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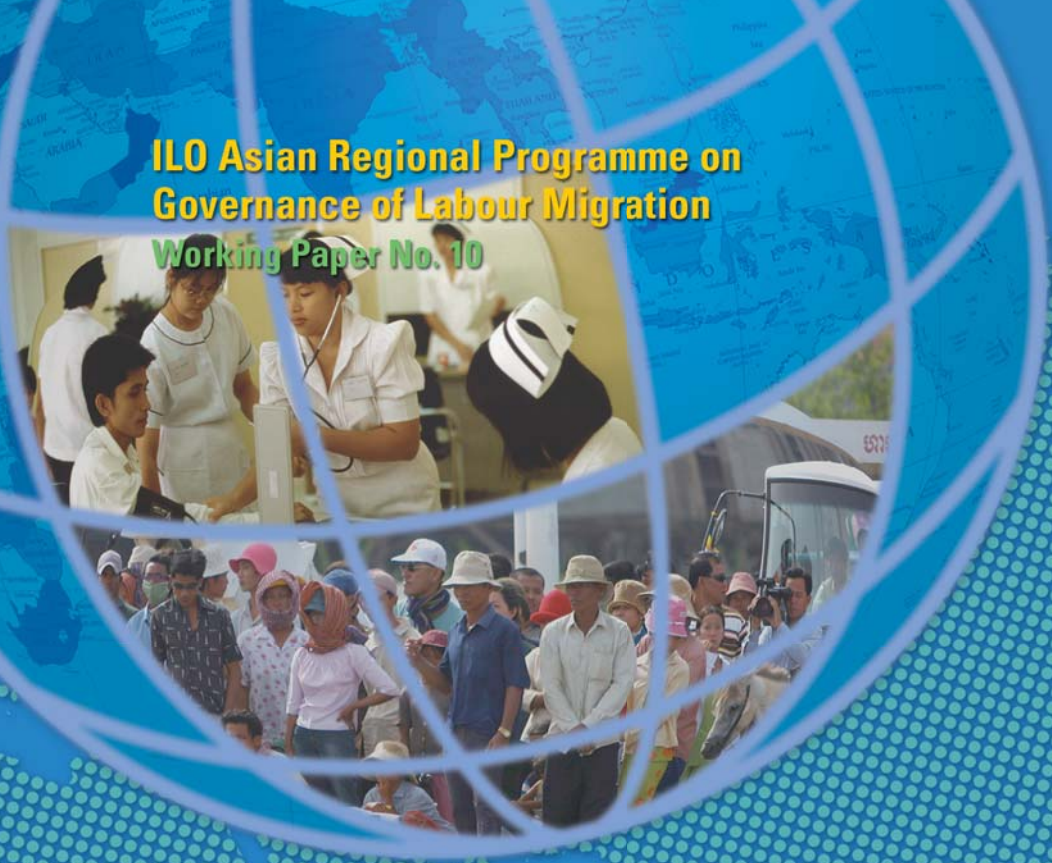

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Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements

Edward Tamagno

Regional Office for Asia and the Pacific
January 2008

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Foreword and acknowledgements

This report on strengthening social protection for ASEAN migrant workers through the conclusion of social security agreements is part of the ILO's Asian Regional Programme on the Governance of Labour Migration, financed by the European Commission. The Chief Technical Adviser for the umbrella program is Manolo Abella, who served for many years as Director of the ILO's International Labour Migration Programme (MIGRANTS). The project resulting in the report was led by Kenichi Hirose, the Senior Social Protection Specialist for the ILO's Subregional Office for South-East Asia and the Pacific (SRO-Manila).

The author of the report was Edward Tamagno, Policy Associate, Caledon Institute of Social Policy, Canada. Prior to joining the Caledon Institute, Mr Tamagno was a senior official of the Government of Canada. From 1983 until his retirement from the Canadian public service in 2004, Mr Tamagno led the Canadian delegation for the negotiation of Canada's social security agreements. In this capacity, he was involved in the negotiation of more than 45 social security agreements.

The author expresses his gratitude to Messrs Abella and Hirose for the wide latitude they gave him in the drafting of the report and for their encouragement and support throughout the project. The author also expresses his gratitude to those who provided information that has been included in this report. In addition to Messrs Abella and Hirose, these include (in alphabetical order) Mukul Asher (National University of Singapore, Singapore), Chantana Boon-Arj (Social Security Office, Thailand), Rakawin Leechanavanichpan (ILO Regional Office for Asia, Bangkok), Ellen Polman (Sociale Verzekeringsbank, the Netherlands), Judy See (Social Security System, Philippines), and Paguman Singh (Malaysia). Finally, the author expresses his appreciation to Gloria (Oyi) Fabian for her technical and logistical assistance in the project.

List of abbreviations and acronyms

ASEAN	Association of Southeast Asian Nations
ASSA	ASEAN Social Security Association
CARICOM	Caribbean Community
DRC	Development Research Centre (University of Sussex)
EU	European Union
FCO	Foreign and Commonwealth Office (United Kingdom)
ILO	International Labour Organization
ILM	International Labour Migration (ILO database)
IOM	International Organization for Migration
ISSA	International Social Security Association
MOL	Ministry of Labour (Thailand)
MOU	Memorandum of understanding
POEA	Philippines Overseas Employment Administration
SECSOC	Social Security Department (ILO)
SSA	Social Security Administration (United States)
SSO	Social Security Office (Thailand)
SSS	Social Security System (Philippines)
UN	United Nations

Acronyms of ASEAN countries

BN	Brunei Darussalam
ID	Indonesia
KH	Cambodia
LA	Lao People's Democratic Republic
MM	Myanmar
MY	Malaysia
PH	Philippines
SG	Singapore
TH	Thailand
VN	Viet Nam

Summary

Migrant workers make vital contributions to the societies and economies of all the ASEAN countries. For some ASEAN countries, in particular those that are the most economically advanced, migrant workers are essential for the operation of the economy. For other ASEAN countries, especially those that are the least economically developed, migration is critical for offering workers opportunities that are not available at home. The remittances those workers send back to their countries of origin provide both the means of subsistence for a number of households and also a significant part of the capital required for national development. For yet other ASEAN countries, including those with the largest populations in the region, both phenomena are at play as they receive migrant workers from some countries and send migrant workers to others.

At the January 2007 summit of the Association of Southeast Asian Nations (ASEAN), held in Cebu, Philippines, the heads of state and government of the ten ASEAN member countries adopted a *Declaration on the Protection and Promotion of the Rights of Migrant Workers*. The Cebu declaration affirms the important contribution migrant workers make to the society and economy of both the host (receiving) and the sending states in ASEAN. It acknowledges the difficulties migrant workers and their families often encounter in exercising their rights. Most importantly, the Cebu declaration committed all the ASEAN countries to strengthen the protection afforded to migrant workers, both to the migrants they receive and those they send.

Migrant workers often experience a wide range of disadvantages in the countries in which they are employed. Among these is lack of access to the social security coverage.

In the majority of the world's countries, including many ASEAN members, the legislative barriers limiting migrant workers' access to social security benefits are compounded by the fact that social security systems cover only part of the labour force. Moreover, in some countries, migrant workers are often employed in sectors of the labour market that either are not covered by social security or in which compliance with social security laws is poorly enforced. Even when migrant workers are employed in covered sectors and social security laws are enforced, irregular migrant workers are usually disqualified from social security benefits due to the fact that they are undocumented.

In those instances in which a migrant worker is engaged in employment that is covered by the social security programs of the host country, migrant workers will be no better off if a country only enforces compliance with its social security laws without taking steps to ensure that migrant workers and their families will have access to benefits when they need them.

Legislation may add restrictions to the right to some benefits, in particular old-age pensions, because the migrant workers or their family members are not in a position to fulfill qualifying conditions requiring a minimum number of years of contribution.

For this reason, countries wishing to provide greater social security protection for migrant workers have generally opted for a reciprocal approach, through the conclusion of social security agreements. Such agreements seek to reduce, and whenever possible eliminate, the barriers that often disqualify migrant workers from social security benefits. To date, no social security agreements have been concluded between any of the ASEAN member countries. Only one ASEAN state, the Philippines, has actively pursued agreements with countries outside ASEAN. As regional integration deepens, social security agreements will become even more important to ensure equal treatment of all ASEAN workers.

Social security agreements could make a tangible contribution towards realizing the commitment in the Cebu declaration to protect and promote the rights of ASEAN migrant workers. As the experience of many countries has shown, agreements can be a powerful tool to strengthen the social security protection of migrant workers.

There are specific actions that ASEAN countries can take to strengthen the social security protection of migrant workers. The vehicle for those actions consists of agreements between countries to coordinate their social security system in order to ensure that migrant workers, and their families, will have access to the programs of the countries in which they have worked. This report seeks to demonstrate the importance of such agreements and proposes specific measures that can be taken to begin the process of concluding agreements.

The development of a comprehensive network of ASEAN social security agreements –ideally in the form of a multilateral agreement – may take time. For most ASEAN countries, even the conclusion of the first social security agreement may take time. However, unless the process is begun, it will never be completed, and most ASEAN migrant workers will remain without social security protection. Without social security agreements, the greater integration of the ASEAN region, which offers so much hope for a better economic future for all the member countries, will be severely impeded.

Social security agreements can provide another of the building blocks for a more integrated, more cohesive and more prosperous ASEAN region. They ought to be made part of the fundamental blueprint for ASEAN's future.

Extension of social security coverage is one of the high priorities of the ILO's Decent Work agenda. The ILO stands ready to provide further technical assistance. In particular, it would be prepared, subject to financial resources being available, to assist social security institutions in ASEAN countries in the areas of (i) training on social security agreements for senior officials of ASEAN social security institutions and ministries, (ii) technical discussions on coordination of a provident fund and a social insurance scheme, and (iii) development of ASEAN 'model provisions' for social security agreements.

Introduction

At the January 2007 summit of the Association of Southeast Asian Nations (ASEAN), held in Cebu, Philippines, the heads of state and government of the ten ASEAN member countries[1] adopted a *Declaration on the Protection and Promotion of the Rights of Migrant Workers* [ASEAN 2007]. The Cebu declaration affirms the important contribution migrant workers make to the society and economy of both the host (receiving) and the sending states in ASEAN. It acknowledges the difficulties migrant workers and their families often encounter in exercising their rights. Most importantly, the Cebu declaration highlights the ASEAN member countries' commitment to take measures to safeguard the rights of migrant workers.

As numerous reports have documented, migrant workers often experience a wide range of disadvantages in the countries in which they are employed. Among these are legal and administrative barriers that impede, and in some instances completely prevent, migrant workers from gaining access to the social security programs of the host countries. A recent assessment of social protection systems in ASEAN member countries concluded that "… cross-border migrants generally enjoy lower access to basic social services and publicly-provided social protection than locals" [Cuddy et al 2006: 17].

This problem is not unique to the ASEAN member countries. It is found, in varying degrees, in states around the world.

The legislation establishing a country's social security programs must set out the eligibility requirements for benefits. The practical effect of some of those requirements, whether intended or not, is either to deny benefits entirely to migrant workers and their families or to severely restrict their access. An example of an eligibility requirement that explicitly targets migrant workers is the provision found in the legislation of some countries that limits eligibility for social security benefits to the nationals (citizens) of the country. There are other eligibility requirements commonly found in social security legislation which, while not obviously or exclusively directed to migrant workers, nonetheless disproportionately disqualify them. These include, for example, provisions in a country's social security legislation that tie eligibility to whether a worker and her/his family members reside in that country, or whether the worker has contributed for a certain number of years to the country's social security system.

In the majority of the world's countries, including many ASEAN members, the legislative barriers limiting migrant workers' access to social security benefits are compounded by the fact that social security systems cover only part of the labour force. Moreover, in some countries, social security laws may not be rigorously applied. Migrant workers are often employed in sectors of the labour market that either are not covered by social security or in which compliance with social security laws is poorly enforced. Even when migrant workers are employed in covered sectors

[1] Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.

and social security laws are enforced, irregular migrant workers are usually disqualified from social security benefits due to the fact that they are undocumented.

Extension of social security coverage is one of the high priorities of the ILO's Decent Work agenda [ILO 2001]. The issues involved in achieving this goal are complex, and there are no simple solutions, especially for developing countries in which substantial portions of the labour force are in the informal economy where coverage by social security programs is very low or, in many instances, virtually non-existent. In such circumstances, it may not be realistic to expect a host state to provide social security coverage to migrant workers when it cannot provide coverage to its own workers engaged in similar activities.

However, in those instances in which a migrant worker is engaged in employment that is covered by the social security programs of the host country, it is entirely legitimate to expect that the worker will, in fact, be covered by those programs, and that the workers and their family members will be entitled to benefits when an insured contingency occurs – for example, depending on the nature of the program, when the worker reaches the age of entitlement for an old-age pension, or if he or she becomes injured at work or dies, or if the worker or a member of the worker's family requires medical care.

The starting point must be to ensure that employers comply with the social security laws of the country of employment. If a migrant worker is not enrolled in the social security system of the host country, there is no possibility of receiving any benefits. Enforcing compliance is entirely the responsibility of the host state.

Migrant workers, however, will be no better off if a country only enforces compliance with its social security laws without, at the same time, taking steps to ensure that migrant workers and their families will have access to benefits when they need them.

A host state can take the necessary measures on its own. For example, it can ease requirements for a minimum period of contribution. However, such a unilateral change to a country's social security laws can have negative consequences for the social security scheme as a whole, for instance by substantially increasing the number, and therefore the aggregate cost, of benefits payable to national workers. Moreover, unilateral action on the part of a country in favour of migrant workers from other countries will not ensure that its own nationals working in those other countries will be similarly treated under the social security laws of those other countries.

For this reason, countries wishing to provide greater social security protection for migrant workers have generally opted for a reciprocal approach, through the conclusion of social security agreements. Such agreements seek to reduce, and whenever possible eliminate, the barriers that often disqualify migrant workers from social security benefits. There are hundreds of social security agreements currently in force, and their numbers grow each year. To date, however, no social security agreements have been concluded between any of the ASEAN member countries. Only one ASEAN state, the Philippines, has actively pursued agreements with countries outside ASEAN.

Social security agreements could make a tangible contribution towards realizing the commitment in the Cebu declaration to protect and promote the rights of ASEAN migrant workers. As the experience of many countries has shown, agreements can be a powerful tool to strengthen the social security protection of migrant workers. The purpose of this report is to assess the feasibility of social security agreements among the member countries of ASEAN.

The report consists of six chapters:

- Chapter 1 examines social security agreements in general, including their objectives and the mechanisms used to achieve those objectives. It discusses the respective advantages and disadvantages of concluding bilateral agreements (those involving only two countries at a time) and multilateral agreements (those involving three or more countries). It also provides examples of best practices in the coordination of social security systems and summarizes the process for negotiating, approving and implementing a social security agreement.
- Chapter 2 describes the key ILO conventions and recommendations regarding the social security rights of migrant workers. The applicability of those conventions and recommendations to ASEAN member countries is examined in chapter 5 of the report.

- Chapter 3 reviews the social security programs of the ASEAN member countries and assesses the extent to which specific provisions of those programs, in the absence of social security agreements, have the effect of restricting the access of migrant workers to social security benefits.

- Chapter 4 presents the available data on the flow of migrant workers between ASEAN member countries. It summarizes action to date at the regional and national level to provide migrant workers with access to social security.

- Chapter 5 presents options available to ASEAN member countries to strengthen the social security protection of migrant workers through the ratification of ILO conventions and the conclusion of bilateral and/or multilateral agreements. Legislative, conceptual, operational and administrative considerations are described.

- Chapter 6 suggests areas in which technical cooperation from the ILO could further the objective of strengthening the social security protection of migrant workers in ASEAN.

Three annexes supplement the report. Annex I to this report gives a more detailed description of the process for negotiating, approving and implementing a social security agreement. Annex II contains 'model provisions' for a social security agreement taken from the ILO *Maintenance of Social Security Rights Recommendation, 1983 (No. 167)*. Annex III summarizes the provisions of the social security programs of each ASEAN country.

In the course of the development of this report, two interim progress reports were presented to the Board of the ASEAN Social Security Association (ASSA), which brings together the CEOs of the social security institutions of most ASEAN member

countries.[2] The first interim report was made by Kenichi Hirose, Senior Social Protection Specialist at the ILO's Subregional Office for South-East Asia and the Pacific, at the ASSA Board's 19th meeting in Bangdung, Indonesia, on 25 April 2007. The second interim report was made by Edward Tamagno, the report's author, and Mr Hirose at the ASSA Board's 20th meeting in Manila, Philippines, on 17-18 October 2007. A draft version of this report was provided to the members of the ASSA Board at the Board's Manila meeting. Comments on the draft and additional information obtained during and following the meeting have been incorporated into this report.

[2] At the time of writing, there are no social security institutions from Cambodia and Myanmar which are members of the ASSA. However, the ASSA Board has expressed its interest in determining whether there are institutions in the two countries that could qualify for membership.

1. Social security agreements: An overview

A social security agreement coordinates the social security programs of two or more countries in order to overcome, on a reciprocal basis, the barriers that might otherwise prevent migrant workers and the members of their families from receiving benefits under the systems of any of the countries in which they have worked.

1.1. Definition of key terms

To describe how social security agreements operate, we define four key terms: social security, migrant worker, coordination, and reciprocity.

1.1.1. Social security

In its *2000 World labour report*, which assessed the state of income security and social protection around the world, the ILO defined social security as:

> … the protection which society provides for its members through a series of public measures:
> - to offset the absence or substantial reduction of income from work resulting from various contingencies (notably sickness, maternity, employment injury, unemployment, invalidity, old age and death of the breadwinner);
> - to provide people with health care; and
> - to provide benefits for families with children [ILO 2000: 29].

This definition of social security reflects the provisions of the ILO's *Social Security (Minimum Standards) Convention, 1952* (No. 102) which established the first comprehensive international standards for social security systems. Convention No. 102 identified nine branches of social security: medical (health) care, sickness benefits, unemployment benefits, old age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, and survivors benefits.

A social security agreement can include any of these nine branches. There are many examples of agreements that include as few as only one branch or as many as all nine.

Within each branch of social security, there are several possible types of programs, differentiated by their financing method, whether they are administered by the public or the private sector, whether they provide periodical cash benefits or lump-sum payments, and the extent to which the amount of cash benefits is linked to previous earnings or to current income. It is not unusual for a country to have more than one type of program within its overall social security system and, in some instances, even in a single branch. The types of social security programs are social insurance, universal coverage, provident funds, individual private accounts, employer-liability and social assistance.

- *Social insurance*, the most prevalent form of social security, consists of employment-related programs that are publicly administered and financed primarily by contributions from workers and employers. Additional income may come from the investment of the scheme's reserve funds and, if applicable, from government subsidies. Most cash benefits under a social insurance program are determined on the basis of a worker's previous earnings and, in the case of long-term benefits (for example, old age pensions), on the length of time the worker has been covered by the scheme. Cash benefits are payable for the duration of the contingency (in the case of old age, for example, until the beneficiary's death). In-kind benefits such as medical care and prescription drugs may be subject to co-payments or user fees. [3]

- *Universal coverage* refers to programs that are financed from general government revenues and that apply to the entire resident population, subject to whatever eligibility requirements may be prescribed in the scheme's legislation (for example, age, minimum period of residence in the country, etc). Cash benefits under a universal coverage scheme are usually in flat-rate amounts unrelated to previous earnings. As in the case of social insurance schemes, cash benefits are payable for the duration of the contingency, and in-kind benefits may be subject to co-payments or user fees.

- *Provident funds* are mandatory collective savings schemes that are publicly administered and financed from contributions by workers and/or employers and from the investment earnings of the fund. Contributions made by, or on behalf of, a worker are credited to the worker's account along with a part of the fund's investment earnings proportional to the balance in the worker's account. When an insured contingency occurs – for example, when a member of a provident fund reaches retirement age – the worker is entitled to withdraw part or all of the balance of her/his account as a lump-sum. The member has the option of using the lump-sum in whole or in part to purchase an annuity which will provide a periodic income. However, there is generally no mandatory requirement for the member to do so. Most provident fund allow a member to make withdrawals from his/her account before retirement age in prescribed circumstances (for example, in some provident funds, to purchase a home).

- *Individual private accounts* are retirement savings schemes which are similar to provident funds in that they are financed by contributions by workers and/or employers, and those contributions are credited to a worker's account along with earnings from the investment of previous contributions. Usually, certain tax advantages are given to this type of scheme. Unlike provident funds, however, systems of individual accounts are privately administered, subject to regulation and supervision by public agencies. When the worker retires, the funds in her or his account must be used to provide some form of periodic benefit, usually through the purchase of an annuity.

[3] The term 'co-payment' refers to the portion of the cost of an in-kind benefit which the insured person must pay from her or his own resources. For example, a co-payment of 10 percent means that the insured person must pay 10 percent of the cost. The term 'user fee' refers to a flat-rate amount that the insured person must pay each time that an in-kind benefit is provided.

- *Employer-liability schemes* are ones under which each employer is obligated to provide benefits or services to its employees when specific contingencies occur – for example, on termination of employment or if a worker suffers an employment injury. Unlike social insurance programs, which pool risks across all participating employers, individual employers are fully responsible under employer-liability schemes. Employers may purchase insurance to cover their liability.

- *Social assistance* programs are essentially the same as universal coverage schemes, except that entitlement is subject to a means-test. Benefits, therefore, are only available to persons with low or modest incomes.

