production and the labour market is scant. The fear of competition from more highly skilled foreigners is greater than the perceived opportunities or desire by skilled locals to work abroad. There is a strong need for a better flow of strategic information, both across ASEAN sectoral bodies and within AMS, regarding these issues. Some options for achieving this are proposed below in Section 5.

4.3 Widespread prevalence of immigration and labour laws/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. Much domestic legislation that is inconsistent with the implementation of a regional agreement, as articulated in the Economic Blueprint, still remains intact in AMS. Many laws and regulations that protect domestic labour markets from foreign competition are still in place.

Labour laws ultimately affect immigration restrictions and requirements. Immigration or similar departments tend to follow the decisions in other departments rather than make decisions themselves. Nevertheless, difficulties, delays and red tape associated with obtaining visas and work permits impede skilled people from going elsewhere to work. If the mobility is of a temporary nature, this may even serve to stop the mobility altogether. For example skilled professionals seeking to practice in Cambodia must acquire separately: (i) a visa from Immigration; (ii) a work permit from Department of Labour; and (iii) a stay permit from the Ministry of the Interior. There is also a quota per employer. In all, the bureaucratic processes are burdensome. Cambodia has recently moved to allow on-shore conversion from a tourist visa to a work visa but this only works to the benefit of a few.

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 but as pointed out earlier they are not yet working.

The use of quotas and labour market and economic needs tests is still widespread in many AMS. As Table 3 shows, most AMS still treat skilled foreigners differently to their own nationals. There is also little demonstrated willingness, to date, to enable skilled human resources from other AMS to be treated more favourably than people from outside of ASEAN.

Labour market tests (LMTs) are a common feature of many countries and they involve some means of assessing (e.g. advertising the position) as to whether a position can be filled by a local. If the position cannot be filled, the employer is usually given permission to import a person from abroad.

Economic needs tests are macro or economy-wide measures of the occupational skills that are in shortage in a particular labour market. A list may be constructed of these skills or occupational shortages. These lists are given various names, such as Occupations in Demand or Skills Shortages List. The compilation of these lists is a resource-intensive exercise. The most recent Australian list contains Australian occupational titles and codes and Australian and NZ Standard Classification of Occupations (ANZSCO) titles and codes (www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/137D6FCFCDC03D0CA2577).

In Canada, when an employer applies to sponsor, he/she should apply for a job offer from Human Resources and Social Development Canada (HRSDC). HRSDC will determine

whether a 'labour market opinion' is necessary for the position that the employer is seeking to fill. The labour market opinion may be waived if the occupation is in shortage, according to the HRSDC provincial office. Canada maintains regional Occupations in Demand Lists for different provinces.

Thus in some countries, when employers apply to import a skilled worker, they may not be required to conduct a LMT if the skills being sought are on a skills shortage list. This is increasingly the case in the European Union where on 'the basis of a precise evaluation of the shortages in certain branches and professions, labour market testing has been lifted for a wider range of occupations. In France, for example, the Ministry of Employment publishes an annual "shortage occupation list", region by region, based on an indicator calculated by the ANPE (national employment service). Publication of the list of occupations where labour market testing no longer applies to immigrants from the new EU member states led to an increase in direct entries of permanent workers in 2005, especially for skilled jobs such as technicians, supervisors, managers and engineers, representing a total of approximately 10 000 individuals. In Belgium the regions, after consulting the social partners, publish lists of sectors and occupations for which immigrants are granted work permits. In the United Kingdom, there is a "shortage occupation list" for which foreigners can obtain a work permit if they meet a minimum level of qualification' (OECD SOPEMI 2007, 97).

4.4 Other regulatory restrictions

Regulations covering investments, nationality, language capability, residency status and length of stay carry implications for both Modes 3 and 4. Table 3 shows the restrictions that still apply in each of the AMS. ASEAN has a timetable for addressing investment issues that is currently in process. The completion of this timetable will open up investment opportunities and the increased mobility of skilled human resources is likely to follow.

Nationality, language and residency requirements are designed to protect labour markets from foreign competition. They are inconsistent with the greater mobility of skilled human resources. Length of stay requirements, such as period of residency prior to an exam or ability to practice, inhibit short-term mobility.

Language requirements (such as those in Thailand) are also not conducive to the short-term mobility of skilled human resources. Means of overcoming this barrier, such as the use of interpreters or professional exams in other languages, need to be put in place. Malaysia has done this for nurses but not for other professions.

Specific requirements pertaining to the hiring or training of local professionals by foreigners also place additional conditions on them. For example, Indonesia only admits foreign nurses who perform a training role. Such people may not want to incur the financial and human costs that this inevitably involves and they may opt to forego the move.

All of the above restrictions determine the types of work permits and visas that may be available for skilled human resources to come into AMS from abroad. Table 3 provides a summary of the types of entry visas and work permits available in each AMS. At present, understandably, there is wide variation in both of these aspects. While there does not seem to be much support among AMS for an AFAS permit, there is scope to look at more simplification and harmonisation in the issuance of work permits and visas, especially under the MRARs. Some international examples are included in the box below.

Box 1: International examples of temporary skilled work permit/visa arrangements

Australia: The 457 visa (4 years) has become an important means of acquiring short-term workers. Employers apply to the Department of Immigration and Citizenship (DIAC) to become a sponsor and nominate a position/s in shortage (as defined by Dept of Education, Employment and Workplace Relations). Once approval is given and an appropriate employee is located, through the Internet, recruitment agency or some other means, the employee applies for a 457 visa (online, in person or by post). The process is handled by DIAC (www.immi.gov.au/skilled/skilled-workers/sbs/).

New Zealand: The employer submits an application to Immigration New Zealand (INZ) and once approval for sponsorship has been approved, the employee then submits an application for a Work Visa/Permit for a temporary stay in NZ. This application must be accompanied by the approved job offer (www.immigration.govt.nz/migrant/stream/work/worktemporarily/howdoiapply/essential/).

There is also scope to facilitate the greater mobility of Business Visitors (BVs). Many countries have good models but, in particular, the APEC Business Travel Card (ABTC) has provided a good mechanism for freer and open trade and investment within APEC. The ABTC removes the need for individuals to apply for visas or entry permits and allows multiple entries into participating economies during the 3-year life of the card. The ABTC is readily renewable (www.apec.org/apec/business_resources/apec_business_travel0.html).

TABLE 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Cambodia	<p>4) Unbound except for measures concerning the entry and temporary stay of a natural person who falls in one of the following categories:</p> <p>Business visitors A natural person who: enters Cambodia for the purposes of participating in business meetings, establishing business contacts including negotiations for the sale of services and/or other similar activities; - without receiving income from within Cambodian sources; - does not engage in making direct sales to the general public or supplying services. Entry visa for business visitors valid for a period of 90 days for an initial stay of 30 days - may be extended.</p>	4) (only as in HCs)	<p>Relatively open.</p> <p>Two types of entry visa:</p> <p>1) employment visa issued at home or at border - sponsored by employer (ICTs)</p> <p>2) independent (IP) arrival on tourist visa, followed by job.</p> <p>Must apply for residence/stay permit from Ministry of Interior after arrival.</p> <p>ICTs can come for up to 5 years.</p> <p>BVs for 30 days – up to 90 days.</p>	<p>No national system at any level. No NQF.</p> <p>New occupational bodies (National Medical Council, BEC) have been established in recent years in some occupations.</p> <p>Not ready to participate in MRARs as national systems not yet in place.</p>	<p>Labour Law (1997) covers all occupations (except army, etc)'</p> <p>Dept of Labour issues work permit for 1-2 years after arrival for:</p> <p>1) employer-sponsored ICT, according to quota - foreigners limited to 10% or up to 20% of workplace.</p> <p>2) IP once has a job contract.</p>		Limits to mode 3 in some sectors, eg private medical colleges, restrict mobility.
Indonesia	4) Unbound except for directors, managers and technical experts/advisors, unless mentioned otherwise, are allowed to stay for two years and could be extended for a maximum two times subject to two years extension each time. Manager and technical experts (intra corporate transfer) are allowed based on an economic needs test.	4) Mostly unbound except for some in tourism and some professionals, directors and technical experts.	<p>Business visit visa for 60 days up to 180 days. Multiple bus. visit visa valid for 1 yr but individual visits of only 60 days.</p> <p>Labour often agrees but immigration rejects application.</p> <p>Security concerns.</p>	<p>Laws gradually been introduced to set and maintain standards.</p> <p>Ready to participate in some MRARs but not in others.</p> <p>Foreigners are not familiar with local conditions.</p>	<p>Many agreements need to be opened up – eg law limits foreigners in broadcasting, postal services, etc.</p> <p>LMTs are in place but there is flexibility if a good case is made. Not interested in permanent entrants but short term service providers welcome.</p>	<p>No land ownership except in joint venture.</p> <p>Great deal of political and social sensitivity - protect jobs for locals.</p>	<p>Geographic restrictions - allow investment mostly in east.</p> <p>ICTs (managers and tech experts) subject to ENTs.</p> <p>Flexibility in allowing in whole teams for investment, including less skilled, requires lengthy negotiations.</p>

Table 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010 (continued)

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Lao PDR	No commitments	4) Mostly unbound – especially for professional workers	<p>Few restrictions:</p> <ul style="list-style-type: none"> - labour (working) visa granted to temporary workers hired by companies up to one year. - business visa for investors - non-immigrant visa for university professors - courtesy (gratis) visa for diplomats 	None in place	<p>Quota system:</p> <ol style="list-style-type: none"> 1. High skilled professionals: the number of foreign workers should not exceed 20% of total employees in a company (but can be increased on a case-by-case basis). 		<p>By law, foreign investors must contribute at least 30% of registered capital</p> <p>Under the Foreign Investment Law, foreign companies must give priority to Lao workers, train and upgrade professional skills and transfer technology to Lao workers.</p> <p>Prohibited areas for foreign investment include activities detrimental to the environment, public health or national culture. Certain business sectors important for national security, economy or society are subject to close control by the State,</p>

Table 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010 (continued)

