

## **ENHANCING MUTUAL RECOGNITION AGREEMENTS IN TRADE IN SERVICES UNDER AEC: PROGRESSIONS AND CONSTRAINTS**

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### ***ABSTRACT***

*The movement of people across national frontiers to render a service has been a highly regulated in ASEAN. Removing restrictions to labour flows within the region is admitted by ASEAN leaders as an essential component in formation of the ASEAN Economic Community (AEC). The AEC Blueprint 2025 has specifically stated the significance of the regime of mutual recognition on qualifications for professionals in ASEAN as it would facilitate implementation of the ASEAN Framework Agreement on Services (AFAS) and Agreement on Movement of Natural Persons (MNP). Without the qualification harmonisation the ASEAN efforts to liberalise the service can be easily mitigated or nullified.*

*This paper will review the existing commitments and policies of ASEAN countries under the MRA, and to identify measures that could be considered by individual countries and by the ASEAN to expand the trade in services specific to the supply mode of movement of natural persons.*

**Keywords:** ASEAN, AEC, MRA, Trade in Services, Movement of Natural Persons.

### **I. INTRODUCTION**

Globalization and the liberalization of trade in services have made the movement of natural persons an important and visible contemporary global phenomenon that involves people moving with ease for employment across national boundaries.<sup>1</sup> The movement of

<sup>1</sup> T.S. Tullao, Jr. and M.A. Cortez, 'Enhancing the Movement of Natural Persons in the ASEAN Region: Opportunities and Constraint' [2006] ARTNeT Working Paper Series 23, 2.

people across national frontiers to render a service, however, remains a highly regulated activity in many countries because of the information asymmetries that exist between service suppliers and consumers. It is known that one of the main impediments to international trade in service is the regulatory requirements on qualifications and professional licences for individuals providing service. It is especially true for professional services that particular qualifications must be met. For instance, the fundamental problem is that a medical doctor in one country may not be regarded as medical doctor in other countries, while “medical” treatment provided by non-medical doctor might be considered as illegal. Even if service sectors are liberalized, the free flow of services can be easily be nullified by qualification requirements of host country because obtaining a new qualification certificate may be extremely burdensome.<sup>2</sup> The principal solution for the problems associated with diverse qualification requirements across the countries is to develop unified international qualification standards and establish mutual recognition arrangements. Thus, conclusion and implementation of mutual recognition agreements (MRAs) is an effective complement to service liberalization agreements.

ASEAN has been pursuing the liberalisation of trade in services since the signing of the ASEAN Framework Agreement on Services (AFAS) in 1995, a year after the WTO General Agreement on Trade in Services (GATS). Part of the preparations for this integration is removing restrictions to labour flows within ASEAN, which is regarded as a critical component in the formation of an ASEAN Economic Community (AEC). As a general matter, AFAS adopts the same four modes of supply as used in GATS, including (1) cross-border supply, (2) consumption abroad, (3) commercial presence, and (4) presence of natural persons. In ASEAN, mode 4 is being facilitated through the implementation of mutual recognition agreements (MRAs) in key professional areas.

The AEC Blueprint 2025 has specifically stated that the objective of facilitating the movement of skilled labour in ASEAN began with MRAs that would allow practitioners in eight professions to practice in other ASEAN Member States through mutual recognition of their qualifications and, where appropriate, through the implementation of the ASEAN Qualifications Reference Framework (AQRF), for which referencing by the ASEAN Member States is voluntary, to support lifelong learning and enhance recognition and the ASEAN Agreement on Movement of Natural Persons (MNP).<sup>3</sup> These arrangements aim to facilitate the temporary cross-border movement of natural persons and business visitors engaged in the conduct of trade in goods, trade in services, and investment.

However, implementation of MRAs within ASEAN is not a simple task given that each country still pursues individual approach on the requirements of professional qualification. It is of high significance to work out the way to define the common elements of qualifications in the region so that ASEAN service suppliers only have to fill the “gaps” in qualification requirements to be able to work in respective country.

<sup>2</sup> S. Hamanaka and J. Sufian, ‘The Emerging ASEAN Approach to Mutual Recognition: A Comparison with Europe, Trans-Tasmania, and North America’ [2016], IDE Discussion Papers, 2.

<sup>3</sup> AEC Blueprint 2025, art 19.

This paper will review the existing commitments and policies of ASEAN countries under the MRA, and to identify measures that could be considered by individual countries and by the ASEAN to expand the trade in services specific to the supply mode of movement of natural persons.