In principle, a social security agreement can include any of the six types of programs just described. Starting in the early 20th century and continuing to this day, many agreements have been concluded that involve social insurance and universal coverage programs. In recent years, a growing number of social security agreements have also involved programs based on individual private accounts and social assistance. However, to the present time there is no social security agreement that includes a provident fund. The likely reasons for this are examined in section 5.1.1 of this report.

1.1.2. Migrant worker

Several definitions of migrant workers can be found in international instruments. For purposes of this report, a broad definition is used to encompass as many as possible of the persons who go from one country to another in search of work. Such a definition is found in the United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which was adopted by the UN General Assembly in 1990 and entered into force in 2003. Article 2(1) of the Convention defines a migrant worker as:

> a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national [UN 1990].

The UN Convention excludes some specific categories of workers from the definition of migrant worker, in particular civil servants and other representatives of a country who are posted to another country in a diplomatic, consular or other official capacity on behalf of the sending country. Social security agreements either also exclude such categories of workers from the application of their provisions or have specific provisions regarding the social security coverage of such workers. This is discussed in more detail in section 1.2.3.4.

There is one group of workers who are excluded from the definition of migrant worker by the UN Convention but who are usually included in social security agreements. These are seafarers employed on board a ship registered in a country of which the seafarer is not a national and to which he or she has not been admitted as a resident. The importance of including provisions in social security agreements dealing with the coverage of seafarers is discussed in section 1.2.3.3

1.1.3. Coordination

As already noted, social security agreements coordinate the operation of the social security systems of two or more countries. The choice of the word 'coordinate' is deliberate and important.

Coordination means establishing mechanisms through which the social security systems of different countries can work together to achieve mutually agreed objectives – in particular, ensuring that migrant workers have protection that is as complete and continuous as possible – while, at the same time, maintaining and respecting the separate definitions and rules of each system. Coordination does not involve replacing the different definitions and rules of each system with common definitions and rules, which is usually referred to as harmonization.

In theory, there is no reason preventing the conclusion of an agreement that harmonizes, rather than only coordinates, the social security systems of different countries. In practice, however, this would be a formidable challenge that has rarely, if ever, been achieved. No two national social security systems are identical, even in instances in which they are based on the same model and are very similar in design. Harmonization would require substituting common rules and definitions for those found in national legislation and would preclude a country from subsequently making unilateral changes to those common rules and definitions. In most cases this would result in changes to a country's social security system, and a loss of a country's ability to modify that system in the future, that most sovereign states would be unwilling to accept.

Coordination, on the other hand, leaves the rules and definitions of national legislation unchanged. It finds ways in which social security systems can be made to work together, in spite of the differences, in order, for example, to establish eligibility for their respective benefits when a migrant worker has been subject to the systems of two or more countries. While it can sometimes take considerable effort to find effective formulas for coordination, such formulas not usually require the types of changes that would be needed for harmonization.

1.1.4. Reciprocity

Reciprocity, which is fundamental to all social security agreements, means that each country which is a party to an agreement undertakes to apply the same mechanisms as every other party to make its social security benefits more accessible to migrant workers. Reciprocity also means that there is a reasonable degree of comparability in the obligations that each party assumes as a result of an agreement.

Among countries that have concluded social security agreements, there is a wide-ranging consensus regarding the mechanisms that can be used to give effect to the principle of reciprocity. These mechanisms, which have evolved over the course of many years, are discussed in detail in the following section of this report that examines the objectives of agreements and the means for implementing those objectives.

Determining what constitutes a reasonable degree of comparability of obligations is much more difficult to quantify. Some countries take an 'accounting' approach that focuses primarily on the projected costs of an agreement for each of the parties and whether those costs are approximately the same. Such a narrow view of comparability of obligations can, in particular, preclude agreements among countries that are at different stages of development. Other countries take a broader approach to comparability of obligations that factors in, for example, the levels of economic development among the prospective parties to an agreement and the relative capacity of the social security systems of the different countries to absorb the additional obligations that would result from an agreement.

1.2. Objectives of agreements

A social security agreement usually pursues five objectives to protect the social security rights of migrant workers. These fall under the headings of equality of treatment, provision of benefits abroad (export of benefits), determination of the applicable legislation, maintenance of rights in course of acquisition (totalizing), and administrative assistance.

1.2.1. Equality of treatment

Many countries base eligibility for social security benefits on a person's nationality. When a country has such nationality-based restrictions in its social security system, a worker or a member of a worker's family who is not a national of the country may not be eligible for any benefit at all, or may be entitled only to a lesser benefit than a national, or may be subject to more stringent eligibility requirements than a national. Whatever reasons a country may give to defend nationality-based restrictions to eligibility, the practical effect is to disqualify migrant workers and their family members from receiving benefits.

A primary objective of social security agreements is to overcome these nationality-based restrictions. Through an agreement, each country, as a party, undertakes to treat workers who are nationals of the other parties in the same way it treats its own nationals. Equal treatment is usually also extended to the worker's family members, irrespective of their nationality, in relation to the rights they derive from those of the worker – for example, medical care if they fall ill, or survivors benefits in the event of the death of the worker.

In the past, nationality-based restrictions to eligibility were a common feature found in the social security legislation of many countries. These restrictions are now less common due to a variety of factors, including court decisions that have struck them down in some countries. However, even when nationality-based restrictions are no longer part of a country's social security legislation, a guarantee of equal treatment in an agreement is still a useful safeguard in the event that a country may decide, in the future, to introduce (or re-introduce) such restrictions.

While the equality of treatment provision of an agreement is concerned primarily with the social security *rights* of a worker who is not a national of the country in which he or she is employed, it also applies to *obligations* – for example, the

obligation to pay contributions, and the obligation to inform the social security authorities of changes in circumstances that may affect ongoing entitlement to a benefit (for example, regaining the capacity for remunerated work which may affect entitlement to an employment injury or an invalidity benefit).

1.2.2. Provision of benefits abroad: Export of benefits

A country's social security legislation may prohibit entirely the payment of benefits or the provision of services to persons who reside outside its borders, or it may impose more stringent requirements for receipt of those benefits and services abroad than for receipt within the country itself. The second objective of social security agreements is to reduce, and whenever possible eliminate entirely, restrictions on the payment of benefits and receipt of services when a worker who had previously been covered by a country's social security system is no longer in that country.

Two types of provisions regarding export of benefits are found in social security agreements. One guarantees export to the territories of the other countries that are parties to the agreement, but not to 'third states' (countries not party to the agreement). The other guarantees export to all countries, including third states.

Even when an agreement only guarantees the export of benefits to the territories of the countries that are parties, there may, nonetheless, be a right to the receipt of benefits in third states if a country, under its social security laws, gives its nationals the right to receive benefits abroad. As a result of the equality of treatment provision of an agreement, a worker who is a national of any party must have the same rights as the nationals of the country under whose legislation the benefit is paid or the service provided. Unless the equality of treatment provision of an agreement is specifically restricted to persons who are in the territories of the countries that are parties, the guarantee of equal treatment extends to all workers who are nationals of any party wherever they may be, and, as a result, gives such workers the right to receive benefits in a third state.

There are exceptions to export of benefits that are commonly found in social security agreements. The most usual exception applies to social assistance benefits, including means-tested benefits that may be part of universal coverage and social insurance programs. The argument is made that these benefits are intended to alleviate domestic poverty and are set in amounts that are based on the economic and social circumstances of the paying country. According to this argument, export of these benefits is, therefore, not appropriate.

The argument against the non-export of social assistance benefits is usually persuasive. However, there are instances in which it is not applicable, especially if social assistance benefits form the only, or the primary, part of a branch of a country's social security system. In such a case, reciprocity may well require the export of some or all of the country's means-tested benefits since, otherwise, that country would be assuming few if any obligations under the export-of-benefit provisions while the other parties with systems based on, say, social insurance, might be assuming substantial obligations.

1.2.3. Determination of the applicable legislation

In some instances migrant workers may be required to pay contributions to the social security systems of two countries for the same work. Left unresolved, such situations of 'double coverage' can impose a high financial cost to a worker. Social security agreements eliminate double coverage by setting out rules to determine which one of the two systems will apply to the worker and which one will not. Social security agreements may also fill gaps in coverage that leave some migrant workers without any protection.

The rules given in a social security agreement for determining the applicable legislation – sometimes referred to as the 'coverage provisions' of the agreement – usually begin by stating, as a general principle, that a person who is employed in a country should be subject *only* to the social security laws of that country for that employment (in other words, *no other country's* social security laws should apply to the employment in question[4]). The coverage provisions of the agreement then go on to address the particular situation of certain categories of workers who are especially likely to encounter double coverage or gaps in coverage namely, detached workers, self-employed persons and seafarers. The coverage provisions also often address the situation of government employees of one country who perform their duties in another country. Finally, they usually contain a clause – referred to as the 'exception' or 'saving' provision – allowing the social security authorities of the countries that are parties to an agreement to make exceptions to the rules, by mutual consent, in specific cases when circumstances warrant.

1.2.3.1. Detached workers

The term 'detached workers', which is often used in technical discussions of social security agreements, refers to persons who are assigned by their employer to work in another country for a limited period of time for the same company or for a closely related company (for example, a parent or a subsidiary company). Under the social security laws of the country of origin, a detached worker might remain subject to those laws even during a period of work abroad because the period abroad is temporary in duration and the worker remains employed for essentially the same company. However, under the laws of the host country, the worker might also be subject to its social security laws because the work is being carried out in its territory.

As just noted, as a general rule, work performed in a country should be subject only to the social security system of that country. However, through a social security agreement, an exception is usually made for detached workers, so that such workers can have unbroken protection under their own country's social security system during the period of the assignment abroad. As a result of this exception, detached workers remain covered by the social security system of their country of origin and are exempt from the social security laws of the host country.

[4] This refers only to *mandatory* coverage under another country's social security law. *Voluntary* coverage, which is permitted under some country's social security laws, does not contravene the general principle.

Several considerations need to be stressed:

- In order for a detached worker to qualify for an exemption from the social security system of the host country, the worker must be covered by the system of the country of origin prior to the start of the assignment. Otherwise the detached worker will be covered by the system of the host country on the same basis as all other workers in that country. The requirement of prior coverage to the system of the country of origin ensures that the detached-worker provisions of an agreement are not used simply as a means of avoiding contributions to the system of the host country.

- The exemption from the social security system of the host country applies only to the employment which is the basis of the assignment. If the worker takes up a second job with a different employer in the host country, he or she will be subject to the host country's social security system for this other job.

- The period of the assignment must be of limited duration. The meaning of the term 'limited duration' is set out in the applicable social security agreement. Under some agreements it can be as short as one year, and under others as long as five years. With the prior mutual consent of the social security authorities of the host and sending countries, the period can be extended beyond the time limit specified in the agreement in particular cases – for example, if the work that is the basis of the assignment cannot be completed in the time originally foreseen and the detached worker must remain in the host country for an additional period.

Detached workers are often well-remunerated senior managers or professionals with specialized skills and knowledge. In this sense, they differ significantly from the great majority of migrant workers. They are, nonetheless, migrant workers. With the increasing globalization of the world economy, the role played by detached workers has become critical for many companies and countries. For some countries, resolving situations of double coverage for their detached workers can be the primary reason for seeking a social security agreement with another country or group of countries. In such situations, regulating the social security coverage of detached workers can be the starting point for an agreement that will benefit all migrant workers, including those who are in particular need of social security protection because of the precarious nature of their employment.

1.2.3.2. Self-employed persons

Self-employed persons who carry out their activities in more than one country also often find themselves subject to double coverage. This is usually due to the fact that countries which cover the self-employed in their social security systems take different approaches to that coverage.

Some countries base the coverage of self-employment on where the self-employment is carried out. Self-employed activities performed in the territory of such countries are subject to their social security laws, irrespective whether the self-employed person resides in the country or not, while self-employed activities performed outside their territory are not covered. Other countries, however, base the coverage of self-employment on where the self-employed person resides. A self-employed person who resides in such a country is subject to the country's social security laws for all

self-employed activities in whatever countries the activities may be performed. On the other hand, a self-employed person who does not reside in the country is not subject to the country's social security laws for any self-employed activity performed there.

When a self-employed person who resides in one of the latter type of countries carries out activities in one of the first type of countries, double coverage will occur. On the other hand, when a self-employed person who resides in one of the first type of countries carries out activities in the one of the latter countries, there can be a gap in coverage.

Through a social security agreement, the double coverage of self-employed persons can be avoided and, in some instances, gaps in coverage of the self-employed can be filled. The means for accomplishing these goals vary considerably from agreement to agreement and depend on the specific legislation and practice of the countries concerned. In some instances, countries cannot find a mutually acceptable general approach regarding the legislation applicable to the self-employed and opt instead to resolve each occurrence on a case-by-case basis through consultations between their respective social security authorities using the 'saving' provision (see section 1.2.3.5). While less than an ideal solution, it is sometimes the only practical one.

1.2.3.3. Seafarers

As noted earlier, seafarers are not migrant workers in the usual sense of the term. Seafarers do not usually leave their country of origin in order to work in another country. From a social security perspective, however, their situation while working on board a ship is not materially different from that of a migrant worker employed in another country, and seafarers often encounter precisely the same barriers to social security protection.

The 'classical' approach to social security for seafarers, which is still used by many countries, is to base coverage on the flag of the ship – that is, on the country in which the ship is registered. Under this approach, often referred to as the 'flag rule', persons employed on board a ship flying a country's flag are subject to that country's social security system.

The flag rule reflects the circumstances of a time in the past when most major coastal nations in the industrialized world had their own mercantile fleets. Those fleets were usually registered in the country of ownership, and crews were recruited either from the same country or from nearby countries.

Today, the situation is quite different. Crews are now often recruited from countries which are distant from the one whose flag the ship is flying. Irrespective of ownership, ships often fly flags of convenience for tax purposes. Most of the countries offering flags of convenience either have no social security system at all or only a minimal system. Enforcement of social security laws, even when they do apply, is often weak to non-existent, especially in regard to seafarers from other countries who have no attachment to the country whose flag the ship is flying.

An alternative to the flag rule is to base the social security coverage of the crews of ships on a seafarer's country of residence or on the country in which the contract of

employment is concluded. This pre-supposes that seafarers are covered under the social security system(s) of the latter country(ies).

When a seafarer who resides or is recruited in one of the latter group of countries is employed on board a ship flying the flag of a country that uses the flag rule to determine the coverage of seafarers, double coverage will occur. In such cases, a social security agreement can resolve the problem by specifying which criteria, flag or country of residence/recruitment, will be the determining factor.

An agreement can also provide coverage where none would otherwise exist, for example if a seafarer is recruited in a country other than his or her own to work on board a ship flying the flag of a country that does not apply a flag rule (or that does not have a social security system). An agreement can, for example, specify that all persons who reside in any of the countries that are party to the agreement and who are recruited in any of these countries to work on board a ship will be subject, in regard to that employment, to the social security laws of their country of residence.

Although the preceding discussion has dealt exclusively with seafarers, the same difficulties can arise for the crews of airplanes and for persons working on off-shore oil rigs and installations for mining gas and mineral resources on or under the seabed. Solutions similar to those for seafarers can be used to resolve these difficulties.

1.2.3.4. Government employees

As noted in section 1.1.2, government employees are not usually included in the category of migrant workers. However, social security agreements often have provisions regarding the social security legislation applicable to employment performed for the government of one country in another country. Therefore, in order to provide a comprehensive overview of agreements, some comments regarding government employment are in order.

Three distinct categories of government employment need to be considered: diplomatic and consular officials posted from one country to another, other government officials, and 'locally engaged' staff..

Diplomatic and consular officials

Article 33 of the *Vienna Convention on Diplomatic Relations* [UN 1961] and Article 48 of the *Vienna Convention on Consular Relations* [UN 1963] provide that diplomatic and consular officials posted by one country to another are exempt from the social security laws of the receiving country.[5] Although the convention on diplomatic relations (but *not* the convention on consular relations) permits a social security agreement to override the exemption, no country is likely to allow this to happen, nor is there any reason for it to happen. The social security coverage of diplomatic and consular officials is clearly within the sole competence of the sending country.

[5] The conventions also deal with the social security coverage of a 'private servant' of a diplomatic official and a 'member of the service staff' of a consular official.

Most social security agreements are silent concerning the social security coverage of diplomatic and consular officials since the conventions on diplomatic and consular relations are definitive in this regard. However, some countries nonetheless prefer an explicit statement in a social security agreement confirming that the provisions of the two conventions regarding social security are not affected by the agreement.

Other government officials

Although there are no international instruments dealing generally with government officials other than diplomatic and consular staff who are posted by one country to another, the same principle that applies to diplomatic and consular officials also applies to other government officials. Such officials are covered only by the social security laws of the sending country and are exempt from the social security laws of the receiving country.

Most social security agreements do not define the term 'government officials' or 'government employment' since the meaning of the terms is usually self-evident. If a question arises in a particular case, it can be settled by the competent authorities of the countries concerned through mutual consultations.

Some social security agreements, however, contain a specific definition of government official or government employment in order to prevent future misunderstandings. In a federal state, for example, it might be necessary to state explicitly in an agreement that 'government officials' includes officials of the sub-national entities (the states or provinces) as well as the officials of the federal (central) government. Depending on a country's social security laws, it might also be necessary to state explicitly that members of the police force or personnel of the armed forces are included among government officials.

Locally-engaged staff

The term 'locally-engaged staff' refers to persons who reside (usually permanently) in a country and who are employed in that country to work for a diplomatic or consular post, or a government ministry or agency, of another country. In keeping with the general rule for the coverage of workers discussed at the start of section 1.2.3, such workers should be covered by the social security system of their country of residence and employment (i.e. the host country), just like all other workers in the host country. However, the host country cannot impose its social security laws on another sovereign state without the concurrence of that other state. A provision in a social security agreement regarding locally-engaged staff constitutes, in effect, that concurrence.

1.2.3.5. Saving provision

However well the provisions of a social security agreement concerning the determination of the applicable legislation have been drafted, unusual cases will, from time to time, inevitably arise. Attempting to anticipate all such cases in advance would be a daunting task requiring a great deal of time and effort for situations that may occur only rarely, if at all. Moreover, the probability of comprehensively anticipating all possible eventualities is small.

For this reason, social security agreements usually contain specific provisions dealing only with the situations in which questions concerning the determination of the applicable legislation are most likely to arise – as already discussed, detached workers, self-employed persons, seafarers and, in many instances, government employees.

For all other situations, agreements usually contain a 'saving' provision that allows the competent authorities of the countries concerned to determine the applicable legislation through mutual consultation. The same saving provision can also be used when either the general rule for coverage, or the specific rules for categories of workers such as detached workers and self-employed persons, is not suitable in a particular instance.

It must be stressed that the saving provision can only be used after the competent authorities of the countries concerned have consulted one another and have agreed that an exception is in order. The saving provision does not allow a country to alter unilaterally the provisions of a social security agreement concerning the applicable legislation.

1.2.4. Maintenance of rights in course of acquisition: Totalizing

To be eligible for benefits under a country's social security system, a worker must fulfil the eligibility requirements specified in the legislation establishing the system. One of those requirements often involves a qualifying period – a minimum period of affiliation that must be fulfilled to be entitled to a benefit. Depending on the type of program, affiliation can mean a period of contribution, covered employment, or residence. In a social insurance program providing old age benefits, for example, at least five years of contribution might be needed for entitlement to a pension at the pensionable age. In addition to, or sometimes instead of, a minimum period of affiliation, a social security program might also require affiliation at the time of the occurrence of the contingency giving rise to the benefit (for example, for an old age benefit, at the time of reaching the pensionable age) or for a period immediately before the contingency occurs (for example, in the case of an invalidity pension, for at least a year before becoming disabled).

Migrant workers often encounter situations in which they have been affiliated with a country's social security system, but not for a period of sufficient length to meet the requirements of the qualifying period. Even if a migrant worker has had a lengthy affiliation with the system, the period of affiliation might have been in the past, so it does not meet the requirement for affiliation at the time of the occurrence of the contingency or immediately before. The result, in any of these cases, is that the worker is ineligible for benefits. In the same way, members of the worker's family may be ineligible for derived benefits, such as a survivors pension or medical care.

Social security agreements assist migrant workers and their family members to become eligible for benefits under the systems of the countries in which they have worked through adding together, or totalizing, the periods of affiliation in all the countries that are parties to the agreement in order to meet the requirements of a qualifying period.

To take an example of how totalizing works in practice, suppose that four countries, designated A, B, C and D, are all parties to an agreement, and that the legislation of each country requires a minimum of 10 years of contribution to be eligible for an old age pension. Suppose further that a migrant worker has contributed for 20 years to the pension scheme in country A, 8 years to the scheme in country B, 5 years to the scheme in country C, and 3 years to the scheme in country D.

In the absence of a social security agreement between the four countries, the worker would only be eligible for an old age pension from country A. He or she would not be eligible for a pension from countries B, C and D because the worker has not completed the minimum qualifying period of 10 years. Through the totalizing provisions of an agreement, however, the worker becomes eligible for pensions from all these countries because her or his combined period of contribution in the four countries is, in the example, 36 years, well above the minimum of 10 years required by each country's system.

Once eligibility for a country's benefit is established through totalizing, the amount of the benefit payable is usually determined in relation to the length of the period of affiliation to the country's social security system. The exact method for making the calculation is set out in the agreement. Two methods are commonly used: proportional calculation and direct calculation. In some social security agreements a different calculation method, known as integration, is used.

1.2.4.1. Proportional calculation

Proportional calculation involves first determining the theoretical amount of the benefit that would be payable if the totalized periods under the social security systems of all the countries taken together had been completed under the system of each country alone. In determining the theoretical benefit, the social security institution of each country applies the benefit-calculation rules specified in its own legislation. The actual benefit that an institution pays is determined by multiplying the theoretical benefit by a fraction that represents the ratio of the periods completed under the system administered by that institution and the totalized periods completed in all the countries taken together.