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Malaysia	<p>4) Unbound except for measures affecting the entry and temporary stay of natural persons defined below</p> <p>1. <u>Intra-corporate Transferees</u></p> <p>a) senior managers being persons within an organisation having proprietary information of the organisation and who exercise wide latitude in decision making relating to the establishment, control and operation of the organisation</p> <p>b) two specialists or experts per organisation being persons within the organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's new service products and technology, research equipment and techniques or management.</p> <p>Additional specialists or experts may be allowed subject to market test and the training of Malaysians through an acceptable training program in the relevant services sector or sub sector: Provided that such persons are employees of the foreign service supplier and have been in the employment of that foreign service supplier for a period of not less than one year immediately preceding the date of their application for a work permit and he is to serve in at least a similar capacity.</p>	<p>No restrictions applying to supply via Modes 1 and 2. Only the IT sector appears to be fully liberalised. Foreign firms/individuals must be in joint venture with Malaysian individuals or Malaysian-controlled corporations. In wholesale & retail trade a certain proportion of equity must be owned by Bumiputras.</p>	<p>Professional Work Permit is an Employment Pass (DP10 Visa). A Professional Work Permit can be obtained by an expatriate who is highly skilled and is offered a skilled job in Malaysia. The initial validity of the pass is 2 years but it can be extended for 12 years. Professional Worker - Visit Pass (Professional)</p> <p>Issued to a foreigner who holds acceptable professional qualifications or specialist skills and enters Malaysia to take up professional work for short term period not exceeding twelve (12) months.</p> <p>Applicant must be outside Malaysia at the time of application.</p> <p>Four categories:</p> <ol style="list-style-type: none"> 1. Expert/Volunteer 2. Artist 3. Mubaligh (Muslim) 4. Missionary/ worker of other religions 	<p>Foreign professionals must meet professional standards of relevant organisation.</p>	<p>Limited number of foreign specialists/experts per institution subject to registration and fulfillment of residency requirements.</p> <p>In wholesale & retail trade, foreign managers/executives must be employed by the company outside Malaysia for a minimum of three years.</p>	<p>Length of stay requirement - some professions require 180 days of residency before they can register and practice.</p>	<p>Foreign equity capped at between 30% and 51%, with most either 30% or 49%. Foreign directorship not allowed.</p> <p>Geographic restrictions on foreign incorporation in legal services.</p> <p>In some professions, a joint venture corporation is only for a duration sufficient to complete the services contract.</p> <p>In dentistry firms are restricted to private dental specialist clinics with a least 5 services, at least 25 chairs/units and foreign equity not exceeding 51%. Must be located in the development corridor /region. Only 2 foreign dental specialist allowed per establishment.</p> <p>Private hospitals must be joint venture with foreign equity not exceeding 51% and hospital must have at least 100 beds.</p> <p>Joint venture in hotels restricted to 4 and 5 star.</p>

Table 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010 (continued)

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Philippines	<p>Unbound - Labor Code and Constitution provisions limit the employment of foreigners.</p> <p><u>Except for</u></p> <p>Non-resident aliens may be admitted to the Philippines for the supply of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing, at the time of application, to perform the services for which the alien is desired (to be reviewed after 2 years of agreement)</p>	<p>4) Foreign professionals must be licensed by the PRC but will be licensed only if reciprocity applies with regard to Filipinos practicing the same profession in the country from which foreigner comes</p>	<p>A visa to take up pre-arranged employment will only be issued if it is established that no person can be found in the Philippines willing and competent to perform the labour or service for which the non-immigrant is desired and that the non-immigrant's admission would be beneficial to the public interest.</p>	<p>Domestic regulations (eg. licences in professional occupations) make it difficult for foreigners to practice their profession in the Philippines.</p>	<p>Section 14, Article XII of the Philippine Constitution provides that "[T]he practice of all professions in the Philippines shall be limited to Filipino citizens, save in the cases prescribed by law.</p> <p>Temporary employment passes usually limited to specific projects being undertaken by a foreign MNC.</p> <p>Resistance from local professionals.</p>	<p>Length of stay - must reside in Philippines for at least 3 years prior to submitting an application to sit the professional exam.</p>	<p>Some services limited to Filipino citizens (eg practice of professions) and nationals (e.g. telecommunications).</p> <p>Only citizens of the Philippines or corporations or association at least 60% of whose capital is owned by such citizens may own land other than public land and acquire public land through lease</p>

Table 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010 (continued)

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Singapore	4) Unbound except for intra-company transferees – managers, executives and specialists who are employees of firms that provide services within Singapore through a branch, subsidiary, or affiliate established in Singapore and who have been in the prior employ of their firms outside Singapore for a period of not less than one year immediately preceding the date of their application for admission.	4) Deep commitments. Commitments for Intra-Corporate Transferees, for example, apply across all liberalised sectors.	<p>Foreigners with acceptable degrees, professional quals or specialist skills and seeking professional, managerial, admin, executive or managerial jobs must acquire an Employment Pass (EP). There are 3 categories of EPs: P1, P2 and Q1. Foreigners must earn a minimum S\$7,000, S\$3,500 and S\$2,500 to qualify for the P1, P2 and Q1 passes, respectively.</p> <p>All nationals of AMS, except for Myanmar, not subject to visa requirements and do not need entry visas for short-term stay.</p> <p>Foreigners coming for short durations do not need a work pass — includes provision of specialised skills, tour facilitation, exhibitions, performances, etc. - broadly corresponding to services provided by CSS, BV, IPs.</p>	<p>Absence of common skills recognition arrangements.</p> <p>Singapore is still establishing its national skills framework as an incremental approach towards an ASEAN skills recognition framework.</p>	No numerical restrictions, no economic needs tests and no sectoral restrictions imposed under the EP framework.	None	Only minor restrictions that should not impact on Mode 3 investment and associated labour mobility

Table 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010 (continued)

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Thailand	<p>4) Unbound except for:</p> <p>I. Business Visitor:</p> <p>1. A natural person who stays in Thailand for the purpose of participating in business meetings or contacts, entering into contract to sell or purchase services, visiting of business establishments or other similar activities and entering with a purpose to establish a commercial presence in Thailand. Such temporary entry will be permitted for an initial period of not more than 90 days and may be extended for a further period of not more than one year.</p> <p>II. Intra-corporate Transferee:</p> <p>A corporate transferee of the managerial or executive level or a specialist, provided that such person has been employed by the company concerned outside Thailand for a period of not less than one year immediately preceding the date of his or her application for admission and has satisfied the criteria for management needs²⁴ stipulated by the Department of Employment. The temporary stay is limited to a one year period and may be extended for a further three terms of not more than one year each.</p>	4) Mostly unbound	<p>90-day non-immigrant visa then apply for 12 months in Thailand - created problems.</p> <p>Supplemented now by work permit for up to 2 yrs.</p> <p>High level of security concerns related to neighbouring AMS.</p>	<p>No NQF or national accreditation system.</p> <p>MRARs not working yet.</p> <p>Some MRARs 'not accepted' – i.e. certificates provided as a result of MRARs not accepted.</p>	<p>Variety of quota arrangements in place re hiring, except where are shortages.</p> <p>Still rely on domestic regulations.</p>	<p>Foreigners must pass occupational tests in Thai to obtain a work permit.</p> <p>Language/cultural knowledge tests being expanded to Thai company employees.</p>	<p>Equity targets not met. Regulations regarding no. of employees.</p> <p>Less skilled not admitted.</p>

²⁴ In considering managerial needs, the following facts shall be taken into consideration by the relevant authority, namely: (1) size of fully paid-up capital; (2) employment creation; (3) extent of foreign investment; (4) export promotion; (5) transfer of technology; (6) special needs of the management.

Table 4: Analytical Framework, summary of barriers to skilled human resource mobility in 8 AMS, 2010 (continued)

AMS	A. Absence of adequate liberalisation		B. Domestic regulations			C. Other regulatory restrictions	
	Horizontal commitments on Mode 4	Sector Commitments	Entry/immigration restrictions	Occupational standards requirements	Employment related restrictions & regulations	Social/residential obligations	Restrictions on Mode 3 investment that impacts on labour mobility
Viet Nam	<p>4) Unbound, except for:</p> <p>(a) <u>Intra-corporate transferees</u> Managers, executives and specialists of a foreign enterprise which has established a commercial presence in the territory of Viet Nam, temporarily moving as intra-corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least one year, shall be granted entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam.</p> <p>(b) <u>Other personnel</u> Managers, executives and specialists, as defined in (a) above, who cannot be substituted by Vietnamese and who are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam.</p> <p>(c) <u>Service sales persons</u> Persons not based in the territory of Viet Nam and receiving no remuneration from a source located within Viet Nam, and who are engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that provider.</p> <p>(d) <u>Persons responsible for setting up a commercial presence</u></p> <p>(e) <u>Contractual service suppliers (CSS)</u> for computer related and engineering services</p>	b) Mostly unbound	<p>Max length of stay is 36 months.</p> <p>More open than other AMS and no real problems.</p>	<p>Decree No 34 (2008) on foreign workers: In terms of Intra-corporate transferees at least 20% of employees and management must be Vietnamese.</p> <p>Employers have to prove that they need a specific skill or not enough local people are available to bring in a high skilled person. LMT required.</p> <p>Labour contract sent to MOLISA and 64 provincial DOLISAs and work permits issued, depending on length of contract.</p> <p>ICTs must have worked for one year with company before coming.</p> <p>Work contract – linked to employer based on length of work contract permit. Work contract also can be extended to 36 months. Work permit requires:</p> <ol style="list-style-type: none"> 1. Registration form 2. Legal record 3. Curriculum vita 4. Health certificate 5. Certificates of 	<p>After issuance of a work permit, the foreigner and the employer must sign a written labour contract in accordance with the labour law of Vietnam, and the employer shall be responsible to forward a copy of the signed labour contract to the body which issued the work permit for such employee. The contents of the labour contract must not be inconsistent with the contents of the issued work permit.</p> <p>Decree No 34 (2008) on foreign workers : In term of intra-corporate transferees at least 20% of employees and management must be Vietnamese. LMT required. LMT requires at least thirty (30) days prior to recruiting employees, the employer must publish its need to recruit employees in</p>	<p>Obligations to own population means protect jobs and develop human resources.</p> <p>Will open up when others do.</p> <p>Eventually want to send high skilled workers offshore, like Philippines and India.</p>	<p>Less skilled not admitted for Investment. Only highly skilled.</p>

				<p>specialist [or] highly technical qualifications of the foreigner [or] five years experience in an occupation or trade, in operating production or in managerial work</p>	<p>a central or local newspaper notifying the following matters: the number of employees to be recruited, the work, the specialist qualifications, the salary level, the working conditions.</p> <p>Employers have to prove that they need a specific skill or not enough local people are available to bring in a high skilled person.</p> <p>ICTs must have worked for 12 months with company.</p>		
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4.5 Specific Occupations

To take the general analysis a step further a more detailed investigation into nine professional occupations was undertaken. While many interviewees were unable to provide detailed information a profile of each occupation has been compiled from the information that was collected in interviews and elsewhere. A detailed table of issues associated with these occupations will be included in the project final report. A brief description of each occupation is presented below.