## **II. CONCEPTUAL DISCUSSION ON HARMONIZATION AND RECOGNITION OF QUALIFICATIONS**

The ASEAN Framework Agreement on Services (AFAS), signed on 15 December 1995, recognises the importance of MRAs to facilitate deeper services trade integration in ASEAN. At the 7<sup>th</sup> Summit in November 2001, the ASEAN leaders decided to initiate negotiations on MRA to facilitate the flow of professional services in the region.<sup>4</sup>

Execution of MRAs on services is considered as a key element of ASEAN economic integration.<sup>5</sup> The MRAs enable the qualifications of services suppliers, recognised by the authorities in their home country, to be mutually recognised by other ASEAN member countries. Article 5 of the AFAS specifically regulates that each ASEAN member state may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another ASEAN member state, for the purpose of licensing or certification of service suppliers.

In analyzing the development and implementation of MRAs, it is critical to distinguish between the substantive and procedural requirements for qualifications. Harmonization or recognition of qualifications conceptually entails harmonization and recognition of both the substantive requirements and the procedural requirements. Substantive requirements include professional standards that must be met. Procedural requirements for qualifications are the procedures that must be completed to demonstrate that the substantive requirements are met. Therefore, just because professional standards are harmonized or recognized does not necessarily mean that the procedures for obtaining qualifications are harmonized or recognized between countries. Unless harmonization and recognition cover procedures, their value is reduced.

Generally, harmonization of qualifications can be classified into two types: (i) unilateral harmonization and (ii) mutual harmonization. Countries may unilaterally harmonize their national regime on qualifications in accordance with an international standard. As this type of harmonization usually focuses on harmonization of standards (or substantive requirements), it can be referred to as the “standardization of qualifications”. Unilateral recognition may be an effective means for a developing country that lacks qualified professional services suppliers.<sup>6</sup> The mutual harmonization of qualifications or licenses means that two or more countries establish a single set of criteria that a license or qualification holder must meet to supply services in any contracting parties’ territory

<sup>4</sup> Pruksacholavit P., “Advancing the Right of Freedom of Movement in the AEC Framework; What the AEC Can Learn from the EU” [2014], INDON. J. INT'L & COMP. L. 1(2), 474-501.

<sup>5</sup> S. Hamanaka and S. Jusoh, supranote 2, 3.

<sup>6</sup> S. Hamanaka and S. Jusoh, supranote 2, 5.

without any additional local requirements. Mutual harmonization of qualifications denotes a narrow reciprocity.<sup>7</sup> In other words, the concerned parties establish a system for common regional qualification that is effective within the contracting parties' territory, which usually, but not always, leads to the abolishment of national qualification systems. Mutual harmonization would include both harmonization of standards and procedural requirements as its purpose is to allow the professionals of the signing parties to provide services more easily within the region. It means that mutual harmonization would lead to creation of a set of regional qualification and a regional accreditation agency.

Arguably, harmonization of qualifications is very challenging because countries usually have their own national qualification system based on their unique historical, cultural and socio-economical background. Thus, finding the "meeting points" between national systems for the purpose of harmonization of qualifications is often difficult. In addition, enhancing the harmonization policy is usually prevented by the conservative domestic regulators, who prefer maintaining their regulatory powers for quality assurance and consumer protection purposes.<sup>8</sup>

Recognition of qualifications, which is different from harmonization, is an alternative solution to this problem. In general, the term "recognition" is defined as "a selection by host (or importing) states of the rule of the home (or exporting) state, to the exclusion of the rule of the host state"<sup>9</sup>. Recognition is a governance decision that maintains regulatory autonomy, as no country is forced to accept a regulation unless they choose to recognize it. This "recognition" results from a country assenting to the equivalence, compatibility, or at least acceptability of the counterpart's regulatory system. When a country recognizes another country's qualifications, it can still keep its own qualification system, unlike in the case of harmonization of qualifications under which a new set of qualifications is established and becomes effective among contracting parties. In case of recognition, individuals that hold a partner country's qualification should be allowed to supply services domestically without additional requirements or be exempted from the equivalent/common requirements if they have already satisfied them in their home country.