To return to the example just given, the institution of country B would calculate the theoretical benefit to which the worker would be entitled if she or he had completed 36 years in country B's social security system. The institution would then multiply the theoretical benefit by 8/36 to determine the benefit that it would pay to the worker (since, in the example, the worker had completed eight years under country B's social security system). The institutions of countries C and D would proceed in a similar manner, first by calculating the theoretical benefits payable under their respective systems if the worker had completed 36 years in each, and then multiplying the theoretical benefits by the appropriate ratios, resulting in 5/36 in the case of country C and 3/36 in the case of country D. Since the worker had already met the requirements of the qualifying period under the system of country A, without the need for totalizing (in the example, country A's system requires a minimum of 10 years and the worker has completed 20 years), the institution of country A would usually calculate its benefit directly under its legislation.

It can sometimes occur that a worker's totalized periods exceeds the maximum period to be taken into account under a country's social security law. In such a case, the maximum period, not the totalized period, is used in the calculation for that country. Returning again to the example, suppose that, under the system of country B, 35 years of contribution gives entitlement to a full pension. Then the theoretical benefit under the system of country B will be based on 35 years, and the ratio used in calculating the actual benefit payable will be 8/35.

1.2.4.2. Direct calculation

Under the method of direct calculation, as the name suggests, the institution of each country calculates the benefit it will pay using the rules specified in its legislation, without the need for determining a theoretical benefit. Since direct calculation is a one-step process that is simpler to administer than proportional calculation, it is the preferred option for many countries.

Direct calculation works well when the benefit formula provides for a uniform rate of accrual of a benefit for each period of affiliation – for example, two percent of final earnings for each year of contribution. However, it can result in disproportionately large benefits in relation to the period of affiliation when the benefit formula includes a flat-rate amount (an amount that is payable irrespective of the length of previous affiliation) or if the benefit formula involves a variable rate of accumulation (for example, three percent of final earnings for each of the first 10 years of affiliation, and two percent for each of the next 20 years).

The decision whether to use proportional calculation or direct calculation in a social security agreement will depend largely on the way in which benefits are calculated under the systems of the countries that are parties to the agreement. An agreement does not have to specify the exclusive use of one calculation method for all the parties. Different parties can use different methods, as long as all agree that the principle of reciprocity – the comparability of obligations – is respected.

1.2.4.3. Integration

Instead of each country paying a partial benefit calculated in relation to the time a worker has been affiliated with its social security system, some agreements employ a third method for determining the amount of benefit payable when eligibility is determined through totalizing. This method is usually referred to as integration.

Under integration, the institution of one country pays a full benefit calculated according to its rules and taking into account the periods completed in all the other countries that are parties to the agreement. The other countries pay no benefits at all. The paying country is usually the one to whose system the worker was last affiliated or the one in which the worker and/or family members are residing at the time of the occurrence of the contingency giving rise to the benefit.

Integration can be an effective solution in the case of short-term benefits (for example, cash sickness and maternity benefits). However, for long-term benefits such

as pensions for old age, invalidity[6] and survivors, integration is generally only considered among countries in which the formula for calculating benefits, and hence the resulting amount of benefits, are similar and there is an approximately equal flow of migrant workers between them. If any of these conditions does not apply, integration will likely result in some countries incurring far higher costs than others. For this reason, integration is seldom used in relation to long-term benefits.

In the case of benefits in kind (medical care, and rehabilitation and other services that may be linked with cash benefits for invalidity and employment injuries), there is no practical alternative to integration. One of the key issues in a social security agreement is to determine which country's system will be responsible for providing the benefits in kind and the rules for apportioning the costs of those benefits – for example, whether the institution providing the services will pay the full costs, or whether those costs will be charged in whole or in part to the other systems to which the worker has been affiliated. The issue of the apportionment of the costs of benefits in kind can be particularly difficult to resolve, especially when the quality and cost of the services in question vary substantially between countries seeking to conclude a social security agreement.

1.2.5. Administrative assistance

Ensuring that claimants are eligible for the benefits for which they are applying and that beneficiaries remain eligible for the benefits they are receiving can be challenging for any country's social security institution. The challenge becomes all the greater when the claimants or beneficiaries are outside the territory of the country in which the institution is located. These difficulties alone can be used to justify denying, or severely restricting, benefits to persons living abroad.

As discussed previously, one of the objectives of a social security agreement is to overcome, or at least reduce, barriers to the export of benefits. The related provisions in an agreement deal with the *legal* barriers to export of benefits. The *administrative*

[6] There are two ways, generally speaking, in which the amount of an invalidity pension can be calculated under a country's social security laws. The most commonly used method basis the amount of the pension on the length of a worker's period of contribution and the wages of the worker before becoming disabled; a flat-rate component is sometimes added to the wage-related component. A worker's period of contribution may include part or all of the 'future period' between the onset of the invalidity and the time the worker reaches retirement age (the age of entitlement to an old age or retirement pension). The second method for calculating the amount of an invalidity pension takes account *only* of the worker's wages before becoming disabled; *no* account is taken of the length of the worker's period of contribution. When a social security agreement applies to a system which uses one of the two methods just described to calculate the amount of an invalidity pension and to another system that uses the other method, the agreement usually contains provisions for calculating the amount of the respective benefits whether or not totalizing under the agreement is needed to determine eligibility for an invalidity pension. Otherwise, the disabled worker could receive, in effect, 'double benefits'. For example, both benefits may be prorated to reflect the period completed under the social security system of each country in relation to the combined systems of both (all) the countries. Alternatively, the disabled worker may only be entitled to the benefit from the system to which she or he was affiliated at the time of becoming disabled.

difficulties, however, remain. Another objective of agreements is to reduce these administrative difficulties by providing for mutual administrative assistance between the social security institutions of the parties to the agreement.

There are different forms of administrative assistance. Under an agreement, the social security institution of a country will usually accept applications for benefits from the other countries that are parties to the agreement when the claimants reside, or are present, in the territory of the first country. Besides physically receiving the application and forwarding it to the institution of the other country, which remains responsible for deciding whether or not the application will be approved, the institution of the first country will also certify a variety of information that the institution of the other country will require to reach a decision. This can include, depending on the type of benefit, dates of birth of the applicant and family members, marital status, dates of death, and other such data. When totalizing is required to determine eligibility, the institution receiving the application will also provide the institution of the other country information on the worker's affiliation to the social security system it administers. In this way, the institution of the latter country can apply the totalizing provisions of the agreement, if needed, to determine the worker's eligibility for a benefit. In the case of applications for invalidity and employment injury benefits, it will provide any medical information it has regarding the applicant's condition. When required, the institution receiving the application will usually arrange additional medical examinations on behalf of the institution of the other country.

Administrative assistance is not limited to new applications for benefits. It can be equally important when an institution that is paying a benefit to a person in another country needs to verify that the person is still alive and continues to be eligible for the benefit – for example, in the case of a survivors pension which ceases on remarriage, that the beneficiary has not remarried. Administrative assistance can be particularly important for determining ongoing eligibility for invalidity and employment-injury benefits.

Generally, the cost of providing administrative assistance under a social security agreement is absorbed by each institution. However, agreements sometimes provide for the reimbursement of the costs of specific types of assistance – for example, arranging and conducting medical examinations – if those costs are appreciable and the institution providing the assistance does not require the resulting information for determining new or ongoing eligibility for benefits under the programs it administers.

1.2.6. Limited agreements

Most social security agreements achieve all five of the objectives that have been described in sections 1.2.1 to 1.2.5. Sometimes, however, countries are only able to find mutually acceptable means for achieving some, but not all, of the objectives.

In such cases, an option that is sometimes used is to conclude a limited agreement that provides only for the objectives on which mutually acceptable solutions have been found. The inventory of social security agreements compiled by the ILO [2002] includes, for example, several agreements concluded by the United Kingdom that deal exclusively with determining the applicable legislation, and the related aspects

of equality of treatment and administrative assistance, but not with export of benefits and totalizing.[7] Franssen and de Jonge [2006] describe agreements concluded by the Netherlands dealing only with export of benefits and related aspects of administrative assistance.[8]

Clearly, the most desirable outcome is an agreement that achieves all five objectives. However, when this does not seem possible, a limited agreement can at least remove some of the barriers that migrant workers would otherwise face. Moreover, a limited agreement can provide a foundation on which a broader agreement can be built in the future.

1.3. Bilateral and multilateral agreements on social security

Most social security agreements are bilateral, involving two countries. However, there are some notable examples of multilateral agreements to which many countries are party. These include, in particular, the regulations of the European Union (EU) that coordinate the social security systems of the 27 EU member-states. In discussing social security agreements, it is worthwhile to consider the factors in favour of a multilateral or a bilateral approach to the conclusion of agreements.

As the ILO [1996; Kulke 2006] and the World Bank [Holzmann et al 2005] have pointed out, the greatest advantage of a multilateral agreement is that it sets common standards and rules for coordinating the social security systems of all the countries that are parties to the agreement. In particular, a multilateral agreement ensures equal treatment of all workers, irrespective of their countries of origin, in regard to their rights and entitlements under all the participating countries' social security systems. In a network of bilateral agreements, on the other hand, migrant workers in a country might have different rights and entitlements, depending on the terms of the bilateral agreement between their countries of origin and the country of employment. Thus, although one of the objectives of social security agreements is equality of treatment, bilateral agreements may result in "inequality among foreigners in the same country of employment" [ILO 1996: 7].

A multilateral agreement can also ease the administrative burden of implementing agreements by setting common procedures and forms applicable to all dealings between the social security institutions of the participating countries. Under bilateral agreements, procedures and forms may vary from agreement to agreement, making administration more complex and increasing the chance for errors.

[7] For the text of such an agreement, see "Convention on Social Security between Canada and the United Kingdom of Great Britain and Northern Ireland". http://www.hrsdc.gc.ca/en/isp/ibfa/countries/agreements/uk-a.shtml, accessed on 22 October 2007.

[8] For the text of such an agreement, see "Agreement between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Thailand on the export of social insurance benefits". In *Tractatenblad van het Koninkrijk der Nederlanden*. Jaargang 2002, Nr. 219.

These significant advantages of multilateral agreements, however, need to be assessed in light of the time and effort that may be required to find terms and conditions for coordination that are mutually acceptable to all the parties. Considerable time and effort are sometimes needed to find solutions for the coordination of the social security systems of only two countries. There are examples of bilateral discussions that have extended over a decade or even more. A multilateral agreement, involving several parties, can require even longer before discussions can be successfully concluded.

Until a social security agreement – whether bilateral or multilateral – is in place, there is no coordination of the systems of the countries concerned, and the rights of migrant workers will be limited to those provided by national legislation alone. If a bilateral agreement, especially an agreement involving two countries between which there is a substantial movement of migrant workers, can be concluded in appreciably less time than would be required for a multilateral agreement involving those and other countries, the countries concerned need to consider whether the theoretical advantages of a multilateral instrument that could be years in the future outweigh the tangible benefits of a bilateral agreement that could be in place much sooner.

Another consideration is that bilateral agreements, like the limited agreements discussed in section 1.2.6, can provide a basis for later, broader agreements – in this case, for multilateral agreements. Especially for countries with no experience in the negotiation and administration of social security agreements, bilateral agreements can provide a useful vehicle for gaining that experience and developing their own best practices.

If a country decides to follow a bilateral approach, at least for an initial period, it is important that it first determine its preferences for achieving the five objectives of social security agreements, taking into account the particularities of its national legislation. For example, what is its preferred approach to determining the legislation applicable for self-employed persons and seafarers, and what options would it be prepared to accept if its preferred approach is incompatible with the approach proposed by another country? What types of periods under the social security system of another country will be taken into account when totalizing to determine eligibility for benefits? How will its institution calculate the benefit payable when eligibility is determined through totalizing?

Setting in advance the parameters for responding to the five objectives of social security agreements will contribute significantly to ensuring consistency among a country's bilateral agreements. This will substantially reduce, although not necessarily eliminate altogether, a patchwork of different rights that vary according to a migrant worker's country of origin and the terms of the bilateral agreement with that country. It can also facilitate, at a later stage, the conclusion of a multilateral agreement to replace some or all of the bilateral agreements.

1.4. Best practices in coordinating social security systems

In examining the network of social security agreements that are currently in force, three examples of best practices warrant particular mention: the regulations of the European Union (EU) regarding social security, the CARICOM (Caribbean

Community) Agreement on Social Security, and the 'third-state' totalizing provision found in some bilateral social security agreements.

1.4.1. European Union regulations on social security

The EU regulations on social security coordinate the social security systems of the 27 member-states of the Union and constitute the most far-reaching multilateral agreement in existence, both in terms of the number of persons covered and the comprehensiveness of the coordination.

The key regulation is EC regulation 1408/71, which entered into force on 1 October 1971 and has been amended on numerous occasions in response to various factors, particularly the expansion of the EU, the evolution of the social security legislation of its member-states, and decisions of European courts. Regulation 1408/71 responds to all five of the objectives of social security agreements described in section 1.2 of this report. It covers all branches of social security. Regulation 1408/71 is complemented by regulation 574/72 which establishes the rules and procedures for its implementation.

In its original form, regulation 1408/71 applied, generally speaking, only to nationals of EU member-states and to some nationals of non-EU countries living in the EU. Regulation 859/2003, which entered into force on 1 June 2003, extended the coverage of regulation 1408/71 to all persons, irrespective of nationality, who reside legally in the EU. Taken together, regulations 1408/71 and 859/2003 ensure complete social security protection for all legal migrant workers in the EU.

The EU regulations have largely replaced a complex set of bilateral agreements that had previously coordinated the social security systems of many, but not all, of the EU member-states. In doing this, the regulations have filled the gaps that existed when countries did not have bilateral agreements. The regulations have also instituted consistent provisions applicable to all the persons legally resident in the EU in place of provisions that varied according to many factors, particularly the nationality of the persons concerned.

1.4.2. CARICOM Agreement on Social Security

The CARICOM Agreement on Social Security is perhaps the most successful example outside Europe of the multilateral coordination of social security systems. CARICOM consists of 25 states and territories of the English-speaking Caribbean and Suriname.

Historically, there has long been a significant movement of migrant workers within the English-speaking Caribbean. Since the first states in the region gained their independence from the United Kingdom in the 1960s, all have established social security systems, most of which are based on a social insurance model and contain similar provisions regarding the types of benefits and eligibility requirements.

The CARICOM Agreement on Social Security, which 13 states and territories have signed and ratified to date, applies to the long-term benefits – old age, retirement,

invalidity and survivors pensions – provided under the social security systems of these states. The agreement responds to all five of the objectives of social security agreements.

1.4.3. 'Third-state' totalizing

Even when two countries have concluded a bilateral social security agreement that provides for totalizing, a migrant worker might nonetheless still not have sufficient periods of affiliation with the social security systems of the two countries to qualify for a benefit from either, or the worker might only qualify for a benefit from one country. Such a situation is especially likely to occur if a worker has been employed in several countries during his or her working life and the period of employment in some of those countries has been relatively short. To overcome this problem, some countries have included 'third-state' totalizing provisions in their bilateral social security agreements.

Under third-state totalizing, if a worker is not eligible for a benefit even after totalizing periods under the social security systems of the two countries that are parties to the bilateral agreement, but if the worker has completed periods under the social security system of another country (a 'third state'), periods in that third country can be added to periods in the first two countries to determine the worker's eligibility for a benefit under the social security systems of the first two countries. In order for third-state totalizing to apply, the third country must be one to which both of the first two countries are bound by bilateral or multilateral social security agreements that provide for totalizing.

As a practical example of third-state totalizing, consider the case of a worker who has spent part of her or his working life in Canada and part in two or more countries that are parties to the CARICOM Agreement on Social Security and that have also concluded bilateral social security agreements with Canada.[9] In spite of the totalizing provisions of Canada's social security agreements, the worker might still not have enough periods in Canada and any one of the Caribbean countries alone to qualify for a Canadian benefit. However, because of the third-state totalizing provisions in most of Canada's agreements with Caribbean countries, Canada, in such a case, would take into account the periods in Canada and all the other countries taken together to determine the worker's eligibility for a Canadian benefit.

Third-state totalizing links together the totalizing provisions of separate bilateral and multilateral social security agreements. It provides an additional element of protection for the social security rights of migrant workers.

[9] Of the 13 countries that have signed and ratified the CARICOM Agreement, Canada has concluded bilateral social security agreements with nine.

1.5. Process for negotiating, approving and implementing a social security agreement

The negotiation, approval and implementation of a social security agreement involves, generally speaking, an eight-step process:

- *Preliminary discussions:* Social security experts of the countries concerned meet to exchange information on their respective social security programs that might be included in an agreement (for example, the branches of social security that are covered by their systems, the types of benefits paid under each branch, the eligibility requirements for the benefits, the method for calculating the amount of the benefits). The experts also inform each other regarding their countries' preferences regarding the application of the principles underlying social security agreements (equality of treatment, portability of benefits, determining the legislation applicable, totalizing, administrative assistance).

- *Preparation of a preliminary draft of an agreement:* Either in the course of the preliminary discussions or through a subsequent exchange of correspondence, the countries concerned decide which one will prepare a preliminary draft of an agreement which will serve as the starting point for negotiations. Sometimes it is decided that each country will prepare its own preliminary draft.

- *Negotiations:* The countries concerned hold one or more rounds of negotiations to agree on the text of an agreement. At the conclusion of the negotiations, when the complete text of the agreement has been agreed, the heads of each countries' delegation usually initial the agreed text.

- *Review of the agreed text:* The agreed text is reviewed by the relevant authorities of each country (for example, ministries of foreign affairs and justice), in accordance with national law and practice. If, as a result of this review, changes are required to the initialled text of the agreement, the changes must be agreed by all the countries concerned.

- *Signing of the agreement:* Once all the relevant authorities of each country have concurred with the text of the agreement, the agreement is signed.

- *Approval of the agreement:* Following the signing of the agreement, it must be approved or ratified by each country in accordance with its constitution, laws and/or treaty practices. The approval process often involves submitting the agreement to the parliament of each country.

- *Conclusion of an administrative arrangement:* The social security agreement establishes the legal framework for the coordination of the social security systems of the countries concerned. It also sets out the principles that will underlie the administrative assistance that the social security authorities and institutions of each country will provide to the authorities and institutions of the other country(ies). A subsidiary instrument, known as an administrative arrangement, describes in greater detail how the administrative assistance will be provided (modalities, procedures, etc.). The administrative arrangement is essential to the implementation and administration of the agreement. Therefore, it

should usually be concluded and signed before the agreement enters into force. Any forms required for the implementation and administration of the agreement should also usually be agreed before the agreement enters into force.

- *Entry-into-force of the agreement:* Once each country has concluded its legal requirements for the approval or ratification of the agreement, the agreement enters into force on a date that is usually determined in accordance with a provision of the agreement itself (for example, on a date agreed through an exchange of diplomatic notes).

The time required to complete the eight-step process just described can vary significantly from one agreement to another. It seldom can be done in less than a year and a half, and considerably longer is often needed.

Annex I gives a detailed description of the process for negotiating, approving and implementing a social security agreement.

2. ILO conventions and recommendations

The ILO has a long history of legal instruments to strengthen the social security rights of migrant workers [ILO 1996; Kulke 2006]. The earliest two such instruments – the *Equality of Treatment (Accident Compensation) Convention, 1925* (No. 19) and the *Maintenance of Migrants' Pension Rights Convention, 1935* (No. 48) – are limited in scope and deal only with particular branches of social security. Three more recent ILO legal instruments – the *Equality of Treatment (Social Security) Convention, 1962* (No. 118), the *Maintenance of Social Security Rights Convention, 1982* (No. 157), and the *Maintenance of Social Security Rights Recommendation, 1983* (No. 167) – are comprehensive and deal with all branches of social security.

2.1. Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Under Convention No. 19, each ratifying country undertakes to ensure that 'foreign workers' – the nationals of all other ratifying states working in the country – will be afforded equal treatment with its own nationals in the application of its laws regarding compensation for work accidents (now usually referred to as employment injuries). The guarantee of equal treatment extends to the dependants of workers.

The obligations a country assumes in ratifying Convention No. 19 relate both to the *coverage* of foreign workers under its work accident laws and to the *payment of benefits* to those workers and their dependants. In each case, foreign workers and their dependants must have the same protection and the same rights as workers who are nationals of the country and their dependants.

Convention No. 19 has a limited provision regarding the export of benefits. This provision prohibits the imposition of residence conditions meant specifically to prevent foreign workers and their dependants from receiving benefits abroad. As a result, if, under a country's work accident laws, its nationals and their dependants can receive work accident benefits while outside the country, foreign workers and their dependants must also be eligible to receive benefits abroad.

Convention No. 19 has been ratified by 120 countries, including among the ASEAN member countries Indonesia, Malaysia, Myanmar, Philippines, Singapore and Thailand.

2.2. Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)

Convention No. 48 provides for totalizing to determine eligibility for old age, invalidity and survivors benefits under the legislation of all the ratifying countries. It also provides for export of benefits, subject to some limitations. While still in force for seven countries which have ratified it and not later denounced it, Convention No. 48 has been shelved since the adoption of Convention No. 157, discussed below, which revises it. No ASEAN member country has ratified Convention No. 48.

2.3. Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Convention No. 118 provides for equality of treatment in all nine branches of social security. It also provides for the export of some benefits.