4.5.1 Accountants

Mobility

As is the case with most professional occupations, this one is mostly unbound except in cases where the practising professional accountant (PPA) is director, manager or technical expert associated with the setting up of a commercial establishment. However, to set up a commercial enterprise it is necessary in most of the AMS to partner with a locally registered firm and only as a minority equity holder.

Mode 4 mobility is more problematic compared to mobility under Mode 3. In most AMS, a PPA must possess the necessary academic credentials, professional qualifications, experience and/or expertise that are recognised by the host country's professional body. In some AMS, quotas or percentage of workforce restrictions apply, while in others labour market tests apply.

If employment is approved then most PPAs are issued with a two-year work permit with an opportunity to extend this by several years.

Training, accreditation and registration/licensing

ASEAN Mutual Recognition Arrangement Framework on Accountancy Services came into effect in February 2009. Its aim is to facilitate the negotiations of MRAs on Accountancy Services between or among ASEAN Member States by providing a structure towards the conclusion of such MRAs, and exchange information in order to promote and take into consideration the development of the best practices on standards and qualifications in the accountancy profession. In terms of implementation requirements and processes, the National Accountancy Body (NAB) and/or Professional Regulatory Authority (PRA) grants recognition to Practising Professional Accountants (PPA) to work in another AMS. The PPA should have met the educational requirements in effect in their Country of Origin who are encouraged to take into account the standards of the International Federation of Accountants (IFAC). There is no specific ASEAN body that covers the profession. PPAs can work independently in another AMS. In each AMS there is National Accountancy Body that liaise with the country's Professional Regulatory Authority to oversee the operational aspects of the MRA

4.5.2 Architects

Mobility

No data are available on the level of mobility of architects within ASEAN and in spite of the MRAR, most AMS still seem to be closed to architects. However, a Registered Foreign Architect (RFA) can work independently in most AMS, which is different and more liberal than for engineering.

Training, accreditation and registration/licensing

ASEAN Mutual Recognition Arrangement (referred to as MRA) on Architectural Services was signed in November 2007. PRAs and MCs that were identified by the MRAR are mostly the same body (see MRAR comparisons table).

As with engineering, in CLMV the PRAs and MCs tend to be government departments. A national accreditation of training is still not in place in these AMS and this poses problems both domestically and with mobility.

The MRAR is broad in its scope and to its credit does not restrict participation to countries in which architectural programs are accredited, or examinations set, by an independent professional body, and does not imply that acceptable academic achievement can be demonstrated only within the context of an architectural degree program. A degree or the equivalent of a degree program, plus a minimum of ten (10) years of continuous architectural practice after graduation, of which at least five (5) years shall be after licensure/registration and two (2) years in charge of major project, are the requirements.

Host countries reserve the right to conduct examinations of foreign architects and this is the case in Malaysia, Philippines, etc. The MRAR is still followed by an examination. The ASEAN Architect Council (AAC) has been established and has published a set of rules.

Other barriers

Language and local employment requirements continue to be a barrier in Thailand and Viet Nam.

4.5.3 Engineers

Mobility

No data are available on the level of mobility of engineers within ASEAN and in spite of the MRAR, most AMS still seem to be closed to engineers, except where there are specialist skills shortages. Many AMS still conduct labour market tests to decide whether an engineer is needed. Foreign engineers cannot work independently so they are most likely to move as part of joint ventures or as ICTs. The restrictions on Mode 3 investments are major in some countries (especially the Philippines) and these will continue to impose significant barriers to mobility.

Training, accreditation and registration/licensing

All AMS now seem to have a Professional Regulatory Authority (PRA) such as a Board of Engineers, or its equivalent, to handle training, accreditation and registration/licensing. In some instances these are new bodies but in other cases they are existing bodies that have been drafted to take on this function. But they have not all gone as far as standardising and accrediting all training courses or those who claim to be professional engineers. The lack of uniformity of standards within an AMS, let alone between AMS, continues to be a problem. Malaysia, for example, only accredits and registers engineers recognised by the Washington Accord but this standard is higher than that of the MRAR.

The ASEAN Mutual Recognition Arrangement on Engineering Services (although referred to as an MRA) was signed in December 2005. The MRAR was signed by all AMS and came into force immediately. Participation has been held up and has not occurred yet in a number of countries (Cambodia, Thailand, Viet Nam). A monitoring committee (MC) also needs to be established in each AMS to administer an ASEAN register and put forward the

names of people who meet the standards of the MRAR (training plus 7 years experience) up to become an ASEAN Chartered Professional Engineer (ACPE).

The ASEAN Chartered Professional Engineering Co-ordinating Committee (ACPECC) and Secretariat have been established and one function is to administer the ASEAN Register of ACPEs.

Other barriers

Language and residency requirements continue to be a barrier in Malaysia and Thailand.

4.5.4 Higher Education Lecturers

Mobility

This is a unique profession in that it has always been one of the most open globally. The calibre of universities and their international standing largely relies on their ability to attract and retain high quality researchers and teachers. In an era of high competition for funds and students, this factor has become even more important.

The implications of this have been that universities have tended to be free to bring in people who they judge to be best suited to their needs, sometimes after a labour market test to demonstrate that no suitable person is available domestically. Increasingly, labour market tests become less important as universities have striven to become global hubs in particular research areas. Consequently, the international labour market that has developed in academia is probably the most vibrant of all such markets, perhaps with the exception of the IT sector. Universities mostly conduct their own assessments of qualifications and experience and to this extent the market is 'unregulated'—that is, there is no national/state/provincial body that sets criteria and assesses standards.

Some countries in ASEAN are still going against this trend and continue to give preference to nationals who remain in the country. This is a short-sighted approach and denies the qualities and expertise that returning nationals with academic experience abroad bring back to their country. Policies that require returning nationals to start at the bottom of the career ladder upon return are regressive and not conducive to the betterment of the universities.

The same policies are sometimes applied to foreign academics. These serve as a disincentive for people to come to these universities, or if they do come, to stay only until a better offer comes along. The situation is usually different for short-term appointments where the university is able to negotiate its own contract with the visiting academic.

Some AMS, especially Singapore, have been particularly adept at recruiting foreign academic experts on very favourable terms to play key roles in their universities. They often build new research centres around such individuals. Others, such as Brunei, tend to bring in academics in areas of need and it has been able to do this by offering them attractive working conditions.

Malaysia is making major efforts to develop its education industry and has been open to improving its own universities/technical institutes and enabling offshore campuses of Australian and other universities/colleges to be established. The degree of liberalisation of the higher education sector is significantly greater than what is inscribed in the sectoral commitments. For example, 100 per cent foreign equity is permitted in international technical schools. The University of Newcastle (UK) has set up a 100 per cent foreign equity medical

school. In contrast, the sectoral Mode 3 restrictions inscribed in the AFAS commitments state that not more than 51 per cent foreign equity will be considered subject to additional criteria which include: a) courses deemed important to attain Malaysia's educational objective, and b) potential to generate export revenues. Such campuses necessitate the short-term mobility of lecturers to teach and oversee the programs.

4.5.5 IT Professionals

Mobility

The IT profession is one of the few professions in which most of the AMS encourage mobility, particularly in the context of Mode 3 mobility. A few of the AMS still consider IT professionals unbound except for those setting up a commercial enterprise and entering the country as a director, manager, intra-company transferee or specialist. However, even in these unbound cases restrictions on commercial presence are considerably less than other occupations in terms of equity considerations, with no maximum equity requirements for foreign firms. In general, most of the countries are experiencing a shortage of qualified IT professionals and hence welcome professionals from abroad.

In general, most countries are experiencing a shortage of qualified IT professionals and hence welcome professionals from abroad.

Training, accreditation and registration/licensing

Training occurs at many different levels and in both education institutions and workplaces. There is no uniform standard though what is required to be a professional in this field is defined by universities and companies.

No MRA has been concluded for the IT profession and it is not recommended. This is an international and highly fluid profession where employers are the major determinants of skills standards. They develop their own certificates and these are internationally accessible on the Internet.

Other barriers

With regard to Mode 4 mobility, a few of the AMS require labour market tests.

4.5.6 Manager/Executive

Mobility

In general, the AMS encourage the mobility of managers and executives in the context of Mode 3 mobility. In most AMS, employment permits or working visas are issued once an application has been received from the company.

Training, accreditation and registration/licensing

All AMS have rather strict definitions of what constitutes a manager/executive. Reference to managers and executives is only mentioned in horizontal commitments and only in relation to Mode 3 mobility. Insofar as a manager or executive is a practising professional, such as an architect or engineer, then various vertical commitments will apply.

Other barriers

In most AMS there are employment preconditions that apply to intra-company transferees that usually take the form of the individual having to have been employed by the company abroad for a minimum period of time, usually one year immediately prior to

applying for a work visa. This restriction inhibits Mode 4 mobility in the form of contractual service suppliers hired as independent professional managers/executives. The hiring of such independent professionals would be subject to a variety of market access restrictions.

In some instances, managerial and executive positions in public enterprises or nationalised industries are restricted to nationals.

4.5.7 Medical Practitioner

Mobility

The situation is that this occupation is mostly 'unbound' and there is a very strong desire to protect employment for local medical practitioners usually on the grounds of cultural sensitivity, language and local knowledge. No AMS was able to provide data on numbers of doctors coming in and going out. Where there is a shortage of specialists there is some leniency towards in-migration.

Training, accreditation and registration/licensing

Most countries have a licensing system while others are still putting this in place (Viet Nam). Some lack nationally accredited training systems and this makes for a wide diversity of domestic training standards. The first priority for many AMS is to improve their national training and accreditation systems and their institutions.