While harmonization and recognition of qualifications are conceptually distinctive, it is important to understand that, in practice, they are closely related in terms of policy implementation. This is especially true in the context of negotiation and implementation of the MRAs in ASEAN, as it reflects the recognition of professional qualifications. The model of MRAs of ASEAN is distinct from that of other regional arrangements, such as Trans-Tasmanian (Australia/New Zealand), EU, NAFTA MRAs.<sup>10</sup> The Trans-

<sup>7</sup> K. Nikolaidis, 'Mutual Recognition of Regulatory Regimes: Some Lessons and Prospects' [1997] Jean Monnet Working Papers 7/97. See also K. Nikolaidis and S. Schmidt, 'Mutual Recognition "On Trial": The Long Road to Services Liberalisation' [2007] *J EUR PUBLIC POLICY* 14(5) 717-734.

<sup>8</sup> K. Nikolaidis and S. Schmidt, *suprnote 7*, 717-734.

<sup>9</sup> J. Trachman, 'Embedding Mutual Recognition at the WTO' [2007] *J EUR PUBLIC POLICY* 14(5), 780-799.

<sup>10</sup> C. Shah and M. Long, 'Labour Mobility and Mutual Recognition of Skills and Qualifications: European Union and Australia/New Zealand' [2007] Monash University Centre for Economics of Education and Training Working Paper 65; K. Nikolaidis, 'East Asian Regionalism and EU Studies' [2010] *J EUR INTEGR* 32(6), 597-616; C. Sa and P.

Tasmanian MRA follows the principle of automatic recognition, which means that participating countries (Australia and New Zealand) have established a system of international or regional licensing. The EU's managed recognition system places emphasis on finding ways to compensate for any gaps or differences in qualification requirements on a case-by-case basis. The NAFTA applies a dual system whereby regional qualification and national qualification co-exist, which does not follow the original idea of mutual "recognition". Within the ASEAN framework, free movement of workers is not the assumed goal; rather, it is trying to achieve "freer" movement for limited professions and the different level of harmonization and recognition of qualifications based on priority of liberalization of specific service sectors set by the member countries. ASEAN attempts to establish a regional qualifications system, which allows ASEAN qualification holders to be registered in ASEAN member countries to supply services.

### III. THE LEGAL FRAMEWORK OF THE MRA UNDER AEC

The foundation for ASEAN MRAs is the ASEAN Framework Agreement on Services (AFAS), which facilitates the liberalization of service sectors in ASEAN for the purpose of the development of the ASEAN Economic Community. AFAS sets out three objectives<sup>11</sup> to concretise the aspirations of ASEAN members to mobilize the private sector for the development of ASEAN members in order to enhance the efficiency and competitiveness of each country's service industry, including:

- (a) to enhance cooperation in services amongst Member States in order to improve efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN;
- (b) to eliminate substantially restrictions to trade in services amongst Member States; and
- (c) 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 to realising a free trade area in services.

In order to achieve the above mentioned objectives, ASEAN leaders have committed to perform the following: (i) substantially eliminate all discriminatory and restrictive approaches to marketing and (ii) prohibit the introduction of new discriminatory measures and restriction on market access among ASEAN Member countries,<sup>12</sup> (iii) enter into free trade negotiations in ASEAN.<sup>13</sup> Pursuant to the AFAS schedule, ASEAN countries undertook to focus on liberalizing certain priority service sectors that can promote investment in region, including tourism, telecommunication, and banking/

Gaviria, 'Asymmetrical Regionalism in North America: The Higher Education Sector since NAFTA' [2012] Norteamerica 7(2), 111-140.

<sup>11</sup> AFAS Agreement, art I ('Purpose').

<sup>12</sup> AFAS Agreement, art III ('Liberation').

<sup>13</sup> AFAS Agreement, art IV ('Negotiating Specific Commitment').

financial services. The next group of sectors for commitments is composed of construction and maritime services. Next are business services like architectural, accounting, bookkeeping, and auditing services. The ASEAN countries are also realizing the need for translation, market research and legal services.