In ratifying Convention No. 118, a country does not need to accept the convention's obligations for all nine branches. It may limit the application of the convention to as few as one branch. After ratification, a country can subsequently add other branches if it so decides. However, before a country can accept the convention's obligations for any branch of social security, it must have a program regarding that branch which is 'in effective operation' and which covers its own nationals in its territory who meet the conditions for coverage specified in the program's legislation. The program can be any of the types described in section 1.1.1, but it cannot be a special scheme for civil servants or war victims. Convention No. 118 also does not apply to 'public assistance', a term which is not defined in the convention.

For each branch of social security for which a country accepts the obligations of Convention No. 118, the country undertakes to guarantee equal treatment with its own nationals to all persons who are nationals of any of the other countries that have ratified the convention or who are refugees or stateless persons. For survivors benefits, this guarantee of equal treatment extends to the survivors of such persons (in whatever way the term 'survivor' is defined in the country's legislation), without regard to the nationality of the survivors. Within a country, equal treatment applies both to coverage and to the right to benefits. Outside the country, equal treatment applies only to the granting of benefits.

Convention No. 118's guarantee of equal treatment in regard to a branch of social security applies irrespective of whether the country of which a person is a national has a program in operation for that branch or has accepted the obligations of the convention for the branch. However, the convention allows a country to make an exception from equal treatment, on a branch by branch basis, in two circumstances:

- if another country which has not accepted the obligations of the convention for a branch has a program in operation regarding that branch whose provisions restrict the rights of nationals of the first country to benefits under that program – that is, if the other country does not provide equal treatment on a reciprocal basis in regard to that branch to the nationals of the first country – or,

- in regard to the payment of benefits abroad, if the other country only pays its benefits to persons residing in its own territory.

When a country has accepted the obligations of Convention No. 118 for long-term benefits (old age, invalidity, survivors) or for employment injury benefits, the country undertakes to guarantee the export of those benefits to persons outside its territory who are its own nationals or the nationals of other countries that have also accepted the convention's obligations for the same branch or who are refugees or stateless persons. The guarantee of export anywhere in the world is unconditional in regard to contributory benefits (those financed by contributions from employers and/or employees or otherwise based on employment) when eligibility for a benefit is established directly under a country's legislation (that is, without recourse to totalizing under a social security agreement). For non-contributory benefits, on the

other hand, the guarantee of export can be conditional on the conclusion of a bilateral or multilateral social security agreement between the country paying the benefit and the country of residence. Similarly, the export of a contributory benefit for which eligibility has been established through totalizing under a social security agreement is conditional on the provisions of the agreement.

Finally, Convention No. 118 commits ratifying countries to 'endeavour' to conclude bilateral or multilateral social security agreements between them that provide for totalizing to determine eligibility for benefits under all the branches for which those countries have accepted the obligations of the convention. The agreements should also address the export of benefits other than those listed above whose export Convention No. 118 makes mandatory. The relevant provisions of the convention speak of the countries 'concerned'. The ILO has explained that "the word 'concerned' means that the obligation is placed on States only when this is warranted by the importance of the migration between them" [ILO 1996: 12].

Convention No. 118 has been ratified by 38 countries. The only ASEAN country to ratify the convention is the Philippines, which has accepted the obligations of the convention for seven branches – old age, invalidity, survivors, medical care, sickness, maternity and employment injury.

2.4. Maintenance of Social Security Rights Convention, 1982 (No. 157)

Convention No. 157 completes the international framework for the protection of the social security rights of migrant workers begun by Convention No. 118. In particular, Convention No. 157 builds on the provisions of Convention No. 118 regarding totalizing and export of benefits, and it introduces provisions for determining the legislation applicable and administrative assistance.

Convention No. 157 applies to all nine branches of social security and to all general and special social security schemes, contributory and non-contributory, except for special schemes for civil servants or war victims and social or medical assistance schemes. In ratifying Convention No. 157, a country accepts the convention's obligations for all branches for which it has a program in place. Unlike Convention No. 118, a country cannot designate the branches to which Convention No. 157 will and will not apply. If a country does not have a program in place for a branch at the time of ratification of the convention and subsequently implements such a program, Convention No. 157 will apply automatically to that program when it enters into operation.

Some of the provisions of Convention No. 157 are directly applicable as soon as a country ratifies the convention. Most provisions, however, can only be implemented through bilateral or multilateral social security agreements between the countries 'concerned' – with the term 'concerned' having the same meaning as that described in the discussion of Convention No. 118. When a country ratifies Convention No. 157, one of the country's overriding obligations becomes to conclude agreements with the other countries 'concerned' which have also ratified the convention if such agreements are not already in force.

One of the directly applicable provisions of Convention No. 157 parallels the provision of Convention No. 118 guaranteeing the export of long-term benefits (old age, invalidity and survivors) and cash employment injury benefits to nationals of the ratifying countries and to refugees and stateless persons, irrespective of where they may live. Convention No. 157 not only reiterates the guarantee of export of those benefits contained in Convention No. 118 but extends the guarantee by requiring that such benefits paid by a country to persons in another country be adjusted (increased) according to the same rules as those applicable to benefits paid within the paying country. A country can, however, opt to make the adjustment of its benefits paid abroad subject to the conclusion of social security agreements providing for such adjustments.

Another of Convention No. 157's directly applicable provisions requires the use of 'third-state totalizing' (see section 1.4.3) when this is necessary to determine the eligibility for a benefit of a person who has been subject to the social security systems of three of more countries that have ratified the convention when the person's eligibility cannot be established using a single bilateral or multilateral agreement.

Convention No. 157 also has directly applicable provisions regarding administrative assistance among the social security authorities and institutions of the ratifying countries when such assistance is needed to apply the convention itself or the countries' social security programs covered by the convention. The assistance includes accepting applications for each other's social security programs when a person who is residing in one country wishes to apply for a benefit from another country. In such a case, the social security institution of the country in which the person is residing will accept the application and forward it to the institution of the other country. Moreover, the date on which the person submits the application to the institution of the country of residence will be deemed by the institution of the other country as the date on which the application was submitted to it. This 'deemed date' of submission can be very important when a country's laws require that an application for a benefit be made within a specific period after the occurrence of the contingency giving rise to the benefit. The administrative assistance just described regarding applications for benefits extends to appeals and any other documents related to a country's social security programs.

To date, Convention No. 157 has been ratified by only three countries. One of those countries is the Philippines.

2.5. Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

Recommendation No. 167 contains, as an annex, model provisions for a bilateral or multilateral social security agreement. The model provisions, which cover all nine branches of social security, take account of the different types of social security programs. They provide a starting point for countries about to negotiate agreements. The model provisions are reproduced in Annex II of this report.

3. Social security programs of ASEAN member countries

Five ASEAN member countries – Lao PDR, Philippines, Singapore, Thailand and Viet Nam – have programs dealing with seven branches of social security: medical care and cash benefits for old age, invalidity, survivors, sickness, maternity and employment injury. Three ASEAN countries – Brunei, Indonesia and Malaysia – have programs dealing with five of the seven branches (all except for cash sickness and maternity). Myanmar has programs which deal with only four branches: cash benefits for sickness, maternity and employment injury and medical care. Cambodia, at the present time, does not have any social security programs in operation.[10] Two branches of social security, unemployment and family benefits, have not been included in this report since only one ASEAN country, Thailand, has programs in operation for these branches.

Table 1 shows the social security programs in the ASEAN member countries by branch. The table takes account *only* of programs for workers in the private sector. It does not include the special schemes found in many countries for groups such as civil servants and armed forces personnel.

Table 1. Social security programs, by country and branch, 2006

	BN	KH	ID	LA	MY	MM	PH	SG	TH	VN
Old age	●		●	●	●		●	●	●	●
Invalidity	●		●	●	●		●	●	●	●
Survivors	●		●	●	●		●	●	●	●
Medical care	●		●	●	●	●	●	●	●	●
Sickness				●		●	●	●	●	●
Maternity				●		●	●	●	●	●
Employment injury	●		●	●	●	●	●	●	●	●

***Source*: [SSA 2007].**

Note: In Tables 1-6, the following standard abbreviations are used to designate countries: Brunei Darussalam (BN), Cambodia (KH), Indonesia (ID), Lao People's Democratic Republic (LA), Malaysia (MY), Myanmar (MM), Philippines (PH), Singapore (SG), Thailand (TH), Viet Nam (VN).

To assess the extent to which the social security programs of the different ASEAN countries protect migrant workers, it is necessary to examine specific provisions of the programs by branch. Since old age, invalidity and survivors benefits are usually provided by a single program, the analyses of these three branches have been combined. For the same reason, the analyses of cash sickness and maternity benefits have also been combined. Annex III to this report provides additional information regarding the social security programs, by branch, of each ASEAN country.

[10] Legislation establishing a social security system in Cambodia has been enacted, but it has not yet entered into force.

As the discussion below indicates, there are significant gaps in the information available on ASEAN social security programs. The analysis in this section of the report is based, by necessity, on the available information.

3.1. Old age, invalidity and survivors benefits

Table 2 categorizes the old age, invalidity and survivors programs in each of the ASEAN countries by type. The table also summarizes the provisions of those programs that are of particular importance to migrant workers: whether coverage is limited to nationals and/or permanent residents of the country, whether benefits can be exported (paid to persons living outside the country), and whether there is a minimum qualifying condition for eligibility for benefits. When a country has more than one program providing old age, invalidity and survivors benefits (which is the case in Brunei and Malaysia), each program is shown separately.

Table 2. Old age, invalidity and survivors benefits, by country and key provisions of programs, 2006

	BN		ID	LA	MY		PH	SG	TH	VN
Type of program:										
Social insurance				●		●	●		●	●
Provident fund	●		●		●			●		
Universal		●								
Branches covered:										
Old age	●	●	●	●	●		●	●	●	●
Invalidity	●	●	●	●	●	●	●	●	●	●
Survivor	●		●	●	●	●	●	●	●	●
Coverage limited to nationals and/or permanent residents	**Yes**	**Yes**	**No**	**N.A.**	**No**	**Yes**	**No**	**Yes**	**No**	**N.A.**
Export of benefits allowed	**Yes**	**No**	**Yes**	**N.A.**	**Yes**	**Yes**	**Yes**	**Yes**	**N.A.**	**N.A.**
Minimum qualifying period for eligibility	**No**	**Yes**	**No**	**Yes**	**No**	**Yes**	**Yes**	**No**	**Yes**	**Yes**

***Source*: [SSA 2007], supplemented by information obtained by the author in discussions and exchanges of e-mails with social security experts in the countries concerned and with ILO experts.**

***Note:* N.A. indicates that the information was not available.**

Of the eight ASEAN countries with old age, invalidity and survivors programs, four (Brunei, Indonesia, Malaysia and Singapore) have provident funds and four (Lao PDR, Philippines, Thailand and Viet Nam) have schemes based on social insurance.

The provident funds pay a lump-sum amount on the occurrence of the insured contingency – that is, when a member reaches a prescribed age (in all four countries, 55) or if a member becomes disabled or dies before the prescribed age. In Singapore, in addition to the lump-sum payment, a member of the provident fund also receives an ongoing monthly pension, starting at age 62, which is financed by the mandatory transfer of part of the balance in the member's provident fund accounts into a 'retirement account'. In Indonesia and Malaysia, a member of the provident fund can

opt to use part of the balance in his or her provident fund account for a monthly pension, but this is at the discretion of the member. In Malaysia, the option just described is limited to nationals and permanent residents.

In Brunei, the provident fund is supplemented by a universal scheme that provides periodic benefits for old age and invalidity for all residents of the country. In Malaysia, a social insurance program operates in parallel to the provident fund and provides periodic benefits in the event of the incapacity or death of an insured worker. The social insurance program is limited to nationals and permanent residents of Malaysia. 'Foreign worker' are covered under a separate scheme, based on employer liability, that provides generally lesser benefits than the social insurance scheme.

The social insurance programs in Lao PDR, Philippines, Thailand and Viet Nam provide periodic (usually monthly) pensions when an insured person meets the qualifying conditions for benefits. These conditions include a minimum qualifying period. If an insured person meets the qualifying conditions *other than* the minimum qualifying period, a lump-sum is paid instead of a periodic pension.

3.1.1. Restrictions to coverage based on nationality and/or residence

For migrant workers, restricting coverage to permanent residents of a country can present the same barrier to social security protection as restrictions based on nationality because, in many instances, migrant workers do not have the right to remain in the host country indefinitely and, therefore, are not considered as permanent residents. For this reason, restrictions based on nationality and restrictions based on residence are considered together.

There is insufficient information available to determine the extent to which nationality and residence restrictions bar migrant workers from coverage under the old age, invalidity and survivors programs of several ASEAN countries. In at least three countries, Malaysia,[11] Singapore and Brunei, there are such restrictions, with the result that migrant workers are excluded from the programs. In the Philippines and Thailand, on the other hand, coverage does not depend on nationality or permanent residence.[12]

3.1.2. Restrictions to export of benefits

In all of the countries with provident funds, a member who emigrates permanently from the country is allowed to withdraw the entire balance in her or his provident

[11] Since 1 March 1993, 'foreign workers' in Malaysia (persons admitted on a work permit who are not nationals or permanent residents of Malaysia) have been excluded from *mandatory* coverage under Malaysia's provident fund. They may, however, be covered *voluntarily*.

[12] It must be stressed that these and other statements in this report regarding coverage by social security programs apply, unless explicitly stated otherwise, only to legal (documented) migrant workers.

fund account at the time of emigration, irrespective of the member's age. The provident funds, therefore, allow export of benefits.[13] The Philippines also allows unrestricted export of its old age, invalidity and survivors benefits if an insured person or beneficiary moves abroad. There is insufficient information to determine whether benefits under the social insurance programs of Lao PDR, Malaysia, Thailand or Viet Nam can be exported. Benefits under Brunei's universal old age and invalidity program are only paid to residents of Brunei.

3.1.3. Minimum qualifying periods

None of the provident funds has a minimum qualifying period for eligibility for benefits. All of the social insurance programs, on the other hand, as well as the universal scheme in Brunei have minimum qualifying periods. For old age benefits from the social insurance schemes, the minimum periods range from five years in the Lao PDR to 15 years in Thailand and Viet Nam. In the absence of social security agreements, such lengthy qualifying periods can pose significant barriers for migrant workers who return to their country of origin after working abroad.

3.2. Medical care

Table 3 provides information on the medical care programs in ASEAN member countries. The term 'medical care' refers to benefits in kind (services) provided by hospitals, doctors and other medical practitioners, including those for maternity.

[13] Anecdotal evidence suggests that, in some instances, ASEAN migrant workers who have emigrated permanently from some countries with provident funds to return to their countries of origin have encountered difficulties in obtaining the balance in their provident-fund accounts, and that the intervention of diplomatic officials has been required in order for these workers to exercise their rights. It is not known whether this problem is limited to isolated cases or is widespread.

Table 3. Medical care, by country and key provisions of programs, 2006

	BN	ID	LA	MY	MM	PH	SG		TH		VN
Type of program:											
Social insurance		●	●		●	●			●		●
Provident fund				●			●				
Universal	●									●	
Social assistance								●			
Coverage limited to nationals and/or permanent residents	**N.A.**	**No**	**N.A.**	**Yes**	**N.A.**	**Yes**	**Yes**	**Yes**	**No**	**No**	**N.A.**
Persons of working age											
Must be in covered employment when contingency occurs	**No**	**Yes**	**No**	**No**	**Yes**	**No**	**No**	**No**	**No**	**No**	**No**
Minimum qualifying period for eligibility	**No**	**No**	**Yes**	**No**	**Yes**	**Yes**	**No**	**No**	**Yes**	**No**	**Yes**
Pensioners (social insurance) / non-active members (provident fund) covered for medical care	**Yes**	**N.A.**	**N.A.**	**No**	**N.A.**	**Yes**	**Yes**	**Yes**	**No**	**Yes**	**Yes**

***Source*: [SSA 2007], supplemented by information obtained by the author in discussions and exchanges of e-mails with social security experts in the countries concerned and with ILO experts.**

***Note:* N.A. indicates that the information was not available.**

All the ASEAN member countries except Cambodia have medical care programs. In six of those countries – Indonesia, Lao PDR, Myanmar, Philippines, Thailand and Viet Nam – the programs are based on social insurance and involve risk-pooling among all insured persons. In Malaysia and Singapore, on the other hand, medical care is part of the same provident fund which also provides old age, invalidity and survivors benefits. When a member or dependant requires medical services covered by the scheme, the costs are paid from the balance in the member's provident fund account, subject to any maxima set by the scheme. In such an arrangement, there is no risk pooling. Once a member's individual account is exhausted, no further services are paid. In Singapore, however, a member, in such circumstances, may have access to an income- and means-tested scheme for medical care if the member is a national of Singapore. Brunei provides medical care on a universal basis to all residents of the country. Thailand, in addition to its social-insurance medical care scheme for workers in the formal sector, also provides medical care on a universal basis for those not covered by the social-insurance scheme.

3.2.1. Restrictions to coverage based on nationality and/or residence

Coverage under the Philippines medical care scheme is limited to nationals of the Philippines. As just noted, nationality is also required for eligibility for Singapore's income- and means-tested program for medical care. Nationality or permanent residence is also required for coverage under Malaysia's scheme. In contrast, Thailand's medical care schemes – both the social insurance and the universal

programs – have no nationality restrictions.[14] There is insufficient information to determine whether nationality-based restrictions, or requirements of permanent residence, apply in any of the other medical care programs in ASEAN countries. If they do, their effect, in the absence of a social security agreement, is to bar migrant workers from access to medical care in their host countries.

3.2.2. Minimum qualifying periods

All of the countries with social insurance programs for medical care require either that a worker who is not yet a pensioner be insured at the time of the illness, accident or incapacity giving rise to the need for care or that the worker have completed a minimum qualifying condition. The minimum qualifying conditions for medical care range from 45 days of contribution in Viet Nam, to seven months of contribution in the 15 months before childbirth in Thailand.

In the absence of a social security agreement that provides for totalizing, even a relatively short minimum qualifying condition leaves a migrant worker without coverage for medical care in the host country if the worker or a member of the worker's family suffers an illness or accident soon after coming to the country and before the migrant worker becomes eligible for medical care under the host country's scheme. A national worker of the host country, of course, will also suffer the same lack of coverage during the initial period under the country's social security program. However, the national worker is likely to have access to informal family support and, possibly, also to national medical assistance programs that are usually not available to migrant workers.

3.2.3. Coverage of pensioners

In at least two ASEAN countries with medical care programs based on social insurance – Philippines and Viet Nam – persons receiving pensions under the national old age program are automatically covered under the medical care program. In Thailand, however, pensioners under the social-insurance scheme for old-age, invalidity and survivor benefits are *not* covered by the social-insurance scheme for medical care. They must rely on the universal scheme, which provides a lesser range of benefits. Information is not available to determine the situation that applies in Indonesia and Lao PDR.

Unless a country has a universal medical care program, linking medical care coverage with receipt of a pension is essential for ensuring that medical care remains available to a worker and his or her dependants after the worker's retirement or in the event of the incapacity or death of the worker. However, even when a country links coverage under its national medical care program with receipt of a benefit under its

[14] From information obtained in discussions with officials of the Thai Ministry of Labour (MOL), it appears that, while there are no nationality-based restrictions per se in the legislation governing medical care, coverage of non-Thai workers may be limited to migrant workers from countries with which Thailand has concluded MOUs regarding migrant workers.

national old age, invalidity and survivors programs, this will still not be sufficient for migrant workers who return to their country of origin after employment in another country if they are not eligible for a pension from their country of origin. In such a case, a social security agreement between the former host country and the country of origin can provide the missing link by allowing totalizing of periods under the two countries' pension programs to establish eligibility for a pension from the program of the migrant worker's country of origin.

3.3 Sickness and maternity (cash benefits)

Table 4 provides information on the cash sickness and maternity benefits in the six ASEAN countries with programs dealing with these two branches of social security.

Table 4. Sickness and maternity (cash benefits), by country and key provisions of programs, 2006

	LA	MM	PH	SG	TH	VN
Type of program:						
Social insurance	●	●	●		●	●
Employer liability				●		
Coverage limited to nationals and/or permanent residents	**N.A.**	**N.A.**	**No**	**Yes**	**N.A.**	**N.A.**
Export of benefits allowed	**N.A.**	**N.A.**	**N.A.**	**No**	**N.A.**	**N.A.**
Must be in covered employment when the contingency occurs	**N.A.**	**N.A.**	**N.A.**	**Yes**	**N.A.**	**Yes**
Minimum qualifying period for eligibility	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**No**

***Source*: [SSA 2007], supplemented by information obtained by the author in discussions and exchanges of e-mails with social security experts in the countries concerned and with ILO experts.**

***Note:* N.A. indicates that the information was not available.**

Of the six countries[15] providing cash sickness and maternity benefits, five – Lao PDR, Myanmar, Philippines, Thailand and Viet-Nam – do so through social insurance programs. Singapore, instead, has a program based on employer liability.

The Philippines sickness and maternity program has no restrictions based on nationality or permanent residence. Coverage under the Singapore scheme, on the other hand, is restricted to persons who were citizens of Singapore at birth; persons who are permanent residents of Singapore but not Singapore citizens at birth are *not*

[15] Although not a maternity benefit scheme per se, under Indonesia's *Manpower Law* (Law No.13 of 2003, Article 82) a female worker is entitled to three months paid maternity leave, of which 1.5 months can be taken in the pre-natal period and 1.5 months in the post-natal period. As well, under the medical care scheme, an insured worker is entitled to reimbursement of up to IRP 400,000 for the birth of each of the first three children. There is no reimbursement for a child after the first three.

covered. There is insufficient information regarding the extent to which such restrictions may apply in the programs of the other countries.