The ASEAN Mutual Recognition Arrangement on Medical Practitioners was signed by government representatives of all 10 AMS in February 2009. They agreed that it would be implemented within 6 months, and at the latest by 1/1/2010. To date there is little scope for it to be working. The bodies that were identified in the MRAR as being the Professional Medical Regulating Bodies are:

Brunei Darussalam – Brunei Medical Board
Cambodia - Cambodian Medical Council and Ministry of Health
Indonesia - Indonesian Medical Council and Ministry of Health
Lao PDR - Ministry of Health
Malaysia - Malaysian Medical Council
Myanmar – Myanmar Medical Council, Ministry of Health
Philippines - Professional Regulation Commission, Board of Medicine and Philippine Medical Association
Singapore – Singapore Medical Council and Specialists Accreditation Board
Thailand – Thailand Medical Council and Ministry of Public Health
Viet Nam - Ministry of Health

These are often umbrella organisations and some countries (Cambodia, Indonesia, Viet Nam) have yet to put in place the requisite bodies. Some professional organisations were not consulted and do not support the move to freer mobility. Therefore, some AMS have not notified that they are ready to implement (or ratify) the MRAR, even though they have been pressured to do so by a certain date.

The CLMV and Indonesia, in particular, are worried that because of the acceptance of national standards as the starting point for the MRAR, their own doctors will be regarded as being of a lower standard and will not be acceptable elsewhere. They can all be subject to further assessment by the receiving AMS. Thus, there is an urgent need for common core competencies if mobility is going to be multilateral.

Other barriers

Language requirements continue to be a barrier in Thailand.

4.5.8 Professional Nurse

Mobility

The situation is that this occupation is mostly 'unbound' and there is still a very strong desire to protect employment for local nurses in most AMS. Most do not have an open policy for foreign health professionals nor do they encourage their health professionals to go abroad. The Philippines and Myanmar, however, both send nurses abroad, and some of them go to other AMS.

Where there is a shortage of professional nurses, such as in Malaysia and Singapore, there is a more open policy. One strategy the Singapore government has been following is to encourage qualified doctors and nurses to practice in Singapore. To help facilitate the recruitment and retention of qualified foreign professionals, the government increased the number of recognised foreign medical schools in the Schedule of the Medical Registration Act to 140 in April 2007. According to the Schedule, 20 more schools were added including top Asian medical schools from China, India, Pakistan, Sri Lanka, South Korea, and Malaysia.

In addition, the Singapore Ministry of Manpower has included healthcare professionals under the newly introduced Strategic Skills List of job positions, which are expected to be in high demand in Singapore in the coming years. As nursing is recognised as one of the strategic skills that Singapore requires, foreign nurses who wish to seek employment opportunities receive special consideration for an Employment Pass/S Pass. Holding an Employment Pass/S Pass allows them to bring their dependents with them or to obtain Long-Term Social Visit Pass for their family members.

To counteract its shortage of nurses, Malaysia has signed agreements with seven countries: Albania, Bangladesh, India, Indonesia, Myanmar, Pakistan and the Philippines to allow their nurses to practice nursing in Malaysia. Nurses from these seven countries are required to obtain a Temporary Practising Certificate (TPC) issued by Nursing Board Malaysia in order to work in Malaysia. Foreign nurses wishing to practice nursing in Malaysia need to meet the minimum requirements set by the Board, such as nurse registration with their origin countries, minimum three years of clinical working experience, etc. The TPC process can all be done in English.

Training, accreditation and registration/licensing

A nationally accredited training system is not yet in place in all AMS, which means that the standard of training may vary substantially. Most countries already have a registration/licensing system but this is still being developed in some.

The ASEAN Mutual Recognition Arrangement (referred to as MRA) on Nursing Services was signed in December 2006. The Nursing Regulatory Authority (NRA) identified in each AMS by MRAR was as follows:

- Brunei Darussalam – Nursing Board of Brunei
- Cambodia - Ministry of Health
- Indonesia - Ministry of Health
- Lao PDR - Ministry of Health
- Malaysia - Malaysia of Health & Midwifery Boards

Myanmar – Ministry of Health & Myanmar Nursing and Midwifery Council
Philippines - Professional Regulation Commission, Board of Nursing
Singapore – Singapore Nursing Board
Thailand – Thailand Nursing Council
Viet Nam - Ministry of Health

Four AMS (Cambodia, Indonesia, Lao PDR and Viet Nam) have yet to finalise the specific bodies required to handle standard setting and national registration/licensing. The agreement on signing was to implement the MRAR in three months from signing, unless AMS notified otherwise. The latest date for implementation was 1/1/2010 but some AMS have not yet notified that they are ready to implement (or ratify) the MRAR, even though they have been pressured to do so.

Nationally accredited nurses who meet the MRAR requirements (qualification and practice of not less than three (3) years) can go on ASEAN register. But as stipulated in Article 3.1.6 of the MRAR, foreign nurses still need to comply with requirements imposed by Nursing Regulatory Authorities (NRA) of host countries. In Singapore and Malaysia, this involves passing a licensure examination unless the nurse holds a qualification from an automatically recognised institution.

The CLMV and Indonesia, in particular, are worried that because of the acceptance of national standards as the starting point for the MRAR, their own nurses will be regarded as being of a lower standard and will not be recognised elsewhere. They can all be subject to further assessment by the receiving AMS. Thus, there is an urgent need for common core competency standards if mobility is going to be multilateral.

Other barriers

Language requirements can be a de-facto deterrent for foreign nurses. For example, in order for a foreign nurse to practice in Thailand, the candidate needs to pass the national licensure exam in Thai language. Only Singapore and Malaysia have introduced a separate examination for foreign and/or foreign-trained nurses. The Singapore Nursing Board conducts its licensure examinations for foreign nurses in English and this arrangement has facilitated a smooth movement of nurses to Singapore. Malaysia conducts its licensure exams in Malay and English.

The ASEAN MRA does not eliminate domestic regulations that exist in the host country. Therefore, challenges still remain. The ASEAN Joint Coordinating Committee on Nursing was established and at the first meeting, which was held in Bali in June 2007, it identified barriers to mobility as an important part of its work plan.

4.5.9 Tour guide

Mobility

The tourism sector is relatively new in some AMS and they are just beginning to development titles of some occupations and sets of competency standards. Tour guides, however, have been practising for a long time albeit at varying levels of proficiency. The level of mobility is relatively low and tour guides are usually only permitted to enter another AMS if they are accompanying a tour group and they link up with a local tour guide on arrival.

Training, accreditation and registration/licensing

In the questionnaire for the present project, enquiries about professional level tour guides revealed that they are variously defined but professional tour guides, however, are typically competent in more than their national language, which means that many have undertaken a university or other tertiary level course. They also have a detailed knowledge of the history, archaeology, culture, religion etc of their country and entry to the profession usually entails some form of examination of this knowledge. In some AMS a high school certificate and language training, followed by an examination, is adequate. In all AMS, this is a government-regulated sector (to ensure a high standard) and the issuance of a licence seems to be mandatory.

In some instances, the chances of a tour guide from one AMS working in another AMS seem very limited. For example, foreign tour guides must pass an examination to acquire a Malaysian tour guide certificate, but that can only be done in Malaysia. They must comply with the same training standards as Malaysians. Further, any foreign tour guide entering Malaysia for work must have an offer of employment from a local firm.

The Tourism Sector Project, which was instigated by the Ministers for Tourism and funded by AusAID, led to the identification of 33 occupations in this sector and the identification of lists of competency standards for each one. The Qualifications Framework that was used was different to that developed in the *Enhancing Skills Recognition Arrangements* project. An MRAR in Tourism has been developed and signed by all but Thailand. Indonesia has responsibility for ensuring that the process is ongoing (see section 4.7.3 of this report for an assessment of this MRAR). Professional tour guide has not been targeted yet for a detailed set of competency standards.

Other barriers

Language and cultural knowledge are still seen as substantial barriers. For example, in Indonesia there is a new Tourism Act (2009) which stipulates that tour guides can be denied entry if they are not culturally sensitive and citizenship requirements are such that they preserve most occupations for locals.

4.6 Policy capacity, communication and coordination Issues

A further set of issues that has hardly been raised in the literature is the capacity of some AMS to manage policy development and new institutional arrangements. Another issue that has emerged is the lack of adequate communication and coordination within AMS and the ASEAN Secretariat. These two sets of factors will be dealt with in the remainder of this section on barriers.

4.6.1 Differences between AMS levels of development and capacity

All AMS, but especially CLMV and Indonesia, 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. These AMS are struggling:

- to educate their own people about policy for managing skilled human resources mobility;
- to set up the bodies 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.

They are overwhelmed at the moment and need in-country expert assistance. Some respondents expressed the view that they had expected much more assistance than they have received. Such assistance needs to consist of workshops for government officials and professional bodies, in depth and on-going mentoring for key negotiators and policy makers and whole-of-government strategies for influential decision-makers.

4.6.2 Communication and coordination within AMS

There is a need to deepen the level of understanding within AMS 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 could flow from the ASEAN Economic Community (AEC). There is still fear and concern about what the free flow of labour, even highly skilled human resources, will mean or how it will benefit individual AMS and ASEAN as a whole. Many are still intent on protecting domestic labour and other markets from competition within ASEAN.

Nevertheless, a growing proportion see the benefit of AMS becoming strong and the value of the ASEAN bloc growing in the context of increasing global competition. They see harmonisation, competition and the free flow of skilled human resources as a means of spurring on the improvement of their domestic human resources. Having grown quickly from opening up to FDI, they realise that similar benefits could accrue from allowing in more skilled human resources. To further this positive development, 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 work force.

Many interviewees spoke of a lack of coordination within their countries. The mobility of skilled human resources involves many agencies and it will take some time to amend domestic legislation. Some have started setting up various arrangements to undertake this task and to coordinate. The establishment of 'one stop shops' for processing the documentation for incoming and outgoing skilled human resources and country coordinating committees, both offer good possibilities.

4.6.3 ASEAN coordination issues

There is a strong need for better overall coordination across sector-body working groups in ASEAN. Based on interviews carried out through the present study it does not yet appear to be clear as to how the sectoral bodies can best work together across the three pillars (political, economic and socio-cultural) to achieve a free flow of skilled human resources.

Sectoral bodies seem to have been working more or less independently of each other and communication and coordination across sectors does not appear to have been adequate. For example CCS reports to SEOM under AEM; SLOM reports to the Labour Ministers under the socio-cultural pillar; while DGICM reports to ministers under the political

pillar. Theoretically, SEOM does the coordinating but it often does not get down to many of the minute details and issues that need to be resolved.

4.7 The process of establishing Mutual Recognition Arrangements (MRARs)

In 1998, ASEAN agreed to the Hanoi Plan of Action, which in part dealt with particular measures 'to establish networks of professional accreditation bodies to promote regional mobility and mutual recognition of technical and professional credentials and skill standards'. The aim was to overcome the problems of the non-recognition of technical and professional qualifications within ASEAN.