The development of MRAs in service sectors under AEC is supported by the declaration of ASEAN leaders in the AEC Blueprint 2025 (“AEC Blueprint”).<sup>14</sup> According to Section 5 of the AEC Blueprint, “*the objective of facilitating the movement of skilled labour in ASEAN began with MRAs that would allow practitioners in eight professions to practice in other ASEAN Member States through mutual recognition of their qualifications and, where appropriate, through the implementation of the ASEAN Qualifications Reference Framework*”.<sup>15</sup>

**Table 1. Mode 4 commitments of countries under the AFAS (Fourth Package 2004)**

Service sector	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Air transport	x									x
Business services	x	x		x	x				x	
Accounting / bookkeeping					x				x	x
Aircraft rental / leasing services	x									
Architectural		x			x			x	x	x
Auditing services	x			x	x				x	x
Engineering		x			x				x	x
Market research		x			x				x	x
Research & experimental services on economics					x			x	x	
Taxation					x			x	x	
Translation		x			x			x	x	
Construction	x	x	x		x				x	x
Construction machinery rental/ leasing		x			x					
Financial services	x							x		
Banking & other financial	x		x	x			x	x		

<sup>14</sup> The ASEAN Economic Community (AEC Blueprint) Master Plan is a document adopted at the ASEAN Summits to outline specific objectives and activities aimed at building the four pillars of the ASEAN Economic Community. The AEC consists of (1) a unified market and production base, (2) a competitive economic sector, (3) a uniform development zone and (4) integration with the global economy. Work-related activities that the AEC is directed to include include: (1) Facilitation of movement through the issuance of a visa or laissez-passer to a qualified trader or worker, (2) Certificate recognition, (3) Implementation and development of new MRAs, (4) Human resource development in the service sector, (4) Core skills and certifications for (5) Strengthening the capacity of the labor market program.

<sup>15</sup> AEC Blueprint, para 19 sec 5.

Service sector	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Insurance	x									
Reinsurance	x							x		
Services auxilliary to insurance	x									
Healthcare	x							x		
Legal services	x		x	x				x		
Maritime		x		x	x	x	x	x	x	x
News paper publishing			x						x	
Radio & Television	x									
Telecommunication	x	x		x	x	x	x	x	x	x
Tourism			x	x	x	x	x	x	x	x
Transport							x		x	x

\*source: [www.aseansec.org](http://www.aseansec.org)

ASEAN members are encouraged to negotiate and sign Mutual Recognition Arrangements (on educational qualifications, diplomas, certificate of practice ...) of the priority service sectors set under the AFAS. To date, ASEAN member countries have completed negotiation and signed MRAs in 6 professional sectors, including:

- MRA on Engineering Services (2005)<sup>16</sup>;
- MRA on Nursing Services (2006)<sup>17</sup>;
- Framework Agreement on Mutual Recognition of Testing Services (2007)<sup>18</sup>;
- MRA on Architectural Services (2007)<sup>19</sup>;
- MRA on Medical Practitioners (2009)<sup>20</sup>;
- MRA on Dental Practitioners (2009)<sup>21</sup>;
- Framework Agreement on Mutual Recognition of Accountancy Services (2009)<sup>22</sup>; and
- MRA on Tourism Professionals (2012)<sup>23</sup>.

These MRAs, arrangements shall facilitate the temporary cross-border movement of natural persons and business visitors engaged in the conduct of trade in goods, trade in

<sup>16</sup> ASEAN Mutual Recognition Arrangement for Technical Services, signed in Kuala Lumpur, Malaysia, 9 December 2005.

<sup>17</sup> ASEAN Mutual Recognition Arrangement for Nursing Services signed in Cebu, Philippines on 8 December 2006.

<sup>18</sup> ASEAN Framework Agreement on Mutual Recognition of Testing Services signed in Singapore on 19 November 2007.

<sup>19</sup> ASEAN Agreement on Mutual Recognition for Architectural signed in Singapore on 19 November 2007.

<sup>20</sup> ASEAN Agreement on Mutual Recognition For Medical Services signed Cha-am, Thailand on 26 February 2009.

<sup>21</sup> ASEAN Agreement on Mutual Recognition for Dental Services signed Cha-am, Thailand on 26 February 2009.

<sup>22</sup> ASEAN Framework Agreement on Mutual Recognition for Accounting Services signed in Cha-am, Thailand on 26 February 2009.