All of the programs except for the one in Viet Nam have minimum qualifying periods. These range from three to nine months, meaning that, in the absence of a social security agreement, migrant workers are excluded from coverage during their initial period in the host country until they have fulfilled the minimum period.

3.4. Employment injury

Employment injury is the only branch of social security for which there are programs in all the ASEAN countries except Cambodia. The term 'employment injury' refers both to accidents suffered at work and to occupational disease, although some programs insure only the first contingency. Table 5 summarizes the ASEAN employment injury schemes.

Table 5. Employment injury, by country and key provisions of programs, 2006

	BN	ID	LA	MY		MM	PH	SG	TH	VN
Type of program:										
Social insurance		•	•	•		•	•		•	•
Employer liability	•				•			•		
Occupational diseases included among insured contingencies	**N.A.**	**Yes**	**N.A.**	**Yes**	**No**	**N.A.**	**Yes**	**(a)**	**N.A.**	**N.A.**
Coverage limited to nationals and/or permanent residents	**Yes**	**N.A.**	**N.A.**	**Yes**	**No**	**N.A.**	**No**	**Yes**	**N.A.**	**N.A.**
Export of benefits allowed	**N.A.**	**N.A.**	**N.A.**	**N.A.**	**Yes**	**N.A.**	**N.A.**	**(a)**	**N.A.**	**N.A.**
Minimum qualifying period for eligibility	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**

***Source*: [SSA 2007], supplemented by information obtained by the author in discussions and exchanges of e-mails with social security experts in the countries concerned and with ILO experts.**

Note: (a) Not legally required; at the discretion of the employer.
N.A. indicates that the information was not available.

The employment injury programs of seven ASEAN countries – Indonesia, Lao PDR, Malaysia, Philippines, Thailand and Viet Nam – are social insurance schemes financed entirely by employer contributions. In Brunei and Singapore, employment injury programs are based on employer liability. The general Malaysian social insurance program for employment injury, which excludes foreign workers from coverage, is supplemented by an employer-liability scheme, the Foreign Workers Compensation Scheme, specifically intended for foreign workers.

As shown in Table 5, none of the ASEAN employment injury programs have minimum qualifying periods. Therefore, to the extent that migrant workers are covered by those programs, the coverage is effective on the start of employment.

3.4.1. Restrictions to coverage based on nationality and/or residence

As for the other branches of social security already discussed, the first issue for migrant workers in regard to the employment injury program of the host country is whether that program has nationality or residence restrictions that exclude foreign workers from coverage. Such restrictions are found in the legislation of Brunei, Malaysia and Singapore. As just noted, in the case of Malaysia, the exclusion of foreign workers is mitigated by the existence of a separate employment injury scheme for foreign workers. However, the scheme for foreign workers usually[16] provides lesser benefits than those provided under the general employment injury scheme applicable to Malaysian workers.

The Philippines does not have any restrictions on coverage based on nationality or residence. No information is available whether such restrictions exist in the employment injury programs of Indonesia, Lao PDR, Myanmar, Thailand or Viet Nam.

3.4.2. Restrictions to export of benefits

Even when a migrant worker is covered under the employment injury scheme of her or his host country, the worker may not necessarily be entitled to continue to receive benefits if he or she returns to the country of origin. Similarly, if the employment injury results in death, the survivors of the deceased worker may not be entitled to benefits if they are living in the worker's country of origin or if they return to that country after the worker's death.

The Malaysian employment-injury scheme for foreign workers makes lump-sum payments when insured workers return to their countries of origin due to an injury. The scheme also pays the worker's travel expenses in such circumstances and, in the event of the worker's death, the cost of transporting the body to the deceased worker's country of origin. Export of benefits under Singapore's employer-liability system is not legally required but can be done at the discretion of the employer. There is no information available regarding the export of benefits under other ASEAN employment injury programs.

3.4.3. Occupational diseases

Migrant workers may encounter particular problems in becoming eligible for benefits related to occupational diseases even if export of benefits is permitted under a country's employment injury program. The problems arise when, at the time the disease is first diagnosed, the worker is no longer in the host country in which she or he was engaged in the work which was the cause of the condition – for example, if the worker has returned to his or her country of origin or moved to a third state. In such an instance, the worker is unlikely to qualify for a benefit under the employment injury program of the country in which the worker is located because the contingency

[16] At certain levels of income, the lump-sum payments from the scheme for foreign workers are greater than the benefits under the social insurance scheme for Malaysian workers.

– the occupational disease – was not due to employment in that country. However, the worker may also not qualify for a benefit under the program of the former host country because he or she is no longer covered by that country's employment injury scheme or the period within which a claim must be submitted under the host country's scheme has expired.

Malaysia's employment injury scheme covers a wide range of listed occupational diseases and provides coverage even for diseases not included in the list when sufficient medical evidence is provided. Under Singapore's scheme, coverage of occupational diseases is not legally required but can be done at the discretion of the employer. Employers are, however, required to pay for medical consultation fees for workers who have been in their employ for at least 180 days and who are nationals or permanent residents of Singapore. There is no information available whether occupational diseases are covered by the employment injury programs of other ASEAN countries.

4. Migrant workers in ASEAN countries: The current situation

The urgency of concluding a social security agreement between any two or more countries depends, at least in part, on the number of migrant workers who go from one of those countries to the other. If the number is relatively large, the urgency of an agreement will clearly be higher than if the number is relatively small. This section examines migration between ASEAN countries. It also examines the actions that ASEAN countries have taken to date on a unilateral basis to provide social security protection for migrant workers and their families.

4.1. Migration in ASEAN countries

The Development Research Centre on Migration, Globalisation and Poverty at the University of Sussex in the United Kingdom has developed a worldwide database containing the estimated number of migrants by country of origin and country of destination [DRC Migration 2007]. The primary sources of information for the database are national population censuses in the 2000 round. The estimated numbers, therefore, do not refer to precisely the same year and should be viewed as the most recent currently available. Moreover, the Development Research Centre has had to make various assumptions and use interpolations to fill gaps in data from the primary sources, so the numbers, in many instances, are 'best guesses'. The database nonetheless provides insight into migration between the ASEAN member countries.

Table 6. Estimated number of migrants in ASEAN countries from other ASEAN countries (numbers in thousands)

Country of origin \ Country of destination		BN	KH	ID	LA	MY	MM	PH	SG	TH	VN	Total
Brunei	BN	--	<1	<1	<1	<1	<1	3	<1	<1	<1	4
Cambodia	KH	<1	--	3	1	<1	<1	4	<1	19	<1	27
Indonesia	ID	5	<1	--	<1	744	<1	138	29	<1	4	921
Lao PDR	LA	<1	<1	4	--	<1	<1	5	<1	29	<1	39
Malaysia	MY	57	<1	47	<1	--	<1	56	304	1	2	468
Myanmar	MM	<1	<1	14	<1	<1	--	18	<1	109	<1	142
Philippines	PH	11	<1	36	<1	308	<1	--	2	1	2	361
Singapore	SG	2	<1	12	<1	92	<1	15	--	<1	<1	124
Thailand	TH	9	90	25	2	92	<1	30	<1	--	<1	248
Viet Nam	VN	<1	109	17	10	1	<1	23	<1	8	--	170
	Total	85	201	158	13	1,238	1	294	336	169	10	2,505

***Source*: DRC Migration 2007, Version 4**

The DRC Migration database from which Table 6 is drawn looks at the *stock* of migrants in different countries – that is, the number of persons residing in a country at a particular time. It does not differentiate between recent migrants and those who may have arrived years or even decades in the past, nor does it differentiate between types of migrants – for example, migrant workers and refugees. Returning refugees undoubtedly account for most of the migrants in Cambodia from Thailand and Viet Nam as well as for those in Laos from Viet Nam.

Data from other sources suggests that the DRC Migration database significantly understates the number of migrants in Singapore. This might be due to the estimating techniques used in constructing the database. The Scalabrini Migration Center estimates that in 1997 there were 100,000 migrants from Indonesia in Singapore, and an additional 60,000 migrants from each of the Philippines and Thailand [Scalabrini Migration Center 2000]. The Social Security Office (SSO) of Thailand estimates there are presently 43,000 Thai workers in Singapore.[17] The ILO's International Labour Migration (ILM) database supports the hypothesis that migration from Thailand to Singapore is significantly greater than that shown in the DRC Migration database. It shows that the number of migrants from Thailand to Singapore averaged about 18,400 a year between 1995 and 2003 [ILO 2005]. Data from the Philippines Overseas Employment Administration(POEA) shows that there were some 64,300 Filipinos who were temporarily employed in Singapore in December 2004 (counting only regularized migrants in Singapore; POEA estimates there were an additional 72,000 irregular Filipino migrants) [POEA 2006].

The DRC Migration estimates of migrants in Brunei are also likely to understate the actual numbers in some instances. POEA data, for example, shows that there were some 21,700 Filipinos who were temporarily employed in Brunei in December 2004, almost double the DRC Migration figure.

Taking the data in Table 6 and the considerations noted above into account, it is clear that all the ASEAN member countries are significant destinations for intra-ASEAN migrants with the exception, understandably, of the least developed states – Cambodia, Lao PDR, Myanmar and Viet Nam. In terms of absolute numbers, the most important countries of destination are Malaysia and Singapore, to which Thailand should likely be added [Ashur and Nandy 2006]. All of the ASEAN countries, with the exception of Brunei, are significant sources of intra-regional migrants.

Figure 1 illustrates the flow of migrant workers between ASEAN member countries, taking into account the data and considerations cited above. The red lines indicate flows involving large numbers of migrant workers, and the green lines indicate flows that, while important from the perspective of the source and/or host country, are numerically smaller.

[17] Information obtained by the author from discussions with officials of the SSO, who obtained the figure from a survey of Thai migrant workers conducted by the labour attaché of the Thai Embassy in Singapore. Thai workers in Singapore are primarily engaged in construction and ship-building.

Figure 1: Flow of migrant workers between ASEAN migrant countries

4.2. Action to date to provide social security to ASEAN migrant workers

4.2.1 Regional level

At the regional level, the most significant step in strengthening the social security protection of ASEAN migrant workers was the adoption, in January 2007, of the Cebu *Declaration on the Protection and Promotion of the Rights of Migrant Workers* [ASEAN 2007], which was mentioned in the introduction to this report. Although, at this point, the Cebu Declaration is only a statement of intention on the part of the ASEAN member countries, it nonetheless represents an important commitment and sets a framework within which concrete action can be taken.

The Cebu Declaration builds on the Vientiane Action Programme which the ASEAN heads of state and government adopted at their 10th Summit in November 2004. The Vientiane Action Program sets out, in general terms, the measures that ASEAN countries have agreed to undertake in the period 2004-2010 to pursue comprehensive political and economic integration within ASEAN. These measures include managing the social impacts of economic integration and, in particular, "establish[ing] an integrated social protection and social risk management system in ASEAN" and "working toward adoption of appropriate measures at the regional level to provide a minimum uniform coverage for skilled workers in the region" [ASEAN 2004: 48].

The Cebu Declaration affirms the obligation of receiving states to "promote the welfare … of migrant workers" and to "facilitate access … to social welfare services as appropriate and in accordance with the legislation of the receiving state, provided [the migrant workers] fulfill the requirements under applicable laws, regulations and policies of the said state, bilateral agreements and multilateral agreements" [ASEAN 2007: 2]. Although the declaration makes no mention of social security agreements, a concrete mechanism for giving effect to the obligations would be through the conclusion of such agreements.

In the early 1990s, discussions involving social security officials from ASEAN countries, assisted by an expert from the ILO's Social Security Department (SECSOC) in Geneva, were held to consider a multilateral ASEAN social security agreement. Substantial progress was made towards the draft text of an agreement, but work was never brought to completion.[18] The reason the work was abandoned is not known.

To the present time, no social security agreements have been concluded between any ASEAN member countries. In the mid-1990s, the Philippines and Indonesia held discussions on a bilateral agreement. A draft text was initialled, but the agreement was never signed.[19] It is unclear why this was the case.

Thailand has concluded memoranda of understanding (MOUs) with Cambodia and the Lao PDR regarding Cambodian and Lao migrant workers in Thailand. Among other things, the MOUs ensure that migrant workers from these counties who are temporarily in Thailand will have the same social security rights in Thailand as Thai workers. The MOUs apply only to legal (documented) migrant workers from Cambodia and the Lao PDR; such workers are given work permits for a period of two years, which can be extended to four years.[20]

The Philippines has concluded social security agreements with a number of countries outside ASEAN, including Austria, Belgium, Canada, France, the Republic of Korea, the Netherlands, Spain, Switzerland and the United Kingdom [ILO 2002; SSS 2006], and Thailand has concluded an agreement with the Netherlands [Franssen and de Jonge 2006]. The Philippines and Thailand are the only ASEAN countries, to date, to

[18] Information obtained by the author from discussions with officials of the ILO.

[19] Information obtained by the author from discussions with officials of the SSS.

[20] Information obtained by the author from discussions with officials of the Thai Ministry of Labour (MOL).

have concluded agreements (except for restricted agreements regarding civil servants concluded by Myanmar and Singapore with the United Kingdom in the 1970s).

4.2.2. National level

In the absence of social security agreements, countries can take unilateral action to extend social security protection to their migrant workers. Among the ASEAN member countries, the Philippines has been the most proactive in this regard, extending mandatory[21] coverage under its Social Security System (SSS), which covers workers in the private sector, to Filipino seafarers employed on board foreign ships and permitting voluntary coverage under the SSS to all other Filipino overseas workers.

Under Philippine law, the recruitment of Filipino seafarers for employment aboard foreign ships is regulated by the Philippines Overseas Employment Administration (POEA), which licenses and oversees the manning agencies that recruit and deploy seafarers. Only POEA-licensed manning agencies are allowed to recruit and deploy seafarers. The manning agencies are required to report the seafarers they recruit to the Philippine social security institution and to remit the required social security contributions each quarter [SSS 1988]. In effect, the manning agencies, as the authorized agents of the actual foreign employers, fulfil the role of the domestic employer for social security purposes. Contributions are shared between seafarers and their employers on the same basis as that of other employees – currently, 3.33 percent of monthly wages by the employee and 6.07 percent by the employer.

For Filipino overseas workers other than seafarers, there is no employer in the Philippines who can be held liable for the remittance of social security contributions. Mandatory coverage of such overseas workers, therefore, has not, to the present time, been thought possible. Instead, the SSS allows Filipinos working outside the country to contribute on a voluntary basis. At the end of 2005, there were 515,000 overseas workers making voluntary contributions [SSS 2006]. Voluntary contributors are treated as self-employed persons and must pay both the employee's and the employer's share of the contributions, for a total of 9.4 percent. Consideration is currently being given to making the coverage of Filipino overseas workers under the SSS mandatory.[22]

[21] In a strictly legal sense, the coverage of Filipino seafarers employed on board foreign ships is voluntary. However, as explained in the following paragraph, the recruitment and deployment of Filipino seafarers aboard foreign ships must be done through a manning agency licensed by a government agency, the Philippines Overseas Employment Agency (POEA). Under an agreement concluded in 1988 between the Social Security System (SSS) and the Department of Labor and Employment (of which the POEA is part), the manning agencies must register the seafarers with the SSS and remit the seafarers' SSS contributions quarterly. Effectively, therefore, the coverage of Filipino seafarers is mandatory.

[22] Information obtained by the author from discussions with officials of the SSS. Since Filipino overseas workers must obtain a permit from the POEA before they are allowed to take employment abroad, and since the license is for a fixed duration, the SSS believes that it will have the means for enforcing compliance (payment of contributions) in regard to the overseas workers.

To facilitate access to Philippine social security by overseas workers, the SSS has established foreign representative offices in countries with high concentrations of overseas workers. These offices, located in Philippine embassies and consulates, act as receiving, registration and information centres [ILO 2006].

In addition to voluntary coverage under the SSS, the Philippines has also established a voluntary provident fund – the Flexi-Fund program – to assist overseas workers to save for retirement. The Flexi-Fund, which is administered by the SSS, offers Filipino migrant workers a readily available and secure vehicle for retirement savings. Contributions to the Flexi-Fund, which are tax exempt, are credited to a worker's individual account. Upon return to the Philippines, the worker can withdraw any amount from the balance in her/his Flexi-Fund account to finance a variety of needs. Alternatively, the worker can use the balance in his/her account to supplement SSS retirement or disability benefits, either in a lump sum or through purchase of an annuity, or both [ILO 2006].

5. Multilateral and bilateral options for strengthening the social security protection of ASEAN migrant workers

The analysis in the preceding sections of this report demonstrates that the coordination of ASEAN social security programs through the ratification of ILO conventions and/or through the conclusion of multilateral or bilateral agreements would strengthen the social security protection of migrant workers in the ASEAN region. This section evaluates the feasibility of the options available to ASEAN member countries to realize such coordination.

5.1. Considerations in evaluating options

There are several conceptual, operational and administrative considerations in evaluating options for coordination. Two are of particular importance in the ASEAN context: the challenge of coordinating a provident fund with a scheme based on social insurance, and the capacity of social security institutions to carry out the responsibilities required to implement coordination.

5.1.1. Coordinating a provident fund with a social insurance scheme

No social security agreement involving totalizing has ever been concluded between a provident-fund country and a social-insurance country. The likely reason is the difficulty of finding a way to ensure that such an arrangement would meet a key element of reciprocity: the relative comparability of the obligations each country would assume (see the discussion of reciprocity in section 1.1.4). Through totalizing, the scheme of the social-insurance country would be obligated to pay new ongoing pensions that would not otherwise be payable under its program alone (that is, pensions to persons who qualify only as a result of totalizing periods in the two countries), and the additional cost of those new pensions would be financed entirely from the scheme's own funds. However, the scheme of the provident-fund country would never be obligated to pay new benefits because there is no minimum qualifying period or other such eligibility requirement for which totalizing would be needed. With such asymmetrical results, a social-insurance country would likely be reluctant to enter into an agreement involving totalizing with a provident-fund country.

In the course of developing the model provisions for a social security agreement that are annexed to ILO Recommendation No. 167 (and that are reproduced in Annex II to this report), the issue of coordinating a provident fund and a social insurance scheme was examined. Two alternatives are included in the model provisions. One of the alternatives is the usual totalizing of periods – for the reason just discussed, unlikely to be an acceptable solution for the country with the social insurance scheme. The other proposed method of coordination takes an entirely different approach – the transfer of money between the two schemes, as follows:

- If a migrant worker moves from a provident-fund country to a social-insurance country, the worker could have the amount in his or her provident fund account transferred to the social insurance system of the latter country, and the worker could use this amount to 'buy back' periods under the latter system. While not entirely clear from the model provisions, 'buy back' appears to mean making retroactive voluntary contributions covering all or part of the period during which the worker was a member of the provident fund. The terms of the 'buy back' would be governed either by the social security laws of the social-insurance country (if those laws allow voluntary contributions, which many do not) or by specific provisions included in the social security agreement between the two countries.

- A migrant worker who moves from a social-insurance country to a provident-fund country, and who has not yet fulfilled the minimum qualifying period for a pension under the social insurance scheme of the first country, could have her or his contributions and those of the employer transferred from the social insurance scheme to the provident fund.[23] The social security agreement between the two countries would specify the method for calculating the amount to be transferred.

The alternative involving the transfer of money between the two schemes is a promising one which deserves further examination. The mechanism proposed – the transfer of money between schemes – would be reciprocal, in the sense that each scheme would send money to, and receive money from, the other scheme. Moreover, when the social insurance scheme takes on the obligation for new ongoing pensions as a result of the transfer of money, it will be compensated (at least in part) through the transfer.

The transfer approach just described appears, on first examination, to be *theoretically* feasible. However, it remains to be seen whether it is *practically* feasible – that is, whether the specific, mutually acceptable provisions required to implement the transfer approach between actual schemes can be found.

For the ASEAN region, with its mix of provident funds and social insurance programs, a workable solution to the issue of coordinating these two types of social security programs is critical to strengthening the social security protection of migrant workers. A first step towards finding a workable solution could be technical discussions between officials of an institution responsible for a provident fund and officials of an institution responsible for a social insurance scheme, assisted by ILO social security experts, to attempt to develop possible terms for implementing the transfer approach between their respective schemes. The objective of such discussions would only be to determine the practical feasibility of the transfer approach, and would not commit either institution to implementation on a bilateral or multilateral basis (although it would clearly be desirable if such an outcome were to follow). The ASEAN Social Security Association (ASSA), which brings together the social security institutions from eight of ASEAN's 10 member countries (all except

[23] In addition to the contributions of the worker and the employer, an additional amount reflecting interest on past contributions and/or the investment earnings realized by the provident fund on those contributions would also have to be transferred.

Cambodia and Myanmar), could provide a forum for launching the technical discussions and reviewing the outcomes.

5.1.2. Operational and administrative capacity

Section 1.2.5 summarized the types of administrative assistance that are usually provided within the ambit of a social security agreement. Providing such assistance requires the institutions involved to assume a range of new responsibilities in addition to those they already have in administering their programs within their own countries.

Social security agreements generally only set out the principles underlying the administrative assistance that the institutions will provide to one another. As noted in section 1.5 of this report, and explained in greater detail in section AI.7 of Annex I, the specific types of assistance must usually be agreed through the conclusion of an administrative arrangement for the implementation of the agreement. Even if a country's social security institution is not directly responsible for the conclusion of the administrative arrangement (this is often the responsibility of the government ministry that oversees the institution), it must nonetheless be closely involved in the process since it will be responsible for implementation. The social security institutions of the countries concerned need to develop mutually acceptable procedures and forms for the administrative assistance they will provide one another. Each needs to recruit and train staff in applying the procedures. Finally, and most important, each institution must ensure that it provides the administrative assistance to other institutions in a timely manner and in accordance with the agreed procedures, and that applications for benefits it receives from the institutions in other agreement-countries are adjudicated promptly and accurately.