One of the outcomes of this agreement was a decision to develop occupation and sector MRAs. This strategy followed the approach taken by the WTO in recommending the development of MRAs. In the absence of professional accreditation bodies in many AMS, the path that was taken was for government departments to be the chief negotiators of MRARs on behalf of the professions.

4.7.1 Positives

There is a strong perception that 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 want 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 and 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.

4.7.2 Negatives

A lack of knowledge of what MRARs actually are, has led to false hopes in some AMS that they would automatically lead to increased mobility, as in an MRA. Some AMS thought that the MRAR would guarantee mobility while now they realise that much needs to be done before this can be achieved.

Moreover, CLV have now become concerned that few of their own people will be able to practice in other ASEAN countries. Rather, they will have large numbers with better training coming in from other AMS. They acknowledge that this could raise their own training standards over time but in the short term they are worried about how they will benefit.

The MRAR process has been very onerous in all countries. The process has been government-driven with officials from relevant departments often being the chief negotiators. Some AMS did not have professional bodies at the time of the commencement of the processes but, even where they existed, they do not appear to have been adequately involved. They are the crucial standard setters, not governments, and without them being engaged in the process there can be a lack of support in later implementation stages. In other cases, professional bodies have been involved in negotiations but they have not really understood or they have been opposed to foreign professionals being able to enter the country to offer trade in services.

No agreement on core competencies or harmonisation of training has been reached in any MRAR to date. This means that the existing training standards of each AMS have been accepted. This is a generous and non-judgmental approach but it means that some countries may not accept the standard of the MRARs. That is, all persons from one AMS who are placed on an ASEAN register may not be judged to be adequately qualified professionally by another AMS. This emphasises the urgent need to agree on competency standards because of the wide variation that exists.

In Europe, the Bologna process began in 1999 to deal with just this type of situation. At a meeting of 29 European Ministers of Education it was agreed to establish a European Higher Education Area (EHEA) by 2010. The EHEA was designed to create a common higher education framework among the signatory states by: implementing a system of easily readable and comparable degrees; standardising degree structures (Bachelor, Masters and Doctorates); implementing a system of credits; promoting greater mobility by overcoming obstacles; promoting European cooperation in quality assurance; and promoting European dimensions in higher education (closer international cooperation and networks). The European experience indicates that the AUN will have a similar role to play in ASEAN here as we will discuss below.

AMS are required to amend their domestic laws before they can implement MRARs. Existing laws stipulate requirements for foreign-trained practitioners to enter and work, and these need to be changed. Five MRARs also provide for new bodies to be established in each country for each occupation and this has to be built into domestic legislation, including general legislation (see 2.4 above). A Professional Regulatory Authority (PRA) and a MRA Monitoring Committee (MC) are recommended for each AMS. It is five years since the first MRAR in engineering was signed. Yet three AMS are still not at a point where they can implement it, as they do not have MCs. The two framework arrangements in surveying and accountancy and services are more flexible.

A total of 14 new or revamped bodies in each AMS are required for the seven occupational MRARs in process. Countries cannot participate in MRARs until they have established such bodies. This is a very bureaucratic approach and may take many years, according to the resources available and technical capacities. Structures that already exist or new multifunction bodies could be a more feasible option but this would require amending the current MRAR work plans.

This occupation-by-occupation approach is similar to that which initially occurred in the EU, commencing in the 1960s. In 1989, however, the Directive on the Recognition of Professional Qualifications (89/48/EEC) was adopted by the Council of European Commission Ministers. This directive covered professions that required a university degree or equivalent. This was followed by another general directive covering regulated professions requiring qualifications below a degree level (92/51/EEC). These general directives were supplemented later by a Certificate of Experience (directive 99/42/EEC), promoting the recognition of trades experience and qualifications. ASEAN may need to consider moving to a more general approach for all remaining occupations.

All bodies, even MRAR MCs, may be subject to government influence and could operate in ways that in some circumstances may inhibit the inflow of AMS professionals. The prevailing political climate, therefore, may outweigh the intentions of the MRAR.

4.7.3 Tourism MRAR

The tourism MRAR is the one sector level arrangement that has been introduced so far and it covers 33 occupations at various levels, ranging from housekeeping to five star hotel managers. There are no minimum standards for accreditation in any of the 33 occupations but core competencies are in the process of being developed for some. The MRAR is not functioning yet (Thailand is still to sign up and is waiting for a new law to be passed) but it is anticipated that it will be finalised by June 2011. It is agreed that the MRAR implementation process will take until 2015, according to the ASEAN Tourism Strategic Plan 2011-2015.

The MRAR was developed primarily by government tourism officials, at the request of the Tourism Ministers that the tourism sector be integrated across ASEAN. As with occupation-specific MRARs, private tourism bodies were not widely consulted in the development of the MRAR but they are starting to come on board in the improved training phase. There remains, however, substantial fear at the threat of competition from foreign suppliers.

The MRAR states that each AMS needs to establish a National Tourism Professional Board (NTPB) and Tourism Professional Certification Board (TPCB). CLV are struggling to get these bodies in place. The situation is made harder by the fact that the tourism sector is relatively new for them in terms of regulation and training. Some do not have courses or training institutions for this sector.

Recently, in June 2010, ATMs agreed to: the establishment of ASEAN Tourism Professional Monitoring Committee (ATPMC) and Secretariat; nomination of centres of excellence for training and training of government officials; the importance of developing competencies and training in housekeeping, and the importance of 'harmonisation of labour law to support manpower mobility' and development of common competency standards. Individual AMS are now struggling to implement these agreements and many doubt whether they can accomplish this by 2015.

The Tourism MRAR operates independently of all other sectors of AMS' labour markets. It is under the Tourism Ministries and other departments such as education, labour and immigration have been only minimally involved. Some of the consequent problems are:

- i. the tourism project under AADCP1 developed a tourism regional qualifications framework with 5 levels (3 certificate and 2 diploma/degree levels) that is different from the 7 level QF (4 certificate and 3 diploma/degree levels) developed in the *Enhancing Skills Recognition Arrangements Project* for ALMs and SLOM;
- ii. the Tourism Regional QF left out the entry-level certificate and jobs;
- iii. individual AMS are developing certificates without any knowledge of levels to be attributed to them or how to fit them into a NQF or RQF,
- iv. immigration will not issue work permits for low skilled service providers.
- v. the Tourism MRAR labels all 33 occupations as professions. This nomenclature does not confirm with standard practice.

The MRAR process is costly to implement in both time and resources. For example, two new bodies are required in each AMS. In addition, there is a lack of expertise and knowledge on trade in services in tourism portfolios in many AMS. This is often exacerbated by a high turnover of government staff. Many people working in the government tourism sector feel 'out of their depth' in terms of negotiating packages and commitments, developing decrees to open up tourism sector jobs and investment possibilities, and issuing certificates where there are no national structures in place. CLMV, in particular, need capacity-building and assistance to establish these bodies.

The Malaysian Ministry of Tourism is making an effort to help the CLMV countries raise their tourism capacity and standards. They have had three training programs so far. The Department of Foreign Affairs appears to be involved in this and it falls under the MTCTP or Malaysian Technical Cooperation Training Program.

Aside from the Malaysia example, there has not been much assistance provided to CLMV throughout the whole MRAR development process, in tourism or in the occupational MRARs. This is a major weakness and one of the issues that will be addressed in the next section on options for future work programs.

5. OPTIONS FOR DEALING WITH THE ISSUES

It is evident that some AMS have already set in place processes to facilitate the mobility of skilled human resources but what is missing is coordination across ASEAN. The countries that have made the most progress, to date, should in a position to advise and assist others through the following proposed options.

5.1 Options for consideration by CCS Working Group

5.1.1 CCS Current work program

The existing CCS work program is focussed on the liberalisation of commitments and MRARs. This includes:

- a) *Trying to develop Mode 4 liberalisation modalities – move from restrictive scheduling - take out all ‘unbound’ and replace with limitations that clarify the level of market openings in all sectors, except where there are sound reasons for restrictions.*
- b) *Currently negotiating 8th Package arrangements.*
- c) *CCS is looking at possibility of having an ASEAN agreement on MNP as a possible option in liberalizing MNP.*
- d) *Developing 7 occupational MRARs and overseeing Tourism MRAR.*

5.1.2 Suggestions for CCS work program

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. It is important to promote consistency in the use of terminology relevant to the ASEAN commitment toward the free mobility of skilled human resources. Such terminology covers the following concepts and these terms could be posted onto an ASEAN website.
 - *Accreditation* — is used in the context of the accreditation of courses and is an agreement about the competencies that make up a qualification.
 - *Assessment* — is used to describe the process for assessing and certifying a person’s competencies/skills.
 - *Automatic recognition* — can occur after agreement has been reached between countries on harmonised training requirements.
 - *Comparability* allows for more flexibility — it allows qualifications/sets of competency standards to be judged to be of comparable value but not necessarily the same.
 - *Equivalency* — means equal in value and content. This requires the compilation of registers of qualifications that are accurate, comprehensive and up-to-date.
 - *Skilled professional workers* are defined as those individuals who are engaged in knowledge-intensive professions such as physicians, nurses, science and technology (S&T) workers, engineers, information technology (IT) specialists, graduate and postdoctoral students, scholars and researchers, and administrators and managers

- *Mutual Recognition Agreement (MRA)* — in the skills recognition context, it means an international agreement that recognises the equivalencies of accreditation systems. An MRA is developed and signed after negotiations are completed as to the equivalence of two or more countries' systems or individual occupations.
 - *Mutual Recognition Arrangement (MRAR)* — an ASEAN mechanism for AMS to work together to harmonise competency standards and training in selected occupations, thereby facilitating labour mobility. It may lead to an MRA. The seven MRAs, so defined by ASEAN, are in effect MRARs. We recommend the terminology be changed to MRAR in order to avoid confusion and raising inappropriate expectations.
 - *Qualification* — can be the certificate/diploma/degree received as a result of formal education or informal training that indicates a person has acquired a body of knowledge or set of competencies required for an occupation, in accordance with a qualifications framework.
 - *Recognition* — the process of valuing the certificates of competency issued in one jurisdiction/country in another.
 - *Skills and competencies* can be used interchangeably — and can be used to develop a qualification. Competencies or competency standards describe the knowledge, skills and attitudes that a person needs to carry out a particular job or occupation and the level of performance required. The means by which the skills or competencies were attained is not relevant but the actual capacity to carry out specific skills or competencies is what matters.
 - *Skilled labour* is any worker who has some special skill, knowledge, or ability in his/her work. A skilled worker may have attended a college, university or technical school or may have learned his/her skills on the job and achieved some degree of certification.
 - *Transparency of qualifications* — is defined as the degree to which the value of qualifications can be identified and compared in the labour market, in education and training and in a wider social setting.
3. Begin a process of liberalising Mode 4 commitments by implementing the following stages.
 - i. Start with liberalising commitments in the seven occupations with MRARs and the priority sectors identified in the Blueprint by the end of 2011;
 - ii. Each AMS to liberalise occupations where they identify a shortage of the occupations in their labour markets, using an agreed transparent mechanism by 2012.
 - iii. Liberalise all remaining sectors, with limitations only in exceptional circumstances by 2014.
 4. CCS could work closely with SLOM and AUN to improve negotiation mechanisms/processes. The lack of understanding within many arms of governments as to the concepts and negotiations involved in trade in services points to the urgent need for in-country training. 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. CCS should look to streamlining the operation of existing MRARs. Once a person is admitted to a national register there should be a process that would enable them to automatically go onto an ASEAN register and be eligible to apply for a work permit in

another AMS. No further testing or checking should be required. Once they qualify for the ASEAN register, domestic regulations should be waived.