<sup>23</sup> ASEAN Mutual Recognition Arrangement for Tourism signed in Bangkok, Thailand on 9 November 2012.

services, and investment. The AEC Blueprint emphasizes that [during the implementation] if necessary, ASEAN will consider further improvements to existing MRAs and consider the feasibility of additional new MRAs to facilitate the mobility of professionals and skilled labour in the region.<sup>24</sup>

It is worth noting that some ASEAN MRAs aim at direct harmonization of qualifications by proposing uniform ASEAN qualification standards for the provision of services, such as MRA on Architectural Services, MRA on Engineer Services, and MRA on Accounting Services. The MRAs of these business services follow a similar template: to establish an ASEAN-wide registration system allowing professional engineers, architects, or accountants to be certified as ASEAN-chartered professional engineers, ASEAN architects, or ASEAN certified professional accountants, after meeting the agreed criteria and receiving approval from an ASEAN technical coordinating body overseeing the certification process (e.g. the ASEAN Architect Council). The ASEAN certified professional can then work as a registered foreign professional engineer, a registered foreign architect, or a registered foreign professional accountant in other Member States. Work for registered foreign professional engineers is in collaboration with other professional engineers in the host country, while registered foreign architects and registered foreign professional accountants can work independently or in collaboration with other licensed architects or accountants in the host country. Registered foreign professional accountants cannot sign off on independent auditor reports or other accountancy services requiring licensing in the host country.

The MRA on Tourism Professionals is somewhat similar to the MRAs in business services, except that tourism professionals tend not be as regulated as engineers, accountants, or architects. Eligibility to work in a host country requires possession of a valid certificate in a job specified in the ASEAN Common Competency Standards for Tourism Professionals issued by a tourism professional certification board in a Member State. Toolboxes consistent with the competency standards are being developed and so is the registry system of the successful certificate holders, the ASEAN Tourism Professionals Registration System. To a large extent, for largely unregulated or far less regulated professions like tourism professionals, the certification system becomes a quality-signalling device for, and a contributor to, improved efficiency of the labour market in the whole region.<sup>25</sup>

The MRAs on health services do not have a system of ASEAN-certified health professionals nor an ASEAN-wide registration system. A registered nurse in one country can apply in another as a foreign nurse if he or she meets the conditions stipulated in the MRA.<sup>26</sup> Much of the work of the coordinating committees on medical, nursing, and dental practitioners has focused on (i) the exchange of information on laws, practices, and developments in healthcare practice; (ii) procedures for the registration and licensing of domestic and foreign practitioners; and (iii) the required qualifications, etc. These initiatives are nonetheless supportive of facilitating the mobility of professionals within

<sup>24</sup> AEC Blueprint, para 21 sec 5.

<sup>25</sup> ASEAN Secretariat, 'ASEAN Integration in Services' [2015] 27–34.

<sup>26</sup> *ibid.*

the region, the promotion of best practices on standards and qualifications, and enhancement of cooperation with respect to mutual recognition and capacity building. This cautious approach is likely a recognition that healthcare services are more sensitive and in culturally shaped sectors (e.g. language requirements so that health service providers can communicate directly with patients).<sup>27</sup>

Upon accessing ASEAN MRAs system, the following interesting characteristics can be observed:

*First*, the ASEAN MRAs system has been developed based on the diversity of level of liberalisation of ASEAN member countries. Some countries in the region have participated in trade negotiations at multilateral levels that formulated the General Agreement on Trade in Services (GATS) of the WTO while others have acceded to the requirements and disciplines of other regional and/or cross-regional trade arrangements. As analysed, ASEAN does not establish a supranational regime for recognition of qualifications to ensure free movement of professionals, within the region, instead, it establishes “freer” conditions for movements for certain professions that have been accepted by all ASEAN member countries as priority service sectors (which directly or indirectly impact foreign direct investment).

*Second*, the ASEAN MRAs system creates a close cooperation mechanism between the competent authorities of the host country and the home country of the service provider, monitored and secured by a regional agency. The ASEAN MRAs facilitate the establishment of focal points of responsibility in member countries, whose activities shall be supervised by a regional agency. Accordingly, under the ASEAN MRAs for business services, professionals in one ASEAN country after obtaining the “ASEAN qualification”, shall be entitled to be registered in any ASEAN countries as foreign professionals to supply services. By streamlining and unifying the one-stop certification process, aiming to remove barriers to establishing a common market and a joint manufacturing base with high competitiveness, it is expected that the MRA will open up a free-trade perspective in the ASEAN region.

