

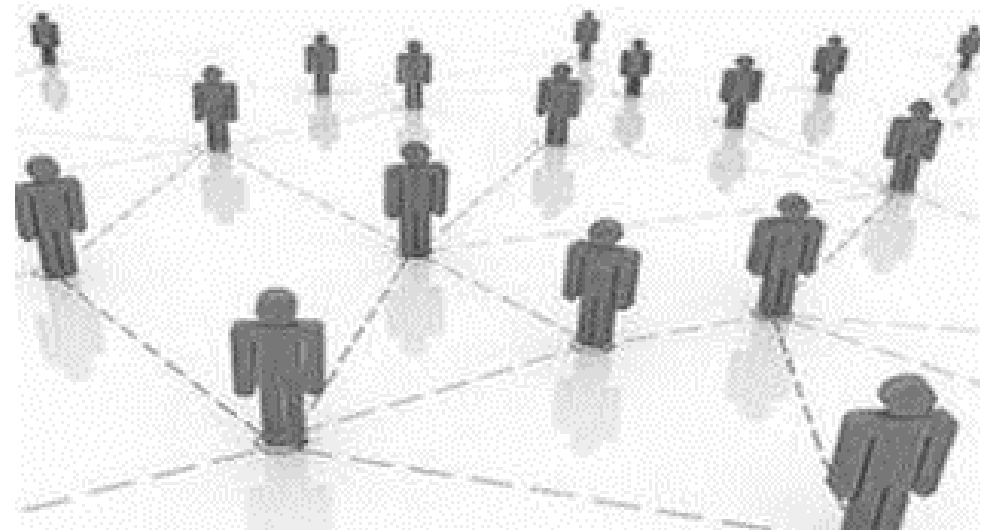
Labor Mobility Within ASEAN Economic Community

Legal Framework for the Mobility of Workers

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The AEC Vision

The vision of the ASEAN Economic Community

Competitive Economic Region

- Competitive policies
- Consumer protection
- IP rights
- Infrastructure Development
- Taxation and E-Commerce

Single Market and Production Base

- Free flow of goods
- Free flow of services
- Free flow of investment
- Free flow of skilled labor
- Freer flow of capital

Region of Equitable Economic Development

- SME development
- Initiative for ASEAN Integration



Region Fully Integrated into Global Economy

- Coherent approach to external economic relations
- Enhanced participation in global supply network

KEY FACTS AND FIGURES

WHY ASEAN MATTERS TO US

ASEAN policy to form an Economic Community with free movement of goods, services, labour and capital by 2015



ASEAN FDI inflows
overtook China in
2013

Asean's economy could exceed

US\$4 TRILLION
by **2020** (roughly that of
Germany in 2013)

and nearly



Home to nearly

10% of the world's
population

Will rank as

5th LARGEST ECONOMY BY **2018**

Annual average growth of

5.6% for the
NEXT **5 YEARS**

More than double the USA, triple that of the EU

Demographics are positive
and hugely advantageous to
growth – young labour force.



Between

2014 AND **2018**
the region's labour force will expand
BY **1.7%** (adding 28m new workers).

Will be the world's

3rd LARGEST EXPORTER BY **2018**



ASEAN consumerism

is set to grow

EXPONENTIALLY

QUISUMBING TORRES

Productivity is creating
a giant middle class.

Middle Class



Middle class households

will more than double BY **2018** TO **80m**

Significant opportunities for

retailers, luxury market, manufacturers,
auto industry, IT industry, healthcare,
financial services and more



Agreements on Labor Mobility

Agreement on Movement of Natural Persons ("MNP Agreement")

- Removal of restrictions to temporary movement of natural persons engaged in trade in goods and services, and investment
- Applies to Business Visitors, Contractual Service Suppliers and Intra-corporate Transferees ("ICTs")
- Does not cover movement of low or semi-skilled workers
- Does not cover access to employment markets or domestic laws relating to citizenship and permanent entry



Mutual Recognition Agreements (“MRAs”)

- Facilitate mobility of professionals by setting out grounds for recognition of educational and/or professional qualifications across ASEAN
- Occupational sectors for which MRAs / MRA frameworks have been signed: engineering services, nursing services, accounting services, medical practitioners, dental practitioners, architectural services, surveying and tourism professionals
- Extent of standardized recognition varies across MRAs
- Progress of implementation of MRAs varies across MRAs and varies across member countries