6. CCS should identify technical experts to assist AMS with the processes of establishing of 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 utilise existing bodies or multifunction bodies as MCs or PRAs. Further MRARs should only be established in regulated professions such as pharmacy and veterinary science.
7. Move to a comprehensive skills/qualifications recognition mechanism jointly with SLOM. 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 should be issued by national skills standards authorities, stating occupation and competence level. These certificates would then be used in negotiations with employers for employment.
8. Support and promote the operations of the Tourism WG as a model of Mode 4 liberalisation or move it from CCS to a working group under the Senior Officials Meeting of Tourism Ministers. The Working Group in 2009 mooted the latter possibility to the ASEAN Secretariat, but as yet there has been no response to this suggestion.
9. Although there seems little support for a general AFAS working visa, several other options could be explored with SLOM and DGICM. For example:
 - i. an ASEAN visa for occupations covered by MRARs — once bodies and procedures are in place, no LMTs should remain and the granting of visas should be automatic;
 - ii. an ASEAN business visitor visa for multiple entry to any AMS for a specified period of time — many people called for a more flexible business visa that would allow multiple trips to more than one destination within ASEAN. This would be similar to the APEC Business Card, which has proved to be very successful for enabling short-term multiple visits.

5.2 Options for consideration by SLOM

5.2.1 SLOM current work program

The 2010-15 ALM Work Program includes the following in relation to the mobility of skilled human resources.

'Skilled human resource mobility within the ASEAN Economic Community will become a reality by 2015 with the adoption of free trade in services. ALMs have agreed that national skills frameworks in the region should be improved in preparation for discussing a regional skills recognition framework.

Interested ASEAN Member States can also collaborate with the ILO to coordinate development of competency standards in a simplified format to improve dialogue between employers and training organisations. The ILO has developed GMS Model Competency Standards for manufacturing, construction, agriculture, mechanical repair, tourism and some hospitality.

Although human resource development planning and labour market information and analysis (LMIA) is a stated priority area for ASEAN, comprehensive information on the structure of ASEAN Member States' labour sectors remains of limited availability. In this regard, ASEAN will embark on an initiative to develop an ASEAN report on labour market performance based on an agreed set of labour sector variables.

Develop a handbook on Labour Market Analysis to facilitate capacity building and promote analysis and wider use of labour market information.'

5.2.2 Suggestions for SLOM work program

Recognising that the SLOM Work program for 2010-2015 has been adopted the following recommendations are proposed for consideration as additional items for that plan.

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. There is a need to finalise skills recognition arrangements (SRAs) in all AMS as per the 2004-08 recommendations of the AADCP 1 *Enhancing Skills Recognition Arrangements (SRA) Project*, and as supported by the ALM. Funding to achieve this will be necessary.
3. Agreement needs to be reached on an ASEAN Regional Qualifications Framework (RQF) or, alternatively, on benchmarking national qualifications frameworks against a standard regional qualifications framework. The seven level qualifications framework contained in Table 5 was developed and supported by all AMS throughout the *Enhancing SRAs Project*.
4. Develop core competency standards (CS) for a range of skilled occupations at certificate 3 and 4 levels – at least for CLMV and Indonesia, but preferably also for some other AMS. Singapore, Malaysia and the Philippines are the only 3 AMS with competency standards in place for a wide range of occupations at these certificate levels.

The development of core CS could be done by starting with the ILO standards developed for the Greater Mekong Sub-region. The ILO has developed competency standards for manufacturing, construction, agriculture, mechanical repair, tourism and some hospitality and they are available on the community of practice website (<http://skills-ap.ilobkk.or.th>) (go to technical resources - competency standards). They can be used as a starting point for discussion with industry. ILO is currently seeking to work more closely with ASEAN on this issue so this is a good opportunity to start working together.

The problem with the ILO standards is that they comprise modules of CS by industry sector. They are not occupation or certificate-specific. Therefore, they provide a starting point only and more work needs to be done to put together sets of CS that will provide the basis for occupations at particular levels. For example, welder level 3 requires one set of CS while welder level 4 comprises these plus skills equivalent to the level 4 generic skills in Table 5. Ideally this would be best done at the sub-regional level in ASEAN (i.e. CLMV/T and I).

5. Alternatively, SLOM could promote the sharing of expertise and sets of existing CS already in use in some AMS, to assist CLMV/T and Indonesia to develop their core competencies. This is a more pragmatic approach but is less desirable as it will lead to different sets of CS in each AMS. The same problems of non-transferability of skills, as currently exists, could eventuate.

Table 5: Proposed 7 level Regional Qualifications Framework for ASEAN

Job level	AQF Certificate	Generic Competencies for Each Level
1. Semi-skill worker/ Assistant /Helper	Certificate 1	Understands safety requirements, has basic practical skills and operational knowledge in a defined range of tasks, can carry out routine tasks given clear direction, can receive and pass on information, can access and record information, takes limited responsibility.
2. Skilled worker	Certificate 2	Has practical skills and operational knowledge in a range of tasks, can carry out skilled tasks, takes limited responsibility for output of self.
3. Advanced skilled worker, tradesperson, mechanic etc.	Certificate 3	Has some theoretical knowledge, has a range of well developed skills, can apply solutions to routine problems. can interpret available information, can take responsibility for output of others.
4. Supervisor/ foreperson	Certificate 4	Has a broad knowledge base, and can apply some theoretical concepts, can identify and apply skills and knowledge, can identify, analyse and evaluate information, understands and can take responsibility for quality, safety and environmental issues.
5. Manager/ assistant professional	Diploma	Specialised knowledge and skills for skilled/ paraprofessional work and for further learning; Wide range of cognitive, technical and communication skills to select and apply methods and technologies; autonomy, judgement and defined responsibility in known or changing contexts.
6. Senior manager - associate professional	Advanced Diploma	Broad and coherent theoretical and technical knowledge with depth in one or more fields of study or practice; Well developed cognitive, technical and communication skills; autonomy, well developed judgement and responsibility in contexts that require self-directed work and learning.
7. Professional	Degree	Has a degree in a specialised area of knowledge and practice; work contexts requiring specialised knowledge and advanced learning, responsibility and autonomy, and intensive preparation.

Note: The present study is only concerned with skilled human resources (i.e. levels 3-7). However, it is necessary to locate the current focus in the context of a *complete* qualifications framework.

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. These certificates would then be used in negotiations with employers for employment.
7. Complete and circulate each AMS with a detailed summary of all AMS requirements on the entry and stay of skilled labour. Table 3 would be a starting point but it needs to be expanded, where necessary, by more detailed information for each AMS. This should include the criteria, the issuing agencies, the timeframe and the provision and processes for extension of work permits.
8. The above compilation could provide the starting point for developing a common set of requirements, including length of stay and other requirements. This would need to be done over a period of time and involve all DGICM and other relevant agencies.
9. Labour officials could oversee the development of common definition and criteria for Labour Market Tests (LMTs), with a sunset clause of five years. For example, a labour market test could require advertising unsuccessfully in one national and/or regional newspaper to fill a vacancy.

On the other hand a more sophisticated approach, which could be developed over time, would be to identify specific occupational skills shortages through economic needs tests (ENTs). Over time, ENTs could largely replace LMTs. From 2015, neither LMTs nor ENTs should be applied to skilled AMS nationals moving within the AEC.

10. The SLOM work program could encourage AMS to explore ways to amend domestic legislation to loosen the nexus between work contracts and work permits, in order to enable employees to change employers in special circumstances. At the moment:

- foreign workers are usually tied to one employer and they cannot change employer without applying for a new work permit. Changing employers is not even possible in some AMS. While this situation theoretically enables greater 'control' of foreign workers it is not accommodating of a decline in workplace needs and/or unworkable employer-employee relations. It locks in both employers and employees.

The introduction of more flexibility would enable employers to make adjustments when necessary and would also encourage them to bring in the skilled workers that they need, as they would not be bound by inflexible arrangements. For employees, the ability to change employers, if necessary, is a basic human right. Employees should not be tied into unproductive, unworkable or exploitative workplace relationships.

- Work permits are usually issued for the same length of time as a work contract. This poses bureaucratic hurdles if the length of time required is longer than what was originally specified. Employers must apply for an extension and often the employee must get a new work permit and a new work visa. A much better arrangement would be to issue a work visa for a reasonable period of time, with or without a work contract. Cambodia has moved towards a more flexible arrangement that provides a good model.

11. SLOM should be given prime responsibility for Mode 4 in each AMS but it should fall under the purview of the coordination committee recommended for ASEAN, in CCS Option 1 and SLOM Option 1. Labour departments have most responsibility for labour migration and most other departments are not well placed to manage the mobility of skilled human resources. Commerce, Trade, Foreign Affairs are still struggling to find the best way to manage this. Such responsibility could include:

- Establishment of working groups/coordinating committee in each AMS to deal specifically with mobility under Mode 4;
- Establish a 'one stop shop' service office to process applications from incoming and outgoing skilled human resources in each AMS;
- Establish data collection mechanisms for monitoring flows of skilled human resources.