For example, for the MRA in Architectural Services, there are three agencies that are involved in the system, namely the Professional Regulatory Authority (PRA), the Monitoring Committee (MC), and the ASEAN Architect Council (AAC). The organization and responsibilities of these agencies are clearly regulated under Article 4 of the MRA on Architectural Services:

- a) The Professional Regulatory Authority (established in each ASEAN member country) shall (i) assess the applications from the ASEAN Architect (AA) and authorise the ASEAN Architect (AA) to practise as a Registered Foreign Architect (RFA), either in independent practice or in collaboration with one or more licensed Architects in the host Country, where appropriate, subject to the domestic laws and regulations; (ii) monitor and assess the professional practice of the RFA and to ensure compliance with the MRA; notify the ASEAN Architect Council (AAC) Secretariat promptly in writing

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<sup>27</sup> *ibid.*

when a RFA has contravened the arrangement, or when an architect is no longer qualified to undertake the practice of architecture in their home country.

b) The Monitoring Committee (established in each ASEAN member country) shall develop, process and maintain a national ASEAN Architect Register (AAR) in the country of origin; it shall be able to certify the qualifications and experiences of an individual architect directly or by reference to other competent bodies; ensure that AAs registered by the ASEAN Architect Council (AAC) Secretariat comply fully with the requirements of the MRA; issue Certificates of ASEAN Architect (AA) and provide advice on the particulars of any registered AA (upon request of AAC); and notify country of origin of non-AA practicing architect in the host country.

c) The ASEAN Architect Council (regional agency represented by each ASEAN member country) shall have the authority to confer and withdraw the title of AA. It facilitates the development and maintenance of authoritative and reliable Registers of ASEAN Architects (AAR); promote the acceptance of AA in each participating ASEAN member country as possessing general technical and professional competence that is substantially equivalent to that of professional architects registered or licensed in the architect's home country; and promote the harmonization of qualifications registration procedures within ASEAN.

*Third*, ASEAN MRAs establish uniformity of specific professional qualification standards within the region. The purpose of signing MRAs, as analysed earlier, is to establish a mechanism for the recognition of qualifications, degrees and certificates from workers in ASEAN. The implementation of uniform standards in ASEAN shall facilitate the development of a common market in service sectors. Within the AEC framework, MRAs in architectural, engineering and accounting services have made great strides in defining the conditions of qualification.

*Fourth*, the ASEAN MRAs have established a dispute settlement mechanism between the member states in relation to recognition of qualification. Most ASEAN MRAs have at least one provision on the dispute resolution mechanism among members, e.g. Article 7 MRA on Technical Services, Article 7 MRA on Architectural Services, Article 6 MRA on Nursing Service, etc. In the ASEAN region, in general, these mechanisms refer to and reiterate the importance of the Protocol on Enhancing the ASEAN Dispute Settlement Mechanism 2004, which means the "closed" dispute resolution mechanism, among ASEAN Member countries.

The above mentioned characteristics of the ASEAN MRAs are an important means to ensure the effective implementation of harmonization of qualifications of professionals under AEC (given the diverse socio-economic conditions of ASEAN member countries).

## IV. CONSTRAINTS OF THE ASEAN MRA MECHANISM

Alongside with remarkable achievements in developing the MRA mechanism, it is our view that there are still a number of constraints that ASEAN countries still need to overcome to enhance the movement of natural persons in the AEC.

### *(i) Limited range of MRA services in the AEC*

At present, these MRAs only recognize qualifications, skills and facilitation for the shift of skilled labor in some occupations (eight mentioned above), not for all working-age persons, including ordinary workers. According to some studies, 87% of intra-ASEAN migrants are ordinary laborers, and skilled labor migration is still very limited.<sup>28</sup> In fact, the demand for labor in the developed countries of ASEAN (ASEAN-6) is very high, mainly in the areas of housing assistance in Malaysia and Singapore (with supplies from the Philippines and Indonesia), agriculture labor in Malaysia (from Indonesia), construction labor in Malaysia and Singapore (from CLMV countries) and food processing labor in Thailand (from CLMV countries).<sup>29</sup> In that situation, the cooperation between the above mentioned exporting and receiving countries on matters such as creating legal working conditions, protecting workers and fighting trafficking, etc., is extremely important and clear. In this case, MRAs do not play a significant role.

### *(ii) Domestic regulatory barriers to MRA in services*

Although the implementation of MRAs in a number of service areas such as Architecture and Engineering has made significant strides<sup>30</sup> by issuing a regional network of occupational registries, a great barrier exists in MRAs, which stipulate that candidates must meet the legal requirements of the host country in order to register or obtain a work permit. Typically, under the MRA Framework for Architectural Services, an ASEAN Architect (an applicant who has been certified by the ASEAN Architects Council) wishes to actually work legally in a foreign country.<sup>31</sup> The practitioner registers in the host country as a "registered foreign architect" (RFA). Therefore, it is this registration which is the most important procedure.