The increased workload that a social security institution will experience as a result of a social security agreement will, clearly, depend on the number of persons affected by the agreement. The workload will often be appreciable. In deciding to conclude a social security agreement, the operational and administrative capacity of a country's social security institution to handle the additional responsibilities and workload must be kept in mind. As well, each country needs to weigh the resources required for other priorities against the resources that would be required for implementing social security agreements. Especially for countries in which social security coverage is low in relation to the overall workforce, extending coverage is likely to be a higher priority – in fact, a *much* higher priority – than social security agreements.

5.2. Applicability of ILO conventions and recommendations

The ILO conventions and recommendations described in chapter 2 – in particular, Conventions No. 118 and 157 and Recommendation No. 167 – provide a comprehensive basis for the multilateral coordination of social security programs. One option would be for ASEAN member countries to follow the lead of the Philippines and to sign and ratify the two conventions.

Although pursuit of this option would be very desirable, it does not appear to be realistic, at least in the short- and medium-term. Worldwide, only a small number of countries have signed and ratified the two conventions – as noted earlier in this

report, 38 in the case of Convention No. 118 and three in the case of Convention No. 157. No country has ratified either convention since 1994, when the Philippines ratified both.

The ratification of Conventions No. 118 and No. 157 would involve a degree of commitment to worldwide multilateral coordination that many of the most economically advanced countries with highly developed social security systems and extensive networks of bilateral and multilateral social security agreements have, thus far, not been willing to make. For example, among the 27 EU member states, only nine have ratified Convention No. 118, and only two have ratified Convention No. 157. None of the industrialized countries outside Europe with advanced economies such as Australia, Canada, Japan and the United States has signed or ratified either convention. It seems unlikely that the ASEAN countries, with no experience in the coordination of social security systems (except the Philippines), would begin such coordination by assuming the considerable commitments involved in ratifying the two conventions.

Moreover, even if a country ratifies Conventions No. 118 and No. 157, comprehensive coordination of its social security programs with those of the other ratifying countries would not follow automatically. As noted in the description of these conventions in chapter 2, both require the conclusion of multilateral or bilateral social security agreements to give effect to many of the commitments, especially those of Convention No. 157. Thus, ratification of the conventions, on its own, would not eliminate or reduce all the barriers to social security protection faced by migrant workers.

In concluding multilateral or bilateral social security agreements among themselves, ASEAN countries should keep in mind the provisions of Conventions No. 118 and No. 157. In particular, they should ensure, whenever possible, that any intra-ASEAN agreements conform to the standards of the two conventions so that if, in the future, an ASEAN country, following the example of the Philippines, finds itself in a position to ratify either or both conventions, its social security agreements will meet the requirements of the conventions.

5.3. Multilateral ASEAN social security agreement

Section 1.3 of this report examined the advantages and disadvantages of multilateral and bilateral social security agreements and discussed considerations that would prompt countries to pursue one or the other approach. As that section argued, multilateral agreements have two significant advantages over a series of bilateral agreements:

- Uniform treatment of all workers, irrespective of their countries of origin, in regard to their rights and entitlements under all the participating countries' social security systems; and

- Common administrative procedures and forms applicable to all dealings between the social security institutions of the participating countries.

These advantages are considerable. However, they need to be weighed against the time and effort that would be required to find terms and conditions for a multilateral agreement acceptable to all the parties and, indeed, the likelihood that such mutually acceptable terms and conditions can be found. Ultimately, until an agreement has been concluded and brought into force, the social security protection of migrant workers will not be strengthened.

As chapter 3 has shown, there are significant differences among the social security systems of the ASEAN countries in regard to both the branches covered and the types of programs used. In particular, four ASEAN countries have based their old age, invalidity and survivors programs primarily or exclusively on provident funds, and four have based theirs on social insurance. While, as section 5.1.1 has shown, it may be possible to coordinate provident funds and social insurance schemes through an agreement, such coordination will require solutions that have not been tried before and that could involve significant technical issues. Resolving such issues to the satisfaction of only two countries could be challenging. Doing so for several countries at the same time could be daunting.

In addition to differences in the types of programs, ASEAN social security institutions also have wide differences in operational and administrative capacity. In light of the Philippines existing social security agreements with non-ASEAN countries, there is no question that its institution has the capacity to implement a multilateral ASEAN agreement or bilateral agreements with other ASEAN countries. Several other ASEAN institutions almost certainly have the same capacity. However some ASEAN institutions, especially those in the least economically developed countries, could find it difficult to take on the additional responsibilities and workload resulting from social security agreements. If they were to try to do so, it could mean diverting resources from priorities such as extending coverage within their own countries.

Proceeding directly from the status quo – no social security agreements between any ASEAN member countries – to an ASEAN multilateral agreement would be a major undertaking which would require strong political support by all (or, at least, most) ASEAN states to succeed. Even with such support, formidable technical and administrative issues would need to be addressed.

At the present time, there is no indication that the prerequisite political support exists among ASEAN governments to launch serious discussions in the next two to five years towards a multilateral social security agreement.

As a long-term goal, an ASEAN multilateral agreement could be a viable option, depending on two factors: ASEAN's evolution in terms of economic integration, and the extension of social security coverage in the ASEAN countries where coverage is currently limited. Greater economic integration, especially if it involves the free movement of workers in the ASEAN region, would bring the coordination of social security systems through the conclusion of a multilateral agreement onto the priority list of ASEAN governments, just as was the case for the European Union and CARICOM. Extension of social security coverage would entail strengthening the overall operational and administrative capacity of the social security institutions whose current capacity is limited, positioning them to take on the responsibilities and workload that a multilateral agreement would involve. In such circumstances, a

multilateral agreement could become feasible. The option of a multilateral agreement, therefore, should remain 'on the table' for discussion at a future time. In the meanwhile, less comprehensive, but nonetheless important, concrete action should be taken in the short and medium term to strengthen the social security protection of migrant workers through the start of work towards bilateral agreements.

5.4. Bilateral social security agreements among ASEAN countries

The principal constraints to the conclusion of bilateral agreements among ASEAN countries are the two considerations discussed in section 5.1.

A starting point for overcoming one of the constraints, the difficulty of coordinating a provident fund with a social insurance scheme, has been suggested in section 5.1.1. If the suggested approach is acceptable in principle, the question then becomes which provident fund and which social insurance scheme would be prepared to engage in the proposed technical discussions. Answering this question will require consultations with senior officials of ASEAN social security institutions.

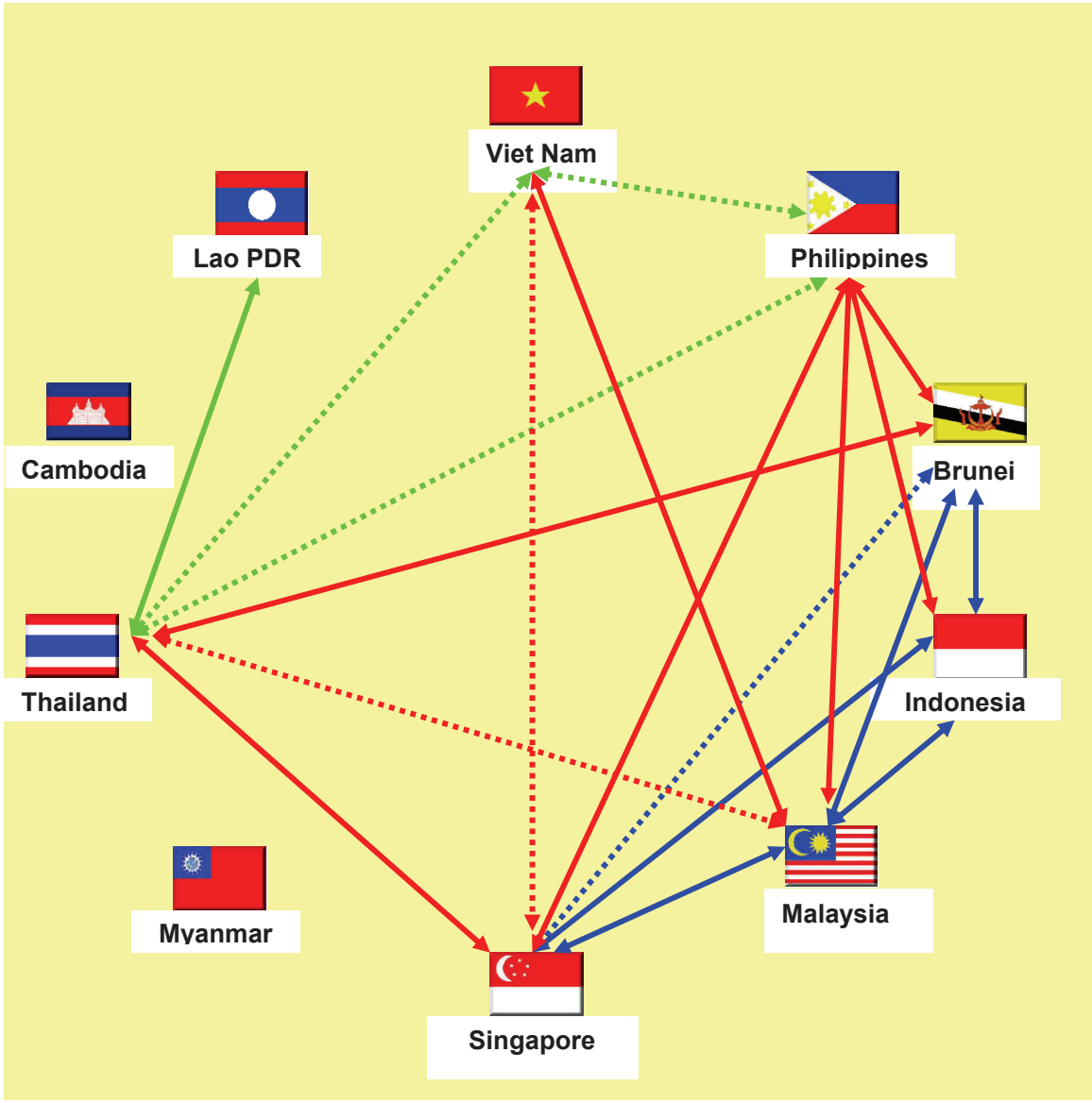
In regard to the second constraint discussed in section 5.1.2, it is beyond the scope of this report to assess the operational and administrative capacity of individual ASEAN social security institutions to assume the additional responsibilities that intra-ASEAN bilateral agreements would entail. Several ASEAN social security institutions have the required capacity, as demonstrated by the complex and multifaceted programs they already administer. For those that may not yet have the capacity, a bilateral approach would allow them to delay the conclusion of agreements until they can develop the capacity.

Figure 2 illustrates the network of *possible* ASEAN bilateral social security agreements covering old-age, invalidity and survivors benefits. In assessing the possibility of a bilateral agreement between countries, account has been taken only of the existence of social security programs in the countries concerned and whether there is a sufficient flow of migrant workers between them to warrant an agreement. No attempt has been made to determine whether there is a political willingness among the countries to conclude an agreement nor of the operational and administrative capacity of the social security institutions of the countries to implement agreements.

Green lines[24] indicate bilateral agreements between countries with social-insurance systems, blue lines[25] between countries with provident funds, and red lines[26] between social-insurance and provident fund countries. Solid lines show where, based on the available data, agreements would be important because of significant migration flows. Dotted lines indicate where agreements could be useful but migration flows are relatively small.

[24] Between (TH, LA), (TH, VN), (TH, PH) and (VN, PH)
[25] Between (BN, ID), (BN, MY), (BN, SG), (ID, MY), (ID, SG) and (MY, SG)
[26] Between (PH, BN), (PH, ID), (PH, MY), (PH, SG), (BN, TH), (VN, MY), (VN, SG) and (SG, TH)

Figure 2: Possible ASEAN bilateral social security agreements (old age, invalidity and survivors)



6. Possible ILO technical cooperation

ILO technical cooperation could play a critical role in encouraging and enabling the social security authorities in ASEAN countries – the region's social security institutions and the government ministries that oversee those institutions – to undertake discussions among themselves regarding social security agreements. There are three specific activities in particular that are feasible in the short term (i.e. the next year to 18 months), *provided that the necessary funding can be found*.

6.1. Training course on social security agreements for senior officials of ASEAN social security institutions and ministries

The ILO, possibly in conjunction with the ASEAN Social Security Association (ASSA), could organize a three-day training course on principles and practices of social security agreements. The course would cover the subjects that are discussed in chapters 1 and 2 of this report from both a conceptual and a practical (operational and administrative) perspective. Sessions would be structured using syndicate groups to allow participants to interact among themselves and with lecturers and to apply what they are learning.

Lecturers would be a mix of ILO experts and current and former national officials from both within and outside ASEAN who have been involved in the negotiation and administration of social security agreements. The Social Security System of the Philippines (SSS) would be asked to provide at least one lecturer since it is the only social security institution in the ASEAN region with extensive experience with agreements. The ILO Training Centre in Turin could be involved in designing the course.

The course could be held either in the ASEAN region or in Turin. The Turin Centre has some well-known advantages in terms of its facilities. However, for reasons of cost, the social security institutions and government ministries might prefer that the course be held in the region.

In conjunction with and immediately following the course, the ILO could organize a larger two-day high-level meeting involving practitioners of social security agreements (negotiators and administrators) from countries around the world. The meeting could focus on key strategic issues concerning agreements – for example, clarifying the conceptual and technical issues involved in coordinating social insurance schemes with provident funds.

Participants at the training course would be invited to the high-level meeting. This would expose them to a wide range of views on agreements and provide an opportunity for 'networking' with officials of non-ASEAN countries with which their own countries might eventually want to consider social security agreements.

To facilitate contacts with social security institutions and to encourage their participation, the ILO might want to consider jointly organizing the high-level meeting with the International Social Security Association (ISSA).

6.2. Technical discussions on coordination of a provident fund and a social insurance scheme

As noted earlier in this report, no agreement has been concluded to date between a social insurance scheme and a provident fund. Section 5.1.1 of the report suggests that a first step towards finding a workable solution for such an agreement could be technical discussions between officials (experts) of an institution responsible for a provident fund and their counterparts from an institution responsible for a social insurance scheme, assisted by ILO social security experts (either 'in house' or from outside, or both), to attempt to develop possible terms.

In agreeing to take part in the technical discussions, the two institutions would, in no way, be making a commitment to implement either a bilateral or a multilateral social security agreement. This would be explicitly and clearly stated at the start.

6.3. Development of ASEAN 'model provisions' for social security agreements

There are already several 'model provisions' for social security agreements, notably those given in the annex to the *Maintenance of Social Security Rights Recommendation, 1983* (No. 167) and reproduced in Annex II to this report. However, there would be some distinct advantages to developing ASEAN-specific 'model provisions' which could take, as their starting point, those annexed to Recommendation No. 167.

One advantage of developing ASEAN-specific model provisions is that the exercise itself would give officials of ASEAN social security institutions and ministries a hands-on experience in drafting provisions of an agreement outside of the sometimes pressured environment of inter-governmental negotiations. The development of the model provisions would build on, and extend, the momentum generated by the first two technical cooperation activities just described.

Another advantage of ASEAN-specific model provisions is that they would focus on the issues that are particularly relevant within the ASEAN context. Moreover, model provisions might contribute to lessening the variations between future bilateral agreements concluded among ASEAN member-countries, thus reducing (somewhat) the likelihood of a 'patchwork' of agreements with substantially different provisions applying to migrant workers from different countries.

Concluding observations

The vital contribution that migrant workers make to the societies and economies of all the ASEAN countries, without exception, is beyond dispute. For some ASEAN countries, in particular those that are the most economically advanced, migrant workers are essential for the operation of the economy; without migrant workers, the economies of those countries could not function. For other ASEAN countries, especially those that are the least economically developed, migration is critical for offering workers opportunities that are not available at home. The remittances those workers send back to their countries of origin provide both the means of subsistence for hundreds of thousands, in fact millions, of persons and also a significant part of the capital required for national development. For yet other ASEAN countries, including those with the largest populations in the region, both phenomena are at play as they receive migrant workers from some countries and send migrant workers to others.

The Cebu *Declaration on the Protection and Promotion of the Rights of Migrant Workers* committed all the ASEAN countries to strengthen the protection afforded to migrant workers, both to the migrants they receive and those they send. The Declaration provides an important framework for action. This is a critical first step. However, it is not sufficient in itself.

The framework established by the Cebu Declaration must be given reality through the concrete actions of the ASEAN member countries in a wide range of fields that are within their competence as sovereign states. One of those fields is social security.

As this report has shown, there are specific actions that ASEAN countries can take to strengthen the social security protection of migrant workers. The vehicle for those actions consists of agreements between countries to coordinate their social security system in order to ensure that migrant workers, and their families, will have access to the programs of the countries in which they have worked. This report has sought to demonstrate the importance of such agreements and has proposed specific measures that can be taken to begin the process of concluding agreements.

The development of a comprehensive network of ASEAN social security agreements –ideally in the form of a multilateral agreement – may take time. For most ASEAN countries, even the conclusion of the first social security agreement may take time. However, unless the process is begun, it will never be completed, and most ASEAN migrant workers will remain without social security protection. Without social security agreements, the greater integration of the ASEAN region, which offers so much hope for a better economic future for all the member countries, will be severely impeded.

Social security agreements can provide another of the building blocks for a more integrated, more cohesive and more prosperous ASEAN region. They ought to be made part of the fundamental blueprint for ASEAN's future.

The ILO stands ready to provide further technical assistance. In particular, it would be prepared, subject to financial resources being available, to assist social security institutions in ASEAN countries in building capacity and knowledge base for prospective social security agreements.

Annex I. Process for negotiating, approving and implementing a social security agreement

The conclusion of a social security agreement usually involves an eight-step process. Details of some of the steps will vary from country to country, depending on the requirements of national law and national practice for the negotiation, approval and implementation of treaties. However, the general contents of the steps are essentially the same for all countries.

This Annex describes, in detail, each of the steps. It is intended to assist countries unfamiliar with the conclusion of a social security agreement to anticipate what should be expected in the process.

AI.1. Preliminary discussions

The starting point for the conclusion of a social security agreement is usually an informal meeting of experts from the countries concerned to (a) exchange information on their respective social security programs and (b) inform each other regarding their countries' preferences concerning the application of the principles underlying social security agreements (equality of treatment, portability of benefits, determining the legislation applicable, totalizing and administrative assistance).

The information exchanged will generally include the branches of social security for which each country has programs in place, the scope of coverage by those programs (the categories of workers who are covered), the types of benefits provided by each program, the eligibility requirements for the benefits, and any other information which will assist the experts of the other countries to understand the country's social security programs. If there are branches of social security or specific types of benefits that a country does *not* include in its social security agreements, the experts from that country should provide an explanation of the reasons for the exclusion of the branches or benefits in question.

To the extent possible, the experts should provide each other copies of their respective social security legislation and examples of the social security agreements, if any, that their countries have already concluded. Since this type of information is often available on the websites of ministries or social security institutions, it suffices, in such instances, to provide the web address (URL) where the information can be found. While, as a matter of courtesy, it is desirable if the information can be provided in a language which the experts of the other countries can understand, a country is not normally expected to provide translations of its legislation or agreements.

In the course of the preliminary discussions, the experts will normally inform each other of the process that their countries follow for the conclusion of a social security agreement, including its approval (see section AI.6). They may also discuss the probable timing of the next steps in the process of concluding an agreement and agree on the country that will prepare a preliminary draft of an agreement (see the following section).

Preliminary discussions among social security experts are sometimes held 'without prejudice', in the sense that they do not commit any party to proceed to the formal negotiation of an agreement or to the terms and conditions that a country may propose in an agreement. This approach can be particularly helpful when a country is unsure whether it wishes to enter into an agreement but is, at least, prepared to consider the possibility.

AI.2. Preparation of a preliminary draft of an agreement

Following the preliminary discussions, one of the countries concerned usually prepares a preliminary draft of an agreement that will serve as the starting point for negotiations. It is helpful if the country that will undertake this work is agreed in the course of the preliminary discussions. However, if this does not prove possible, it can be done through a subsequent exchange of correspondence.

The preliminary draft should reflect, to the greatest extent possible, the preferences regarding the application of the principles of agreements that the experts of the countries concerned have indicated during the preliminary discussion. If countries have indicated differing preferences, options could be given in the preliminary draft reflecting each of the preferences.

Sometimes it is decided that each country will prepare its own preliminary draft. This is especially done when countries have substantially differing views or if one or more countries have particular 'non-standard' provisions that they use in agreements and that reflect the specificities of their social security legislation or practice.

Whether there is one preliminary draft of more than one draft, the text(s) should be sent to all the countries well in advance of the negotiations so that their experts can analyze the draft(s) and develop their respective positions. Every effort should be made to avoid sending the preliminary draft on the eve of the negotiations or, worse yet, presenting it to the other countries at the start of the negotiations themselves.

If there are some provisions in the preliminary draft that a country finds especially problematic for it, that country may wish to prepare its own proposal (in effect, an alternative or counter-proposal) in writing and either send it in advance to the other countries or circulate it when the provision in question comes up for discussion at the negotiations.

AI.3. Negotiations

The countries concerned will hold one or more rounds of negotiations to agree on the text of the social security agreement between them. The starting point for the negotiations will be the preliminary draft or drafts just discussed.