12. Collaborate with DGICM to establish a 'one stop shops' for *both* visas and work permits. This will require a decision to take 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. Collaborate with DGICM to develop a mechanism for collecting relevant and accurate information concerning outgoing skilled human resources. This could follow the Philippines Overseas Employment Administration (POEA) or other available models. The UN Statistics Division offers workshops and technical support for improving migration data collection.

14. Collaborate with DGICM to develop a mechanism for collecting relevant information concerning incoming skilled workers, by country of origin, sex, occupation and sector. Immigration or arrival cards could offer a mechanism for collecting the raw data.

5.3 Options for consideration by AUN Secretariat

5.3.1 AUN Secretariat current work program

The present AUN work program includes further developing the ASEAN University Network. AUN undertakes a range of activities that can contribute to supporting the flow of skilled human resources. These include:

assisting in promotion of human resource development in engineering in ASEAN; undertaking an engineering exchange program; and planning activities such as business conferences and extending cooperative links to other ASEAN Business Bodies.

5.3.2 Suggestions for the AUN work program

1. Information about AUN should be circulated to all sectors. There is very little awareness of AUN outside of the education sector. Such a development would be consistent with the AUN objective of transmitting knowledge and information to achieve ASEAN goals and would flow from its aim to develop a graduate course on ASEAN.
2. Exchange programs of academics could 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. A means of incorporating professional bodies into the AUN needs to be found. This way they can also keep up with the latest trends in information and skills and generate a better match between educational output and industry demand for skilled human resources.
4. Initiate credit transfer and student exchanges. This will lead to much more dialogue between universities and agreements on credit transfer arrangements. It should lead to greater harmonisation of courses, though this is a slow and patchy avenue for achieving this. More importantly it is a way of expanding the mobility of students and opening up their options after graduation. As the literature review pointed out, broadening students' experience by international study leads to the development of a range of generic skills that employers in multinational firms, in particular, value highly.
5. Encourage internship placement in other AMS. The ASEAN-European Engineering Exchange Program under AUN serves as a useful model for this process and could be extended to cover other professions. These should include internships in firms/governments in other AMS. This would lead to more integration but could also open the door to students taking up jobs in other AMS on the completion of their study.
6. The emphasis on harmonising training, as per the Bologna process in Europe, should be given a very high priority. Until this occurs, the university training of professionals in CLMV and Indonesia will continue to disadvantage them in the MRARs that have been developed. At the moment, MRARs have been developed on the basis of the national training offered in each AMS. However, those with training and professional systems that are less developed fear that, in reality, their professionals will not be able to move as a result of the MRAR. They say that some AMS will 'not accept the MRAR'.
7. Seek to overcome the lack of understanding within many arms of governments as to the concepts and negotiations involved in trade in services. There is an urgent need for training through the AUN (as outlined in CCS work plan).

5.4 Options for consideration by SOM-ED

5.4.1 SOM-ED current work program

SOM-ED has until now not had a forward Work Program SOM-ED is currently developing a five year work program for 2010 – 2015. The following options should be considered as part of that program.

4.4.2 Suggestions for the 2010-2015 SOM-ED work program

1. Where TVET is partially or totally administered by education officials there needs to be much closer coordination with labour officials. This has been an ongoing problem in some AMS and has resulted from the traditional focus of education departments on formal training and labour departments on workplaces. The two now need to be brought together, however, as CS and training should to be consistent and flexibly provided across both sectors. Viet Nam and Cambodia provide good models of having both moved recently to bring the two together.

5.5 Options for consideration by DGICM

5.5.1 DGICM current work program

The issue of facilitating the mobility of skilled human resources in the region is a small part of their work plan. They are mostly concerned with the implementation of rules and regulations rather than developing policy.

Nevertheless, the aims of the ASEAN Plan of Action on Immigration Matters are, among others:

- *to enhance and streamline region-wide immigration procedures to facilitate intra-ASEAN commerce, tourism and travel;*
- *to strengthen regional capacities and capabilities through effective networking and cooperation to facilitate intra-ASEAN economic cooperation, especially in the areas of intra-ASEAN commerce, tourism and travel; and*
- *to cooperate amongst member countries in the movement of labour, both skilled and unskilled.*

5.5.2 Suggestions for DGICM work program

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.

Table 6: Matrix of suggested actions and timeline

ASEAN Body	Action	Timeline
CCS	1. Form a high level MNP coordinating committee to meet twice yearly on the mobility of skilled human resources for a period of 2 years - with CCS, SLOM , SOM-ED and DGICM representatives from each AMS. 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.	Establish by the end of 2010 for completing the work by the end of 2012.
	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.	Establish a set of common definitions on ASEAN web-site by the end of 2010.
	3. Begin a process of liberalising Mode 4 commitments by implementing the following stages: i. Start by liberalising commitments in all seven occupations with MRARs and the priority sectors identified in the Blueprint; ii. Each AMS to liberalise occupations where they identify a shortage in their labour markets, using an agreed transparent mechanism; iii. Liberalise all remaining sectors, with limitations only in exceptional circumstances.	Complete by end of 2011. Complete by end of 2012. Complete by end of 2013.
	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.	Initiate action for 2011. On-line course established by the end of 2012.
	5. Streamline the operation of MRARs and renegotiate with AMS. Move to common competency standards.	Complete by the end of 2011. Complete by the end of 2013.
	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.	Initiate in 2011 and continue through to 2015.
	7. Complete all NQFs and SRAs. Move to a comprehensive ASEAN skills/qualifications recognition mechanism.	Initiate through 2011 and complete by 2014.
	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.	Negotiate through 2010 for implementation through 2011.
	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 for a specified period of time.	Undertake through 2011 with a view to implementation in 2012.

Table 6: Matrix of suggested actions and timeline (continued)

ASEAN Body	Action	Timeline
SLOM	1. Form a high level MNP coordinating committee (see CCS-1, above).	Establish in early 2011 for completing the work by the end of 2012.
	2. Finalise skills recognition arrangements in all AMS as per the 2004-8 recommendations of the AADCP 1 <i>Enhancing Skills Recognition Arrangements (SRA) Project</i> and SLOM work plan.	Implement by mid-2011.
	3. Reach agreement on an ASEAN Regional Qualifications Framework (RQF) or, alternatively, on benchmarking national qualifications frameworks against a standard regional qualifications framework.	Reach agreement by mid-2011.
	4. Develop core competency standards (CS) and training modules for a range of skilled occupations at certificate 3 and 4 levels – for all AMS.	Complete by end of 2012. Continue process through to 2015.
	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.	Complete for CLMV and Indonesia by end of 2012. Continue process through to 2015.
	6. Move to a comprehensive skills/ qualifications recognition mechanism jointly with CCS.	Complete by 2014.
	7. Complete and circulate each AMS with a detailed summary of all AMS requirements for entry and visas for skilled human resources. (Table 3)	Circulate by end February 2011.
	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.	Use MNP coordinating committee in 2011 to make recommendations for implementation by the end of 2012.
	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)	Decide on approach by mid 2011 and complete the process by the end of 2011. Remove LMTs in 2015.
	10. Explore ways to amend domestic legislation, where necessary, to loosen the nexus between work contracts and work permits - to enable movement between employers in special circumstances.	Complete recommendations for action by mid-2011 and implement by end of 2012
	11. SLOM should be given prime responsibility for Mode 4 it should fall under the coordination committee recommended for ASEAN in CCS Option 1 and SLOM Option 1.	Responsibility to SLOM by 2011 for action through to 2015.
	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.	Utilise the MNP coordinating committee to make recommendations for implementation in 2013.
	13. In collaboration with DGICM, develop a mechanism for collecting relevant and accurate information concerning outgoing skilled human resources.	Utilise the MNPCC in 2011 to make recommendations for implementation in 2013.
	14. Collaborate with DGICM to collect information on incoming skilled human resources where this does not already happen.	Utilise the MNPCC in 2011 to make recommendations for implementation in 2013.

Table 6: Matrix of suggested actions and timeline (continued)

ASEAN Body	Action	Timeline
AUN	1. Information about AUN should be circulated to all sectors.	Circulate and promote through ASEAN website by 2011
	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.	Develop a strategic plan through 2011
	3. Develop a means of incorporating professional bodies into the AUN.	Identify a strategy by 2011 for implementation through 2012-15
	4. Initiate credit transfer and student exchanges.	Develop arrangements through 2011 for implementation in 2012
	5. Encourage internship placement in other AMS. These should include internships in firms/governments in other AMS.	Initiate exchange program for 2012 implementation
	6. The emphasis on harmonising training, as per the Bologna process in Europe, should be given a very high priority.	Establish a working party in 2011 to initiate this process to be undertaken through 2012-15 focusing on a set of target occupations.
	7. There is an urgent need for training through the AUN (as outlined in CCS work plan).	Establish training modules through 2011 for special course delivery in AMS through 2012-15
SOM-ED	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.	Work with AMS through 2011-15 toward achieving close-knit coordination by 2015.

Table 6 Matrix of suggested actions and timeline (continued)

ASEAN Body	Action	Timeline
DGICM	1. Encourage the dissemination of information on immigration requirements of each AMS.	Utilise the data collected through the present project and circulate to AMS for regular updating each year through to 2015.
	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: (i) the issuance of work visas within ASEAN; (ii) establishing a 'one stop shop' for all visas and work permits; (iii) collecting relevant information concerning outgoing skilled human resources; and, (iv) collecting relevant information concerning incoming skilled human resources.	Commit the MNPCC working group in 2011 to make recommendations for implementation in 2013.