Challenges to Labor Mobility Within ASEAN



Challenges to Labor Mobility

- MNP Agreement does not address unskilled labor
- Limited usefulness of MNP Agreement and MRAs as harmonizing/standardizing instruments

Country	Commitments under MNP Agreement
Singapore	Entry for ICTs (executives, managers, and specialists) is limited to a 2-year period, which may be extended for up to 3 additional years each time, subject to a total term not exceeding 8 years.
Indonesia	<p>Entry for ICTs (executives, managers, and specialists) is permitted for up to a 2-year period, which may be extended for a maximum of 2 times, each extension being up to 2 years. Managers and specialists are required to take an economic needs test.</p> <p>Entry for business visitors is permitted for 60 days, extendable to a maximum period of 120 days.</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Indonesia’s commitments under the MNP Agreement are limited to industries/sectors listed in Indonesia’s Schedule of Commitments under the ASEAN Framework Agreement on Services. • Limitations to Indonesia’s commitments are prescribed in respect of the legal, communication, education, banking, hospital services and tourism sectors. • Persons in certain industries/sectors must fall under the category of “director” or “specialist” in order for Indonesia’s commitments under the MNP Agreement to be engaged.

Country	Commitments under MNP Agreement
<p>Malaysia</p>	<p>Entry for ICTs (executives, specialists) and professionals is limited to a 10-year period.</p> <p>Entry for business visitors is limited to a 90-day period.</p> <p>Limitations to Malaysia’s commitments are prescribed in respect of certain industries/sectors.</p>
<p>Philippines</p>	<p>Entry for business visitors is permitted for an initial 59-day period, which may be extended every 2 months for a total period of stay of 1 year.</p> <p>Entry for the following categories of persons is permitted for an initial 1-year period, which may be extended:</p> <ul style="list-style-type: none"> • ICTs • Certain kinds of investors • Persons supplying services requiring advanced technology or knowledge on the basis of a contract with a public or private organisation in The Philippines • Persons having advanced knowledge in certain fields and who has a contract with a Higher Education Institution in The Philippines <p>Limitations:</p> <ul style="list-style-type: none"> • The Philippines’ commitments under the MNP Agreement are limited to industries/sectors listed in The Philippines’ Schedule of Commitments under the ASEAN Framework Agreement on Services as well as the financial and air transport services sectors. • Limitations to The Philippines’ commitments are prescribed in respect of certain industries/sectors.



Country	Commitments under MNP Agreement
Vietnam	<p>Entry and stay permit for ICTs is granted for an initial period of 3 years, which may be extended subject to the term of operation of those entities in Vietnam. At least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise.</p> <p>Entry and stay permit for business visitors is limited to a 90-day period.</p> <p>Entry and stay permit for Contractual Service Suppliers is granted for a period of 90 days or for the duration of the contract, whichever is less, and subject to compliance with certain conditions and requirements.</p>



Challenges to Labor Mobility

- MNP Agreement does not address unskilled labor
- Limited usefulness of MNP Agreement and MRAs as harmonizing/standardizing instruments
- Diversity in educational standards, qualifications amongst Member States hinder effective operationalization of MRAs

Implementation Mechanisms of MRAs

Occupational Sector	Implementation Mechanism
Architecture, Engineering	After being certified at the domestic level (i.e., the Country of Origin), registration must be made with the relevant ASEAN-level institutions (i.e., ASEAN Architecture Council or ASEAN Chartered Professional Engineer Coordinating Committee).
Tourism	Registration onto the ASEAN Tourism Professionals Registration System is conducted at the domestic level via the competent Tourism Professional Certification Board of the Country of Origin. In order to qualify for registration, applicants must have fulfilled competency requirements stipulated in the Common ASEAN Tourism Curriculum.
Nursing, Medical, Dental	Registration is conducted only at the domestic level (i.e., the Host Country). There is no ASEAN-level approval procedure.
Accountancy, Surveying	Because the agreements signed are merely MRA frameworks, another stage of negotiated accords is required to turn them into fully functional MRAs.



Challenges to Labor Mobility

- MNP Agreement does not address unskilled labor
- Limited usefulness of MNP Agreement and MRAs as harmonizing/standardizing instruments
- Diversity in educational standards, qualifications amongst Member States hinder effective operationalization of MRAs
- Labor and immigration laws have not been amended to align to the commitments

Survey of current laws and policies regarding the entry and employment of foreigners across several ASEAN countries





Questions

What are the conditions for employing foreign nationals?

Is a specific visa required for foreign nationals intending to work to be able to enter?

What types of permits, if any, are required before a foreign national may be employed?