Pre-employment requirements are one of the biggest domestic regulatory barriers for effective implementation of MRAs. The pre-employment requirements include language tests, health clearances, security clearances, and personal and professional references. By examining the data in Appendix K on Work Permit Regimes in ASEAN Countries, it can be observed that sectors that have the largest inflows of workers in the ASEAN

<sup>28</sup> B. Harkins and D. Lindgren, 'Labour Migration in the ASEAN Region: Assessing the Social and Economic Outcomes for Migrant Workers', <<http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=harkins-labour-migration-in-asean-update.pdf&site=354>>, last visited 12/1/2018.

<sup>29</sup> Ibid.

<sup>30</sup> Y. Fukunaga, 'Assessing the Progress of ASEAN MRAs on Professional Services' [2015] Economic Research Institute for ASEAN and East Asia 3; see also VCCI, "Cẩm nang về Cộng Đồng Kinh Tế ASEAN" [Handbook on the ASEAN Economic Community], <<http://chongbanphagia.vn/Modules/News/Uploaded/38/2017021510455756sach-aec.pdf>>, last visited 12/1/2018.

<sup>31</sup> Vuong Anh Dung, 'Thoả thuận về dịch vụ kiến trúc giữa các nước ASEAN, bước chuẩn bị cho hành nghề của KTS trong AEC' [Agreement on architectural services among ASEAN countries, the preparatory stage for the practice of architects in AEC] J. Architecture Magazine (Hanoi, 1 November 2015), 23.

region come from three sectors/categories, namely (i) manufacturing sector, (ii) intra-corporate transferees, and (iii) short term business travelers. The normal type of authority that can be observed for the issuance of work permits is mostly coming from the labor sector. Though different ASEAN countries refer to it with different names, its functions and objectives are parallel with each other. Almost all the ASEAN countries require these things before an applicant can work.

Language tests are also a significant barrier for ASEAN professionals. Although English is the official language in ASEAN official communications, aside from the Philippines and Singapore and a certain extent Malaysia and Brunei, the language of commerce in Thailand, Indonesia, Laos, Cambodia, Myanmar and Viet Nam is not English. This language diversity may impair the implementation of MRA and, therefore, movement of people across the region to render services.

### *(iii) Immigration barriers*

ASEAN MRAs do not guarantee full freedom of movement for skilled workers but only facilitate the process for some professions. The implementation of the MRAs in AEC depends significantly on the ASEAN Agreement on Movement of Natural Persons (MNP).<sup>32</sup> Hence, ASEAN member countries have established regulatory measures that limit the application of MNP through nationality and residency requirements in the provision of services. Thus, even if a foreign professional is allowed to render services, the conditions on residency and immigration status in the host country may restrict the free flow of human resources across the national boundaries.

The benefits from the development of the AEC are of high importance. However, it cannot be achieved without the free movement of natural persons. Free flow of natural persons working along with the movement of capital and services, are the ultimate goal of the AEC. The MNP Agreement, although signed by the ASEAN countries, is different in the national schedules and is generally non-existent. Meanwhile, within the EU, European citizens, at any level, are free to move, reside and seek employment in any of the member countries. There are many reasons for the cautiousness of the AEC in particular. In general, the differences in ASEAN countries are so great that they relate to the cultural, political, religious, developmental and productivity levels. Among the members in the region, social status is difficult to achieve for foreign workers, especially high-level workers. In addition, one of the fundamental principles in ASEAN's operational organization is not to interfere in the internal affairs of its members<sup>33</sup> and, in fact, ASEAN is not geared towards a high degree of alignment such as in the EU. MRAs in ASEAN cannot go so far as to harmonize standards, procedures and fully replace the laws in the receiving country.

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<sup>32</sup> VCCI, supranote 30.

<sup>33</sup> ASEAN Charter, art 2 (e).

## **V. CONCLUSION**

MRA is one of the key components in developing of ASEAN's common market. To facilitate the mobility of skilled workers among ASEAN countries, countries have signed MRA in a number of areas of the industry to recognize each other in terms of degrees and qualifications of skilled labor in the area. However, in order for MRAs to operate effectively in practice, ASEAN countries still need to continue efforts to unify and streamline accreditation processes and, in particular to raise the standard of occupational training for the professional workforce in each country.

## REFERENCES

AEC Blueprint 2025, art 19.

AEC Blueprint, para 19 sec 5.

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