ATTACHMENT 1:

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ATTACHMENT 2:

Meetings and interviews carried out through July-August in AMS

	Agency	Contact/s	Date
Brunei Darussalam			
1	Ministry of Foreign Affairs and Trade	Mazlizah Pg Mahalee, Department of Trade Development. Ms Jennifer H. Lim, Ministry of Education	<i>By e-mail</i>
Cambodia			
2	Ministry of Commerce	Mr. Kao Kosal, Deputy Director, Department of Notification and Legal Compliance and Cambodian Representative on the ASEAN Coordinating Committee on Services. Mr Tan Yuvaroth , Deputy Director	11/8/2010
3	Ministry of Health	Dr Pau Ann Sivutha, Deputy Director International Cooperation Prof Dr Thir Kruey, President Cambodian Medical Council Dr Kng Narith, Chief of ASEAN Affairs Medical Council	12/8/2010
4	Office of the Council of Ministers	Leewood Phu, Sec. General National Information Communications Technology Development Authority.	12/8/2010
5	Ministry of Tourism	Poch Voleark, Dep. Director International Cooperation- ASEAN. Mr. Sieng Neak, Chief of ASEAN Office.	12/8/2010
6	Ministry of Labour and Vocational Training	Pich Sophoan, Secretary of State.	13/8/2010
7	Ministry of labour and Vocational Training	H.E. Mr. Seng Sakda, Director General for Labour. Mr. Heang Veasna, Director of International Cooperation Dept. Mr. Khuon Saingpagnarith, Deputy Director, International Cooperation Dept.	14/8/2010
8	Board of Engineers	Soth Sopanha, Dep Sec. General, Undersecretary of State. Prak Min, Sec General Board of Engineers Lim Sothav, Dep Sec. General Board of Engineers.	14/8/2010
9	JMK Construction Co., Ltd	Mr. Jian Michel, General Manager.	14/8/2010
Indonesia			

10	Ministry of Trade	Adolf Warouw, Co-Chair for Coordinating Team on Services.	20/7/2010
11	Indonesian representative on ASEAN BAC	Mr. Anangga W. Roosdiono, Roosdiono and Partners Indonesian Chamber of Commerce.	21/7/2010
12	Ministry of Culture and Tourism	N.W. Giri Adnyani, Director International Relations. Hamndan Rivai, Director Human Resources.	21/7/2010
13	Ministry of Manpower	Abdul Wahab Bangkona.	21/7/2010
14	Indonesian Medical Association	PrijoSidipratmo, President, Ibu Triana Darmayanti Akbar Vice Secretary.	22/7/2010
15	Association of Indonesian Tour and Travel Agencies	Bapak Herry Setiawan Bapak Bondan Nurdiyanto	22/7/2010
16	Indonesian Monitoring Committee on Engineering Services	S.S. Mulyo.	20/7/2010
Lao PDR			
17	Ministry of Planning and Investment (MPI)	Mr. Manothong Vongsay, Deputy Director General, Investment Promotion Department.	16/8/2010
18	Ministry of Education (MOE)	Mr. Phouvieng Phoumilay, Deputy Director General TVET (Technical and Vocational Education & Training) Department.	16/8/2010
19	Ministry of Education and Social Welfare (MLSW)	Mr. Phouvanh Chanthawong, Department of Skills Development and Employment, MLSW, Director general.	16/8/2010
20	Ministry of Foreign Affairs (MFA)	Mr. Bounliep Houngvongsone, Deputy Director General, Consular Department. Mr. Daophet Chanthasinh.	17/8/2010
21	Lao National Chamber of Commerce and Industry (LNCCI)	Mr. One-Sy Boutsivongsakd, President-Board of Advisers.I.	17/8/2010
22	Ministry of Education (MOE)	Mr. Sengsomphone Viravouth, Director general, Department of Planning and Cooperation.	17/8/2010

23	Ministry of Public Works and Transport (MPWT)	Mr: Sengdarith Kattignasack, Director, Local Road Division Department of Roads.	18//8/2010
24	Ministry of Health (MOH)	Dr. Phisith Phoutsavath, MD, MPH Director of Local Hospital Management Division Department of Healthcare. Dr. Siprasert Ladparkdy (Dental Practitioner) Department of Healthcare..	18/8/2010
Malaysia			
25	Ministry of International Trade and Industry	Ms. Mariam Md Salleh, Director of Internal Integration, ASEAN Economic Cooperation Division. Ms Roziyanahayu Abdul Rahman, Principal Assistant Director, ASEAN Economic Cooperation Division. Ms Jamaliah binti Hamzah, Principal Assistant Director, ASEAN Economic Cooperation. Ms. Mardiana Mohd Yusof, Assistant Secretary, ASEAN Economic Cooperation.	5/8/2010
26	Ministry of Home Affairs	Mohd Faizol Isma bin Azman, Assistant Secretary, Immigration Affairs Division. Selvaraja Chinniah, Assistant Director Immigration, Student Pass Division.	5/8/2010
27	Information & Communications Technology	Ong Kian Yew, General Manager, The National ICT Association of Malaysia. Ramachandran Ramasamy, Head of Policy, Capability & Market Research, The National ICT Association of Malaysia.	4/8/2010
28	Ministry of Human Resources	Dr.Pang Chau Leong, Director-General, Dept. of Skills Development. Mohd Sahar Darusman, Deputy Secretary General (Policy).	4/8/2010
29	Ministry of Tourism	Mr. Mohd Halimi Ibrahim, Secretary, International Relations Division Ms Farah Naquiah bt Mohd Shah, Assistant Secretary, International Relations Division. Ms Ivin Mercy, Assistant Secretary, Tourist Services Division. Diana Lee Geok Chin, Executive Secretary, Malaysian Tourist Guides' Council. Reginald T. Pereira, Chief Executive Officer, Malaysian Association of Hotels.	6/8/2010
30	The Institution of Engineers	Kok Hee Poh, Special Assistant to the President, Ir Mohamed Ali Yusoff, The Institution of Engineering and Technology.	5/8/2010

31	Ministry of Education	Tan Sri Dr Zulkurnain Bin Haji Awang, Secretary General.	5/8/2010
32	Ministry of Health	Dr. Federa Aini bt. Hj. Bibit, Senior Chief Director, Legislation Act & Globalisation Section. Normala binti Mohd Rashid, Dentistry.	5/8/2010
33	Ministry of International Trade and Industry (MITI)	Mohd Faizol Isma bin Azman, Assistant Secretary, Immigration Affairs Division, Ministry of Home Affairs. Selvaraja Chinniah, Assistant Director Immigration, Student Pass Division, Ministry of Home Affairs. MITI Officials Ms. Mariam Md Salleh, Ms Rozieyanahayu Abdul Rahman, and Ms. Mardiana Mohd Yusof.	12/8/2010
Philippines			
34	ABAC International Secretariat	Antonio I. Basilio, Director, ABAC International Secretariat.	9/8/2010
35	Department of Tourism	Alex M. Macatuno, Officer-in-Charge, Policy Formulation and Evaluation Division.	9/8/2010
36	Department of Labour & Employment	Maria Criselda Sy, Director IV, Bureau of Local Employment. Jose S. Sandoval, Employment Standards and Regulation Division, Bureau of Local Employment.	9/8/2010
37	NEDA	Ms Brenda R. Mendoza, Director IV, National Economic and Development Authority.	10/8/2010
Singapore			
38	Ministry of Manpower	Ms Wendy Ang - Director, Foreign Workforce Policy. Ms Jill Wong - Deputy Director, Workplace Policy and Strategy Division. Lin Shilie - Assistant Director, Workplace Policy and Strategy Division.	12/8/2010
39	Immigration & Checkpoints Authority	Superintendent Toh Lai Keng – Head, Customer Services-Visa. Deputy Superintendent Maran s/o V K Subrahmaniyan, Deputy Head, International Affairs & Legislation.	12/8/2010

40	Ministry of Health	Mr Velmurugan Vaiyapuri, Assistant Director (Specialist Staff) Pharmacy Branch. Ms Pauline Tan Cheng Jee, Chief Nursing Officer, Registrar Singapore Nursing board. Dr Tan Chor Hiang, Executive Secretary (Administration, Registration, Accreditation & Surveillance Divisions), Singapore Medical Council. A/Prof Patrick Tseng, Chief Dental Officer, Registrar Singapore Dental Council.	12/8/2010
41	Singapore Tourism Board	Neeta Lachmandas-Sakellariou, Executive Director, Capability Development Division, Sectoral Planning & Development Group. Evelyn NG, Manager, Industry Manpower Development, Capability Development Division. Shirley Sim, Manager, Information & Feedback, Capability Development Division.	13/8/2010
42	Singapore Business Federation	Juliana Giam, Deputy Director, International Business Advisory, Global Business Division.	13/8/2010
Thailand			
43	Ministry of Foreign Affairs (MFA)	Ministry of Foreign Affairs (MFA) Director, Department of ASEAN Affairs.	4/8/2010
44	Ministry of Labour (MOL)	Ms. Piengphap Withayachumnarnkul, Chief of Foreign Relations Division Department of Employment. Mr. Santi Bumrungkunakorn Mr. Poonsak Pramong Ms. Gunjanaporn Saigal Director, Office of the Permanent Secretary,	4//8/2010
45	Ministry of Commerce (MOC)	Mr. Ronnarong Phoolpipat, Director of ASEAN Trade in Services Division Department of Trade Negotiations. Mr. Thnananchon Rojkittikhun Trade Officer, ASEAN Trade in Services Division, Department of Trade Negotiations.	5/8/2010
46	The Association of Thai ICT Industry (ATCI)	Mr. Bunrak Saraggananda, President.	9/8/2010
47	Office of the AUN Secretariat	Dr. Nantana Gajaseni, Executive Director.	10/8/2010
48	Ministry of Information and Communications Technology (MICT)	Mrs. Methini Thepmani, Executive Director, Policy and Strategy Bureau.	11/8/2010
49	Council of Engineers of Thailand (CET)	Prof. Ekasit Limsuwan, Vice president (CET) and Member, Monitoring Committee, ACPECC.	11/8/2010

50	The Consulting Engineers Association of Thailand (CEAT)	Mr. Pisit Puthipiroj, President.	13/8/2010
51	ASEAN Business Advisory Council (ABAC)	Mr. Arin Jira, Co-chair.	19/8/2010
52	Ministry of Public Health (MOPH)	Dr. Orasa Kovindha, Director Bureau of Policy Strategy.	19/8/2010
53	Ministry of Tourism and Sports (MOTS)	Ms. Thanitta Savetsila Maneechote, Deputy Permanent Secretary.	25/8/2010
Viet Nam			
54	Ministry of Labour, Invalids and Social Affairs.	Le Kim Dung Director International Cooperation.	6/8/2010
55	Ministry of Labour, Invalids and Social Affairs	Mr Dai, Director, Employment.	7/8/2010
56	Ministry of Health	Mr Pham Duc ,Muc, Vice Director and President Nurses Association.	9/8/2010
57	Ministry of Planning and Investment	Mr Nguyen Anh Tuan, Service Sector Dept. Mr Nguyen Anh Tuan, Service Sector Dept.	10/8/2020
58	Viet Nam National Administration of Tourism	Mrs Nguyen Thi Hong Diep, International Cooperation Dept.	10/8/2010
59	Ministry of Construction	Mr Nguyen Huu Hung, International Cooperation Department	10/8/2010