Are there any pending laws or regulations which seek to modify the current requirements?

Quick guide: Conditions for hiring foreigners

Country	Skilled Workers
Indonesia	<ol style="list-style-type: none"><li data-bbox="674 587 1785 746">1. Qualification of the foreigner (i.e., education and working experience of at least 5 years relevant to the position);<li data-bbox="674 762 1753 863">2. Statement of willingness to transfer of skills and expertise to his/her Indonesian counterpart;<li data-bbox="674 879 1570 979">3. Able to communicate in the Indonesian language;<li data-bbox="674 995 1671 1096">4. Payment to the Expertise and Development Fund;<li data-bbox="674 1112 1682 1212">5. Approved Foreign Personnel Utilization Plan (commonly referred to as RPTKA)<li data-bbox="674 1228 1720 1329">6. Current policy regarding the ratio of foreigners vis-à-vis Indonesian employees

Quick guide: Conditions for hiring foreigners (cont'd)

Country	Skilled Workers
Malaysia	<ul style="list-style-type: none">• A non-resident who wishes to work in Malaysia has to be issued a valid working permit.• Expatriates are generally allowed to work in almost all sectors except for those that impinge on national security and there are some restrictions on the number of expatriates in banking and finance.• The employer should explain why an expatriate must be employed rather than a Malaysian (i.e., there is no Malaysian citizen or permanent resident available who is suitable in terms of education and/or relevant working experience or technical skills.

Quick guide: Conditions for hiring foreigners (cont'd)

Country	Skilled Workers
Myanmar	<p>There are no general restrictions in hiring foreign nationals.</p> <p>However, for companies promoted by the Myanmar Investment Commission (the “MIC”) and has an MIC permit, and those located in Special Economic Zones, a specific ratio should be observed.</p>

Quick guide: Conditions for hiring foreigners (cont'd)

Country	Skilled Workers
Philippines	<ol style="list-style-type: none"><li data-bbox="622 528 1823 635">1. Foreigners cannot be employed in areas where there are competent, willing and able local personnel.<li data-bbox="622 643 1823 750">2. Practice of profession is limited to Filipinos subject to exceptions provided by law.<li data-bbox="622 758 1823 925">3. Board of Investment registered entities may employ foreign nationals for supervisory, technical or advisory positions.

Quick guide: Conditions for hiring foreigners (cont'd)

Country	Skilled Workers
Singapore	<ul style="list-style-type: none">• Employers should consider Singaporeans fairly for job vacancies and comply with the Tripartite Guidelines on Fair Employment Practices.• The Fair Consideration Framework, effective 1 August 2014, required employers wishing to hire Employment Pass (“EP”) holders (usually granted to higher qualified foreigners) to first advertise the position in the Singapore Workforce Development Agency's Jobs Bank for at least 14 calendar days, among others.

Quick guide: Conditions for hiring foreigners (cont'd)

Country	Skilled Workers
Thailand	<p>There are no general restrictions for the hiring of foreign nationals.</p> <p>The number of foreign workers allowed in a company is determined by its registered capital. If registered with the Bureau of Investments, it can obtain multiple work permits without increasing its capital.</p>

Quick guide: Conditions for hiring foreigners (cont'd)

Country	Skilled Workers
Vietnam	<ol style="list-style-type: none"><li data-bbox="710 499 1749 547">1. Unavailability of a Vietnamese for the position<li data-bbox="710 555 1861 722">2. Foreign labor usage plan listing the position and its details approved by the Chairman of the Provincial People's Committee<li data-bbox="710 730 1917 836">3. Obtained the necessary work permit or a confirmation of his/her exemption of work permit

Quick guide: Entry requirements

Country	Skilled Workers
Indonesia	Temporary Stay Visa (VITAS), including other expatriate-related documents
Malaysia	Social Visit Pass (SVP) Depending on the nationality of the foreigner, a pre-entry visa issued at a Malaysian embassy may be required.