The negotiations usually involve a clause-by-clause review of the preliminary draft or drafts, starting with the title and preamble and continuing until the signatory block. To the extent possible, the objective of the review of each clause will be to agree on the specific wording of the clause. Where the wording of a clause has been agreed, whether with or without modification to the wording given in the preliminary draft, the clause should be included in a revised draft which will be annexed to the minutes of the negotiations (discussed below).

It will not always be possible during a single review to agree on the wording of every clause of an agreement. There will be some clauses on which the parties concerned will have differing views that cannot be immediately reconciled or regarding which the experts of a country may have to consult with officials of various ministries in their own government. Once all the points of view have been completely presented and questions, if any, answered, further discussion of such clauses should be deferred to the next round of negotiations or for resolution through an exchange of correspondence. In the revised draft of an agreement annexed to the minutes of the negotiations, such clauses are often indicated by the use of square brackets ([…]).

The number of rounds of negotiations required to conclude an agreement will vary. Most often, two rounds are required, each of three to five days' duration. Some agreements, however, can be concluded in as little as one round, while others may require several rounds. If there is more than one round of negotiations, it is the usual practice for the countries involved to host the rounds in a sequence agreed between them. For the negotiation of a bilateral agreement, this will mean alternating the rounds between the two countries.

Prior to the conclusion of each round of negotiations, minutes are usually prepared that summarize the outcome of the discussions. The revised draft of an agreement, reflecting the clauses agreed (or, as the case may be, not agreed) during the discussions is annexed to the minutes, along with a list of the participants and any other relevant material that may be agreed.

The country hosting the negotiations usually drafts the minutes. The minutes will be the principal subject of discussion at the last session of the round of negotiations. Whenever possible, the minutes will be signed at the closing of the round of negotiations by the heads of the respective delegations. However if this is not possible (for example, because the minutes must be translated), the minutes can be signed and exchanged afterwards through the mail or electronically. Each delegation should have an original, signed copy of the minutes.

The amount of detail given in the minutes will vary according to the practice of the participating countries and the contents of the negotiations. Generally speaking, minutes will be relatively brief (one to three pages, not including annexes). This will especially be the case if no contentious issues arose in the negotiations and/or if the agreed text of the agreement is clear from a simple reading. However, if some points have had to be deferred for consideration at the subsequent round of negotiations or for resolution through an exchange of correspondence, an appropriate explanation should usually be included in the minutes. This will serve, among other things, as an *aide memoir*.

As well, if the meaning or intent of a provision of an agreement may not be entirely clear even to an informed reader, or if some provision was a matter of contention and required significant compromise, an explanation in the minutes stating the provision's intent and purpose may be helpful. This can be particularly important if the provision gives rise, at a later date, to a dispute as to its meaning or application after the agreement has been signed. In this regard, note should be taken of Article 31 of the *Vienna Convention on the Law of Treaties* which states that, for purposes of confirming the meaning of a provision or interpreting it, "recourse may be had to

supplementary means of interpretation [of a treaty[27]], including the preparatory work of the treaty and the circumstances of its conclusion" [UN 1969].

At the conclusion of the negotiations, when the complete text of the agreement has been agreed, the heads of each countries' delegation usually initial the text. This indicates the heads of delegation's formal concurrence in the text. However, unless explicitly stated otherwise, initialling does not preclude subsequent modifications as a result of a further review of the text (see the following section), provided all the countries concerned agree to the changes.[28]

AI.4. Review of the agreed text

Although the heads of delegations have initialled the agreed text of an agreement in good faith, the text must nonetheless usually be reviewed by the relevant authorities of each of the countries (for examples, the treaty experts in ministries of foreign affairs and legal experts in ministries of justice). The minutes of the last round of negotiations usually make reference to such a review and the possibility that it may result in proposals to modify the agreed wording of specific provisions.

Any modifications resulting from such a review should be kept to a strict minimum and should only involve questions that are essential for a country. If the modifications involve treaty practice or legal issues outside of the sphere of social security (for example, constitutional questions), these should be resolved through direct discussions between foreign ministries through diplomatic channels. Social security experts cannot be expected to resolve issues outside of their range of competence and responsibility.

If, as a result of this review, changes are required to the initialled text of the agreement, the changes must be agreed by all the countries concerned. In such a case, the concurrence of the other countries to the changes should be given in writing, whether by letter or e-mail, to avoid any possible future misunderstanding.

AI.5. Signing of the agreement

Once the relevant authorities of each country have concurred with the final text of the agreement, the agreement is ready for signing. The time and location of the signing are determined through consultations between the countries concerned.

The country in which the signing will take place is usually responsible for preparing the copies of the agreement for itself and for all the other signatory countries.

[27] Article 1(a) of the *Vienna Convention on the Law of Treaties* defines the term 'treaty' to mean "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" [UN 1969]. A social security agreement unquestionably falls within this definition of a treaty.

[28] The United Kingdom's foreign ministry, for example, defines initialling as "signif[ying] only provisional assent to the text of a treaty by delegates following negotiation" [FCO 2007].

However, this practice can vary as circumstances require. In any case, it is essential that each country have an original copy of the signed agreement for deposit in the treaty registry of its ministry of foreign affairs.

It is the usual international practice that, in the copy of the agreement that a country will retain, the name of that country appears first in the title, preamble and signatory block. For example, in a bilateral agreement between country X and country Y, the title of the agreement in country X's copy will read 'Agreement on Social Security between country X and country Y', while in country Y's copy it will read 'Agreement on Social Security between country Y and country X'. In the treaty practice of some countries, the same rule may also apply to provisions of the agreement itself (for example, in the article stating the legislation of each country that is included in the material scope of the agreement).

Foreign ministries should be consulted regarding a country's treaty practice. In the event of differences in practice between countries, these should be resolved by foreign ministries through diplomatic channels.

If an agreement is being signed on behalf of a country by an official other than the country's head of state, head of government or minister of foreign affairs, an instrument of full power is often issued to certify to the other countries that the individual is authorized by her or his country to sign the agreement. The authority competent to issue an instrument of full power varies from country to country. It might, for example, be the head of state, the council of ministers (cabinet), the minister of foreign affairs after concurrence by the council of ministers, or another authority designated in national law.

AI.6. Approval of the agreement

Most agreements do not enter into force simply by virtue of the fact that they have been signed. A further step is required. This step takes the form of approval or ratification by each country in accordance with its constitution, laws and/or treaty practices.

There is wide variation between countries as to the procedure to be followed for the approval or ratification of an agreement. In some countries, for example, the agreement must be submitted to the parliament for approval and it is subject to a vote in parliament. In other countries, the agreement must be tabled in the parliament, but it is deemed to be approved if the parliament has not decided to debate the agreement within a prescribed period (for example, within 30 days of its tabling).[29] In yet other countries, approval by the council of ministers is required.

In colloquial usage, the term 'ratification' is often used interchangeably with 'approval' in regard to an agreement. In law, however, 'ratification' refers to a specific and formal legal process.[30] The laws or constitutions of many countries require the ratification of treaties. In other countries, approval alone suffices.

[29] This procedure is often referred to as 'negative resolution'.

[30] The United Kingdom's foreign ministry notes that ratification "follows signature and signifies the consent of a State to be bound by the treaty. It consists of the deposit of an

AI.7. Conclusion of an administrative agreement

The social security agreement establishes the legal framework for the coordination of the social security systems of the countries concerned. The agreement alters national social security legislation and creates rights and obligations that do not exist under the national legislation alone (for example, eligibility for a pension through totalizing when eligibility cannot be established only under national legislation). The social security agreement also sets out the principles that will underlie the administrative assistance that the social security authorities and institutions of each country will provide to the authorities and institutions of the other country or countries.

A subsidiary instrument, known as an administrative arrangement, describes in greater detail how the administrative assistance will be provided. It sets out the modalities for providing the assistance, the procedures that will be followed, etc.

Authorization to conclude an administrative arrangement is given in a provision of the agreement itself. Usually the ministries responsible for the application of the social security legislation of the countries concerned, designated in agreements as the 'competent authorities', are authorized to conclude the administrative arrangement. In some instances, the institutions responsible for administering social security legislation, designated in agreements as the 'competent[31] institutions', are given the authority.

Administrative arrangements are, essentially, contracts between the social security authorities and institutions that set out the terms and conditions through which the authorities and institutions will work together, and assist one another, to apply the agreement and the legislation to which the agreement applies.

There are some examples of administrative arrangements that go beyond administrative issues and that affect the rights and obligations of insured persons under an agreement. This exceeds the authorization that has been given to the competent authorities and/or institutions to conclude an administrative arrangement and should rigorously be avoided. If issues of rights and obligations are not dealt with insufficiently in the social security agreement itself, the agreement needs to be

instrument of Ratification with the other State (bilateral), or the Depositary (multilateral). Any process of obtaining parliamentary approval for ratification is not ratification, though often mistakenly referred to as such" [FCO 2007]. The *Vienna Convention on the Law of Treaties* gives four terms – ratification, acceptance, approval and accession – that can be used to designate "the international act … whereby a State establishes on the international plane its consent to be bound by a treaty" [ILO 1969].

[31] In most social security agreements, the terms 'institution' and 'competent institution' are used interchangeably. However, a distinction sometimes needs to be made between an 'institution' – that is, *any* institution responsible for the administration of the social security programs included in the material scope of an agreement – and the 'competent institution' in a particular case – that is, the institution that is authorized ('competent') under the applicable country's laws to act in that specific case.

amended. The administrative arrangement should not and, in law, *cannot* be a vehicle for dealing with gaps, omissions or imprecisions of an agreement.[32]

The administrative arrangement will usually designate, by name, the specific agency or agencies of each signatory country that will serve as that country's 'liaison agency' for the application of the social security agreement. The liaison agency is the one which, usually, is responsible for sending and receiving communications and documentation (for example, claims for benefits) related to the agreement. Depending on how a country's social security system is structured, there may be more than one liaison agency. For example, in the case of a country in which one institution collects social security contributions and another determines eligibility for benefits, the first institution (or one of its departments) may be the liaison agency for matters concerning the legislation applicable while the latter institution (or one of its department) may be the liaison agency for all other matters arising under the agreement.

If the agreement does not explicitly name the competent authorities and/or competent institutions of the signatory countries, these authorities and/or institutions should be designated, by name, in the administrative arrangement.[33]

The administrative arrangement is essential to the implementation and administration of the agreement. Therefore, it should usually be concluded and signed before the agreement enters into force so it can take effect on the same date as the agreement.

Although the administrative arrangement is essential, it is not, by itself, usually sufficient. There is also need to agree on the forms that will be used to apply the agreement and the detailed operational procedures that will be followed. The forms and detailed procedures should usually be agreed between the competent institutions and liaison agencies of the countries concerned in the course of implementation discussions.

[32] The administrative arrangement can be used to clarify, *for administrative and operational purpose*s, terms used in the agreement and how specific provisions of the agreement should be applied. For example, if the provision of the agreement regarding totalizing states that periods under the social security system of one country which overlap with periods under the social security system of another country will be taken into account only once when totalizing, the administrative arrangement can provide rules for dealing with such overlapping periods.

[33] Given that a social security agreement is a treaty and so may require considerable time and effort to amend, many countries find it advantageous to use a general formula in the agreement for designating its competent authorities and institutions. Such a general formula may, for example, define the term 'competent authority' to mean 'the ministry authorized under the legislation of a Party to administer that legislation'. By using such a formula, it is not necessary to amend the agreement if a country alters the title of a ministry or moves responsibility for a program from one ministry to another. When such a general formula is used in an agreement, the authorities and/or institutions should be listed, by name, in the administrative arrangement concluded pursuant to the agreement. The administrative arrangement can be easily amended in the future, as required, by an exchange of correspondence between the competent authorities.

AI.8. Entry-into-force of the agreement

The final step in the conclusion of a social security agreement is its entry-into-force. Once each country has concluded its legal requirements for the approval or ratification of the agreement and the administrative arrangement has been signed, the agreement enters into force on a date that is usually determined in accordance with a provision of the agreement itself. This could, for example, be on a date agreed by the countries concerned through an exchange of diplomatic notes. A more usual formula found in most social security agreements is to state that the agreement will enter into force on the first day of the second (or third, or fourth[34]) month following the exchange of instruments of ratification or notification that national requirements have been met. For example, if the relevant provision of an agreement states that the agreement will enter into force on the first day of the second month following the exchange of instruments of ratification, and if the instruments of ratification are exchanged at any time in the month of November, the agreement enters into force on the following 1 January.

AI.9. Length of time required to conclude an agreement

The time required to complete the eight-step process just described can vary significantly from one agreement to another. It seldom can be completed in less than a year and a half. Considerably longer is often needed.

A country which has little or no experience in the conclusion of social security agreements will usually require more time for its first few agreements than a country with considerable experience. It is important that a country just embarking on the conclusion of agreements proceed with a degree of caution since the precedents set in its first agreements could determine the pattern for subsequent agreements and might be difficult to reverse or even substantially modify in later agreements.

[34] Although the first day of the second month is the most commonly used formula, the length of time will depend on legal and administrative considerations. For example, if a country's laws require the publication of the text of the agreement in the country's official gazette between the time of the exchange of instruments of ratification and the date of the agreement's coming-into-force, a longer period (e.g. three or four months) may be needed. Similarly, if a country's social security institutions prefer not to print forms for applying for benefits under an agreement until close to the time the agreement enters into force, a longer period may again be required.

Annex II. ILO model provisions for the conclusion of social security agreements

The text below gives the model provisions for a social security agreement that were developed by social security experts at the 69th Session of the International Labour Conference, in the course of the preparation of the *Maintenance of Social Security Rights Recommendation, 1983* (No. 167).

R167 ***Maintenance of Social Security Rights Recommendation, 1983***

RECOMMENDATION CONCERNING THE ESTABLISHMENT OF AN INTERNATIONAL SYSTEM FOR THE MAINTENANCE OF RIGHTS IN SOCIAL SECURITY

SUB-ANNEX II.A.

Model Provisions for the Conclusion of Bilateral or Multilateral Social Security Instruments

I. DEFINITIONS

Article 1

For the purpose of these model provisions −

(a) the term legislation includes any social security rules as well as laws and regulations;
(b) the term competent State means a Contracting Party under whose legislation the person concerned can claim benefit;
(c) the term competent authority means the minister, ministers or other corresponding authority responsible for the social security schemes in all or any part of the territory of each Contracting Party;
(d) the term institution means any body or authority directly responsible for applying all or part of the legislation of a Contracting Party;
(e) the term competent institution means --
    (i) in relation to a social insurance scheme, either the institution with which the person concerned is insured when he claims benefit, or an institution from which he is entitled to receive benefit or would be entitled to receive benefit if he were resident in the territory of the Contracting Party where that institution is situated, or the institution designated by the competent authority of the Contracting Party concerned;
    (ii) in relation to a scheme other than a social insurance scheme, or in relation to a family benefits scheme, the institution designated by the competent authority of the Contracting Party concerned;

(iii) in relation to a scheme consisting of obligations imposed on employers either the employer or his insurer or, in default thereof, the body or authority designated by the competent authority of the Contracting Party concerned;

(f) the term provident fund means a compulsory savings institution;

(g) the term members of the family means persons defined or recognised as such or as members of the household by the legislation under which benefits are awarded or provided, as appropriate, or persons determined by mutual agreement between the Contracting Parties concerned; where persons are defined or recognised as members of the family or as members of the household under the relevant legislation only on the condition that they are living with the person concerned, this condition shall be deemed to be satisfied in respect of persons who obtain their main support from the person concerned;

(h) the term survivors means persons defined or recognised as such by the legislation under which benefits are awarded; where persons are defined or recognised as survivors under the relevant legislation only on the condition that they were living with the deceased, this condition shall be deemed to be satisfied in respect of persons who obtained their main support from the deceased;

(i) the term residence means ordinary residence;

(j) the term temporary residence means a temporary stay;

(k) the term institution of the place of residence means the institutional empowered, under the Contracting Party's legislation applied by it, to provide the benefits in question at the place of residence or, where no such institution exists, the institution designated by the competent authority of the Contracting Party concerned;

(l) the term institution of the place of temporary residence means the institution empowered, under the Contracting Party's legislation applied by it, to provide the benefits in question at the place of temporary residence of the person concerned or, where no such institution exists, the institution designated by the competent authority of the Contracting Party concerned;

(m) the term periods of insurance means periods of contribution, employment, occupational activity or residence which are defined or recognised as periods of insurance by the legislation under which they were completed, and such other periods as are regarded by that legislation as equivalent to periods of insurance;

(n) the terms periods of employment and periods of occupational activity mean periods defined or recognised as such by the legislation under which they were completed and such other periods as are regarded by that legislation as equivalent to periods of employment or periods of occupational activity respectively;

(o) the term periods of residence means periods of residence defined or recognised as such by the legislation under which they were completed;

(p) the term benefits means all benefits in kind and in cash provided in respect of the contingency concerned, including death grants, and --

(i) as benefits in kind, benefits aimed at the prevention of any contingency covered by social security, physical rehabilitation and vocational rehabilitation;

(ii) as benefits in cash, all components thereof provided out of public funds, and all increases, revaluation allowances of supplementary allowances, and any benefits awarded for the purpose of maintaining or improving earning capacity, lump-sum benefits which may be paid in lieu of pensions and, where applicable, any payments made by way of refund of contributions;

(q) (i) the term family benefits means any benefits in kind or in cash, including family allowances, granted to offset family maintenance costs, with the

exception of increases in, or supplements to, pensions provided for the members of the family of the recipients of such pensions;

(ii) the term family allowances means periodical cash benefits granted according to the number and age of children;

(r) the term death grant means any lump sum payable in the event of death other than the lump-sum benefits mentioned in subparagraph (p)(ii) of this article;

(s) the term non-contributory applies to benefits the award of which does not depend on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity, and to any scheme which exclusively awards such benefits.

II. APPLICABLE LEGISLATION

Article 2

1. Notwithstanding the general rule relating to the application of the legislation of the Contracting Party in the territory of which the employed persons are employed (Note: see paragraph 1 (a) of Article 5 of the Maintenance of Social Security Rights Convention, 1982) the legislation applicable to employed persons referred to in this paragraph is determined in accordance with the following provisions:

(a) (i) employed persons who are employed in the territory of a Contracting Party by an undertaking which is their regular employer and who are sent by that undertaking to work for it in the territory of another Contracting Party shall remain subject to the legislation of the first Party, provided that the expected duration of the work does not exceed the time-limit determined by mutual agreement between the Contracting Parties concerned and that they are not sent to replace other employed persons who have completed their period of secondment abroad;

(ii) if the work to be carried out continues because of unforeseeable circumstances for a period longer than originally foreseen and exceeding the determined time-limit, the legislation of the first Party shall remain applicable until the work is completed, subject to the consent of the competent authority of the second Party or of the body designated by it;

(b) (i) employed persons who are employed in international transport in the territory of two or more Contracting Parties as travelling personnel in the service of an undertaking which has its registered office in the territory of a Contracting Party and which, on behalf of others or on its own account, transports passengers or goods by rail, road, air or inland waterway, shall be subject to the legislation of the latter Party;

(ii) however, if they are employed by a branch or permanent agency which the said undertaking has in the territory of a Contracting Party other than the Party in whose territory it has its registered office, they shall be subject to the legislation of the Contracting Party in whose territory the branch or permanent agency is situated;

(iii) if they are employed mainly in the territory of the Contracting Party where they are resident, they shall be subject to the legislation of that Party, even if the undertaking which employs them has neither its registered office nor a branch or permanent agency in that territory;

(c) (i) employed persons other than those in international transport who normally follow their occupation in the territory of two or more Contracting Parties shall be subject to the legislation of the Contracting Party in whose

territory they reside if their occupation is carried on partly in that territory or if they are employed by several undertakings or by several employers having their registered offices or their places of residence in the territory of different Contracting Parties;

(ii) in other cases they shall be subject to the legislation of the Contracting Party in whose territory the undertaking which employs them has its registered office or their employer has his place of residence;

(d) employed persons who are employed in the territory of a Contracting Party by an undertaking which has its registered office in the territory of another Contracting Party and whose premises lie astride the common frontier of the Contracting Parties concerned shall be subject to the legislation of the Contracting Party in whose territory the undertaking has its registered office.

2. Notwithstanding the general rule relating to the application of the legislation of the Contracting Party in the territory of which self-employed persons engage in an occupation, (Note: see paragraph 1 (b) of Article 5 of the Maintenance of Social Security Rights Convention, 1982) the legislation applicable to the self-employed persons referred to in this paragraph is determined in accordance with the following provisions --

(a) self-employed persons who reside in the territory of one Contracting Party and engage in their occupation in the territory of another Contracting Party shall be subject to the legislation of the first Party:

(i) if the second Party has no legislation applicable to them, or

(ii) if, under the legislation of each of the Parties concerned, self-employed persons are subject to that legislation solely by reason of the fact that they are resident in the territory of those Parties;

(b) self-employed persons who normally engage in their occupation in the territory of two or more Contracting Parties shall be subject to the legislation of the Contracting Party in whose territory they are resident, if they work partly in that territory or if, under that legislation, they are subject to it solely by reason of the fact that they are resident in the territory of that Party;

(c) where the self-employed persons referred to in the preceding subparagraph do not work partly in the territory of the Contracting Party where they are resident, or where, under the legislation of that Party, they are not subject to that legislation solely by reason of their residence, or where that Party has no legislation applicable to them, they shall be subject to the legislation mutually agreed upon by the Contracting Parties concerned or by their competent authorities.

3. Where by virtue of the preceding paragraphs of this article, a worker is subject to the legislation of a Contracting Party in whose territory he is neither employed nor engaged in an occupation nor resident, that legislation shall be applicable to him as if he were employed or engaged in an occupation or resident in the territory of that Party, as the case may be.