Quick guide: Entry requirements (cont'd)

Country	Skilled Workers
Myanmar	<p data-bbox="763 571 1066 619">Business Visa</p> <p data-bbox="763 687 1794 967">Upon entry, the foreign national may opt to apply for a Stay Permit and a Foreigner Registration Card. The aforementioned are not specific work authorizations but will allow the foreigners to remain in Myanmar for extended periods of time.</p>

Quick guide: Entry requirements (cont'd)

Country	Skilled Workers
Philippines	<ol style="list-style-type: none">1. Special Work Permit (for gainful employment of 3 to 6 months)2. Pre-Arranged Employment 9(g) Visa3. Special Non-Immigrant's 47(a)(2) Visa <p>*For certain nationals, they may enter under a Tourist Visa but the appropriate working visa should be obtained prior to commencing work.</p>

Quick guide: Entry requirements (cont'd)

Country	Skilled Workers
Singapore	<p>No specific visa is required for foreign nationals to enter Singapore with the intention to work.</p> <p>However, the appropriate Pass should be obtained prior to commencing any work.</p>

Quick guide: Entry requirements (cont'd)

Country	Skilled Workers
Thailand	Non-Immigrant Business Visa (Non-B Visa)
Vietnam	<p>Strictly speaking, the foreign national should already have a Work Permit prior to his/her entry to Vietnam and then, apply for a working visa (LD visa) to be able to enter the country.</p> <p><u>Main types of visa:</u></p> <p>DT visa - foreign investors and foreign lawyers (up to 5 years) LD visa - people who come to work (up to 2 years) DN visa - people who come to work with companies in Vietnam for business purposes (up to 12 months) HN visa - people who come to attend conference/ workshop (up to 3 months)</p>

Quick guide: Employment requirements (con'td)

Country	Skilled Workers
Indonesia	<ol style="list-style-type: none"><li data-bbox="875 571 1787 735">1. Foreign Personnel Expatriate Utilization Plan / Plan of Using Foreign Manpower (RPTKA)<li data-bbox="875 746 1733 852">2. Employment Foreign Workers Permit (IMTA)<li data-bbox="875 863 1697 906">3. Other expatriate related documents

Quick guide: Employment requirements (con'td)

Country	Skilled Workers
Malaysia	<ol style="list-style-type: none"><li data-bbox="862 571 1765 678">1. Employment Pass Category 1 (for a director, manager or professional-level)<li data-bbox="862 687 1805 794">2. Employment Pass Category 2 (for employment period of 12 months or less)

Quick guide: Employment requirements (con'td)

Country	Skilled Workers
Myanmar	<ul style="list-style-type: none">• No specific work permit or license is required. A Stay Permit may suffice.• For entities with a Myanmar Investment Commission permit or those located within a Special Economic Zone, a Work Permit <u>and</u> a Stay Permit is required.

Quick guide: Employment requirements (con'td)

Country	Skilled Workers
Philippines	Alien Employment Permit (AEP)
Singapore	<ol style="list-style-type: none">1. Employment Pass for higher qualified foreigners2. S Pass for mid-level qualified employees

Quick guide: Employment requirements (con'td)

Country	Skilled Workers
Thailand	Work Permit
Vietnam	<ul style="list-style-type: none">- Work Permit; or- Work permit exemption confirmation;

Quick guide: Amendments in laws and policies

Country	Skilled Workers
Indonesia	None
Malaysia	None
Myanmar	Laws currently being drafted: 1) Regarding foreign employees - in charge is the Ministry of Labour 2) Regarding Permanent Residents - in charge is the Ministry of Immigration and Population
Philippines	None
Singapore	None
Thailand	None
Vietnam	1. <u>Work permit</u> : proposed amendment of Decree No. 102/2013/ND-CP on management of foreign employees in Vietnam 2. <u>Immigration</u> : New Law on Entry, Exit, Transit and Residence of Foreigners took effect on 1 January 2015.



Trends

- In most countries, focus is still to secure local employment opportunities for citizens.
- Different conditions for employing foreign nationals
- Different visa requirements for foreign nationals intending to work to be able to enter
- Different types of permits are required before a foreign national may be employed
- No new laws or regulations which seek to modify the current requirements. Only Vietnam has implemented a new law on entry, exit and transit of foreigners (effective on 1 January 2015).

Recommendations / Key Points



Recommendations

- Continue the process of adjusting domestic regulations
- Undertake more aggressive information campaigns on the substance, nature and benefits of MRAs
- Set greater coordination between government agencies and professional bodies
- Expand the scope of MRAs beyond the current 8 occupational sectors
- Consider regionalizing the measures relating to unskilled labor



Key Points

- Usefulness of the MNP Agreement as a harmonizing or standardizing instrument is limited.
- Lack of synchronized policies to manage the movement of skilled labor has been identified as a potential impediment to raising the productivity of ASEAN economies.
- Member States should start discussion on how to increase the number of sectors covered by MRAs or pursue a streamlined regulation of immigration and issuance of work permits.

Thank You



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