4. The competent authorities of the Contracting Parties may, by mutual agreement, make other provisions than those of the preceding paragraphs of this Article, in the interest of the persons concerned.

III. MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION

A. ADDING TOGETHER PERIODS

1. Medical Care, Sickness Benefit, Maternity Benefit and Family Benefit

Article 3

Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of the right to benefit conditional upon the completion of periods of insurance, employment, occupational activity or residence, the institution which applies that legislation shall, for the purpose of adding periods together and to the extent necessary, take account of periods of insurance, employment, occupational activity and residence completed under the corresponding legislation of any other Contracting Party, in so far as they are not overlapping, as if they were periods completed under the legislation of the first Party.

2. Unemployment Benefit

Article 4

1. Where the legislation of a Contracting Party makes the acquisition, maintenance of recovery of the right to benefit conditional upon the completion of periods of insurance, employment, occupational activity or residence, the institution which applies that legislation shall, for the purpose of adding periods together and to the extent necessary, take account of periods of insurance, employment, occupational activity and residence completed under the corresponding legislation of any other Contracting Party, in so far as they are not overlapping, as if they where periods completed under the legislation of the first Party.

2. However, the institution of a Contracting Party whose legislation requires the completion of periods of insurance for the establishment of the right to benefit may make the adding together of periods of employment or occupational activity completed under the corresponding legislation of another Contracting Party subject to the condition that these periods would have been considered as periods of insurance if they had been completed under the legislation of the first Party.

3. The provisions of the preceding paragraphs of this article shall apply, mutatis mutandis, where the legislation of a Contracting Party provides that the length of the period during which benefit may be awarded depends on the length of the periods completed.

3. Invalidity, Old-age and Survivors' Benefit

Article 5

1. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of the right to benefit conditional upon the completion of periods of insurance employment, occupational activity or residence, the institution which applies that legislation shall, for the purpose of adding periods together, take account of periods of insurance, employment, occupational activity and residence

completed under the corresponding legislation of any other Contracting Party, in so far as they are not overlapping, as if they were periods completed under the legislation of the first Party.

2. Where the legislation of a Contracting Party makes the provision of benefit conditional on the person concerned or, in the case of survivors' benefit, the deceased, having been subject to that legislation at the time at which the contingency arose, that condition shall be deemed to be fulfilled if the person concerned or the deceased, as the case may be, was subject at that time to the legislation of another Contracting Party or, failing that, if the person concerned or the survivor can claim corresponding benefits under the legislation of another Contracting Party.

3. Where the legislation of a Contracting Party provides that the period of payment of a pension may be taken into consideration for the acquisition, maintenance or recovery of the right to benefit, the competent institution of that Party shall for this purpose take account of any period during which a pension was paid under the legislation of any other Contracting Party.

4. Common Provisions

Article 6

Where the legislation of a Contracting Party makes the provision of certain benefits conditional upon the completion of periods in an occupation covered by a special scheme or in a specified occupation or employment, only periods completed under a corresponding scheme or, in the absence of such a scheme, in the same occupation or in the same employment, as the case maybe, under the legislation of other Contracting Parties, shall be taken into account for the award of such benefits. If, notwithstanding periods completed in this way, the person concerned does not satisfy the conditions for entitlement to the said benefits, the periods concerned shall be taken into account for the award of benefits under the general scheme or, in the absence of such a scheme, the scheme applicable to wage earners or to salaried employees, as appropriate.

B. DETERMINATION OF INVALIDITY, OLD-AGE AND SURVIVORS'BENEFIT

Article 7

The determination of invalidity, old-age and survivors' benefit shall be carried out in conformity with either the method of apportionment or the method of integration, according to the choice made by mutual agreement between the Contracting Parties concerned.

ALTERNATIVE I-METHOD OF APPORTIONMENT

1. Common Provisions

Article 8

1. Where a person has been subject successively or alternately to the legislation of two or more Contracting Parties, the institution of each of these Parties shall determine, in accordance with the legislation which it applies, whether such person, or his survivors, satisfies the conditions for right to benefit having regard, where appropriate, to the provisions of Article 5.

2. Where the person concerned satisfies these conditions, the competent institution of any Contracting Party whose legislation provides that the amount of benefits or certain parts thereof shall be in proportion to the periods completed may calculate those benefits or parts thereof directly, solely on the basis of the periods completed under the legislation which it applies, notwithstanding the provisions of the following paragraphs of this Article.

3. If the person concerned satisfies the conditions referred to in paragraph 1 of this Article the competent institution of any of the other Contracting Parties shall calculate the theoretical amount of the benefits he could claim if all the periods completed under the legislation of all the Contracting Parties concerned and taken into account for establishing entitlement, in accordance with the provisions of Articles 5, had been completed exclusively under the legislation which that the institution applies.

4. However,

(a) in the case of benefits the amount of which does not depend on the length of periods completed, that amount shall be taken to be the theoretical amount referred to in the preceding paragraph;
(b) in the case of non-contributory benefits the amount of which does not depend on the length of periods completed, the theoretical amount referred to in the preceding paragraph may be calculated on the basis of and up to the amount of the full benefit :
    (i) in the case of invalidity or death, in proportion to the ratio of the total periods completed, before the contingency arose, by the person concerned or the deceased under the legislation of all Contracting Parties concerned and taken into account in accordance with the provisions of Article 5, to two-thirds the number of years which elapsed between the date on which the persons concerned or the deceased reached the age of 15-or a higher age fixed by mutual agreement between the Contracting Parties concerned- and the date on which the incapacity for work followed by invalidity or the death, as the case may be, occurred, disregarding any years subsequent to pensionable age;
    (ii) in the case of old age, in proportion to the ratio of the total periods completed by the person concerned under the legislation of all the Contracting Parties concerned and taken into account in accordance with the provisions of article 5, to 30 years, disregarding any years subsequent to pensionable age.

5. The institution referred to in paragraph 3 of this Article shall then calculate the actual amount of the benefit payable by it to the person concerned on the basis of the theoretical amount calculated in accordance with the provisions of paragraph 3 or of paragraph 4 of this Article, as appropriate, and in proportion to the ratio of the periods completed before the contingency arose under the legislation which it applies, to the total of the periods completed before the contingency arose under the legislation of all the Contracting Parties concerned.

6. If the total of the periods completed under the legislation of all the Contracting Parties concerned before the Contingency arose exceeds the maximum period required by the legislation of one of these Parties for the receipt of full benefits, the institution of that Party shall, when applying the provisions of paragraphs 3 and 5 of this Article, take into account this maximum, period instead of the total of the periods completed, without, however, being obliged to award higher benefits than the full benefits provided for by the legislation which it applies.

Article 9

1. Notwithstanding the provisions of Article 8, where the total duration of the periods completed under the legislation of a Contracting Party is less than one year and where, taking into account only those periods, no right to benefit exists under that legislation, the institution of the Party concerned shall not be bound to award benefit in respect of the said periods.

2. The periods referred to in the preceding paragraph shall be taken into account by the institution of each of the other Contracting Parties concerned for the purpose of applying the provisions of Article 8, except those of paragraph 5 thereof.

3. However, where the application of the provisions of paragraph 1 of this Article would have the effect of relieving all the institutions concerned of the obligation to award benefit, benefit shall be awarded

(Alternative A) exclusively under the legislation of the last Contracting Party whose conditions are fulfilled by the person concerned, regard being had to the provisions of Article 5, as if all the periods referred to in paragraph 1 of this Article had been completed under the legislation of that Party.

(Alternative B) in accordance with the provisions of Article 8.

Article 10

1. If the person concerned does not, at a given date, satisfy the conditions required by the legislation of all the Contracting Parties concerned, regard being had to the provisions of Article 5, but satisfies the conditions of the legislation of only one or more of them, the following provisions shall apply:

(a) the amount of the benefit payable shall be calculated in accordance with the provisions of paragraph 2 or of paragraphs 3 to 6 of Article 8, as appropriate, by each of the competent institutions applying legislation the conditions of which are fulfilled;

(b) however:

(i) if the person concerned satisfies the conditions of the legislation of at least two Contracting Parties, without any need to include periods completed under any legislation the conditions of which are not fulfilled, such periods shall not be taken into account for the purpose of applying the provisions of paragraphs 3 to 6 of Article 8;
(ii) if the person concerned satisfies the condition of the legislation of one Contracting Party only, without any need to invoke the provisions of Article 5, the amount of the benefit payable shall be calculated exclusively in accordance with the provisions of the legislation the conditions of which are fulfilled, taking account of periods completed under that legislation only.

2. Benefits awarded under the legislation of one or more Contracting Parties concerned in the case covered by the preceding paragraph shall be recalculated automatically, in accordance with the provisions of paragraph 2 or of paragraphs 3 to 6 of Article 8, when the conditions prescribed by the other legislation or legislations concerned are satisfied, regard being had, where appropriate, to the provisions of Article 5.

3. Benefits awarded under the legislation of two or more Contracting Parties shall be recalculated, in accordance with the provisions of paragraph 1 of this Article, at the request of the beneficiary, when the conditions prescribed by the legislation of one or more of these Contracting Parties cease to be fulfilled.

Article 11

1. Where the amount of the benefits a person would be entitled to claim under the legislation of a Contracting Party, without regard to the provisions of Articles 5 and 8 to 10, is greater than the total benefits payable in accordance with those provisions, the competent institution of that Party shall pay a supplement equal to the difference between the two amounts. That institution shall bear the whole cost of the supplement.

(Alternative A) 2. Where the application of the provisions of the preceding paragraph would have the effect of entitling the person concerned to supplements from the institutions of two or more Contracting Parties, he shall receive only whichever is the largest. The cost of this supplement shall be apportioned among the competent institutions of the Contracting Parties concerned according to the ratio between the amount of the supplement which each of them would have to pay if it alone had been concerned and the amount of the combined supplement which all the said institutions would have to pay.

(Alternative B) 2. Where the application of the provisions of the preceding paragraph would have the effect of entitling the person concerned to supplements from the institutions of two or more Contracting Parties, he shall receive these supplements only within the limit of the highest theoretical amount calculated by these institutions in accordance with the provisions of paragraphs 3 or 4 of Article 8. If the total amount of the benefit and supplements exceeds the highest theoretical amount, each institution of the Contracting Parties concerned may reduce the amount of the supplement which it would have to pay, by a fraction of the excess determined according to the ration between the amount of the latter supplement and the amount of the combined supplement which all the said institutions would have to pay.

3. The supplements referred to in the preceding paragraphs of this Article shall be regarded as a component of the benefit provided by the institution liable for payment. Their amount shall be determined once and for all, except where the provisions of paragraph 2 or paragraph 3 of Article 10 are applicable.

2. Special Provisions concerning Invalidity and Survivors' Benefits

Article 12

1. In the event of an aggravation of any invalidity for which a person is receiving benefit under the legislation of one Contracting Party only, the following provisions shall apply :

(a) if the person concerned has not been subject to the legislation of any other Contracting Party since he began to receive benefit, the competent institution of the first Party shall be bound to take the aggravation into account, when awarding benefit, in accordance with the provisions of the legislation which it applies;
(b) if the person concerned has been subject to the legislation of one or more other Contracting Parties since he began to receive benefit, the aggravation shall be taken into account when awarding benefit in accordance with the provisions of Article 5 and 8 to 11;
(c) in the case referred to in the preceding subparagraph, the date on which the aggravation was demonstrated shall be regarded as the date on which the contingency arose;
(d) if in the case referred to in subparagraph (b) of this paragraph the person concerned is not entitled to benefit from the institution of another Contracting Party, the competent institution of the first Party shall be bound to take the aggravation into account, when awarding benefit, in accordance with the provisions of the legislation which it applies.

2. In the event of aggravation of any invalidity for which the person is receiving benefit under the legislation of two or more Contracting Parties, the aggravation shall be taken into account, when awarding benefit, in accordance with the provisions of Articles 5 and 8 to 11. The provisions of subparagraph (c) of the preceding paragraph shall apply mutatis mutandis.

Article 13

1. Invalidity or survivors' benefit shall, where appropriate, be converted into old-age benefit, on conditions prescribed by the legislation under which they have been awarded and in accordance with the provisions of Article 5 and 8 to 11.

2. Where, in the case referred to in Article 10, a recipient of invalidity or survivors' benefit payable under the legislation of one or more Contracting Parties becomes entitled to old-age benefit, any institution liable for the payment of invalidity or survivors' benefit shall continue to pay the recipient to which he is entitled under the legislation which it applies until such time as the provisions of the preceding paragraph become applicable in respect of that institution.

ALTERNATIVE II-METHOD OF INTEGRATION

Formula A - Integration Linked with Residence

Article 14

1. Where a person has been subject successively or alternately to the legislation of two or more Contracting Parties, he or his survivors shall be entitled only to the benefits determined in accordance with the legislation of the Contracting Party in the territory of which they reside, provided that they satisfy the conditions prescribed by that legislation or by the Contracting Parties concerned, having regard, where appropriate, to the provisions of Article 5.

2. The cost of the benefits determined in accordance with the provisions of the preceding paragraph shall be:

(a) borne entirely by the institution of the Contracting Party in the territory of which the person concerned resides; however, the application of this provision may be made conditional upon the person concerned having been resident in that territory at the date of the submission of his benefit claim or, in respect of survivors' benefit, upon the deceased having been resident in that territory at the date of his death for a minimum period fixed by mutual agreement between the Contracting Parties concerned; or

(b) apportioned among the institutions of all the Contracting Parties concerned according to the ratio between the duration of the periods completed under the legislation which each of those institutions applies, before the contingency arose, and the total duration of the periods completed under the legislation of all the Contracting Parties concerned before the contingency arose; or

(c) borne by the institution of the Contracting Party in the territory of which the person concerned resides, but compensated by the institutions of the other Contracting Parties concerned according to a lump-sum arrangement agreed upon between all these Parties on the basis of the participation of the person concerned in the scheme of each of the Contracting Parties which is not liable to pay benefit.

3. If the person concerned does not satisfy the conditions of the legislation of the Contracting Party referred to in paragraph 1 of this Article or if that legislation does not provide for the award of invalidity, old-age or survivors' benefit, he shall receive the most favourable benefit to which he is entitled under the legislation of any other Contracting Party, regard being had, where appropriate, to the provisions of Article 5.

Formula B - Integration Linked with the Occurrence of Invalidity or Death

Article 15

1. Where a person has been subject successively or alternately to the legislation of two or more Contracting Parties, he or his survivors shall be entitled to benefit in accordance with the provisions of the following paragraphs of this Article.

2. The institution of the Contracting Party whose legislation was applicable when the incapacity for work followed by invalidity or death occurred shall determine, in accordance with the provisions of that legislation, whether the person concerned satisfies the conditions for right to benefit, regard being had, where appropriate, to the provisions of Article 5.

3. The person concerned who satisfies these conditions shall obtain the benefit form the said institution only, in accordance with the provisions of the legislation which it applies.

4. If the person concerned does not satisfy the conditions of the legislation of the Contracting Party referred to in paragraph 2 of this Article, or if that legislation does not provide for invalidity or survivors' benefit, he shall receive the most favourable benefit to which he is entitled under the legislation of any other Contracting Party, having regard, where applicable, to the provisions of Article 5.

Article 16

The provisions of Article 12, paragraph 1, shall apply mutatis mutandis.

C. DETERMINATION OF BENEFITS IN RESPECT OF OCCUPATIONAL DISEASES

Article 17

1. If a worker contracts an occupational disease after having been engaged in an occupation likely to cause that disease under the legislation of two or more Contracting Parties, the benefit to which he or his survivors may be entitled shall be awarded exclusively under the legislation of the last of the said Parties the conditions of which they fulfil, regard being had, where applicable, to the provisions of paragraphs 2 to 4 of this Article.

2. Where the legislation of a Contracting Party makes the right to benefit for occupational diseases conditional upon the disease in question being first diagnosed in its territory, that condition shall be deemed to have been fulfilled if this disease was first diagnosed in the territory of another Contracting Party.

3. Where the legislation of a Contracting Party explicitly or implicitly makes the right to benefit for occupational diseases conditional upon the disease in question being diagnosed within a specified period after the termination of the last occupation liable to cause such a disease, the competent institution of that Party, when ascertaining the time at which the occupation of the same kind engaged in under the legislation of any other Contracting Party, as if it had been engaged in under the legislation of the first Party.

4. Where the legislation of a contracting Party explicitly or implicitly makes entitlement to benefit for occupational diseases conditional upon an occupation liable to cause the disease in question having been pursued for a specific period, the competent institution of that Party shall, to the extent necessary, take account, for the purpose of adding periods together, of periods during which such an occupation was followed in the territory of any other Contracting Party.

5. In those cases where the provisions of paragraph 3 or paragraph 4 of this Article are applied,

(Alternative I) the cost of benefits

(Alternative II) the cost of pensions
in respect of occupational diseases may be apportioned among the Contracting Parties concerned,

(Alternative A) in proportion to the ratio between the duration of exposure to the risk under the legislation of each of those Parties and the total duration of exposure to the risk under the legislation of the said Parties.

(Alternative B) in proportion to the ratio between the duration of the periods completed under the legislation of each of those Parties and the total duration of the periods completed under the legislation of the said Parties.

(Alternative C) equally between those Parties under whose legislation the duration of exposure to risk has reached a percentage, fixed by mutual agreement between the Parties concerned, of the total duration of exposure to the risk under the legislation of the said Parties.

Article 18

Where a worker having contracted an occupational disease has received or is receiving compensation from the institution of a Contracting Party, and in the event of an aggravation of his condition claims benefits from the institution of another Contracting Party, the following provisions shall apply :

(a) where the worker has not engaged, under the legislation of the second Party, in an occupation liable to cause or aggravate the disease in question, the competent institution of the first Party shall bear the cost of the benefit, taking the aggravation into account, in accordance with the provisions of the legislation which that institution applies;
(b) where the worker has engaged in such an occupation under the legislation of the second Party, the competent institution of the first Party shall bear the cost of the benefit, leaving the aggravation out of account, in accordance with the provisions of the legislation which it applies; the competent institution of the second Party shall award to the worker a supplementary benefit the amount of which shall be equal to the difference between the amount of the benefit due after the aggravation and the amount of the benefit that would, in accordance with the provisions of the legislation which that institution applies, have been due before the aggravation if the disease in question had been contracted under the legislation of that Party.

IV. MAINTENANCE OF ACQUIRED RIGHTS AND PROVISION OF BENEFITS ABROAD

1. Medical Care, Sickness Benefit, Maternity Benefit and Benefits Other than Pensions in respect of Occupational Injuries and Diseases

Article 19

1. Persons who reside in the territory of a Contracting Party other than the competent State and who satisfy the conditions for right to benefit prescribed by the legislation of the latter State, regard being had, where appropriate, to the provisions of Article 3, shall receive in the territory of the Contracting Party in which they reside--

(a) benefits in kind, provided at the expense of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation which the latter institution applies, as if these persons were affiliated to it;

(b) cash benefits, paid by the competent institution in accordance with the provisions of the legislation which it applies, as if these persons were resident in the territory of the competent State. However, by agreement between the competent institution and the institution of the place of residence, cash benefits may also be paid through the latter institution, on behalf of the competent institution.

2. The provisions of the preceding paragraph shall apply, mutatis mutandis, in respect of medical care, sickness and maternity benefits, to members of the family who are resident in the territory of a Contracting Party other than the competent State.

3. Benefits may also be provided to frontier workers and to members of their family by the competent institution in the territory of the competent State, i accordance with the provisions of the legislation of that State, as if they were resident in its territory.

Article 20

(Alternative I)

1. Persons who satisfy the conditions for right to benefit under the legislation of the competent State, regard being had where appropriate, to the provisions of Article 3, and--

(a) whose condition necessitates the immediate provision of benefits during temporary residence in the territory of a Contracting Party other than the competent State; or

(b) who, having become entitled to benefits payable by the competent institution, are authorised by that institution to return to the territory of a Contracting Party where they reside, other than the competent State, or to transfer their residence to the territory of a Contracting Party other than the competent State; or

(c) who are authorised by the competent institution to go to the territory of a contracting Party other than the competent State in order to receive the treatment required by their condition,

shall receive--

(i) benefits in kind, provided at the expense of the competent institution by the institution of the place of residence or temporary residence in accordance with the provisions of the legislation applied by the latter institution, as if these persons were affiliated to it, for a period not longer than that which may be prescribed by the legislation of the competent State;

(ii) cash benefits, paid by the competent institution in accordance with the provisions of the legislation which it applies, as if these persons were in the territory of the competent State. However, by agreement between the competent institution and the institution of the place of residence or temporary residence, cash benefits may be paid through the latter institution on behalf of the competent institution.

2. (a) The authorisation referred to in subparagraph (b) of the preceding paragraph may be refused only if the move might prejudice the health or the course of medical treatment of the person concerned.

(b) The authorisation referred to in subparagraph (c) of the preceding paragraph shall not be refused when the requisite treatment cannot be given in the territory of the Contracting Party in which the person concerned resides.

3. The provisions of the preceding paragraphs of this Article shall apply, *mutatis mutandis,* to members of the family in respect of medical care, sickness and maternity benefits.

(Alternative II)

1. Persons who satisfy the conditions for right to benefit under the legislation of the competent State, regard being had, where appropriate, to the provisions of Article 3, and --

(a) whose condition necessitates the immediate provision of benefits during temporary residence in the territory of a Contracting Party other than the competent State; or

(b) who, having become entitled to benefits payable by the competent institution, return to the territory of a Contracting Party other than the competent State; or

(c) who go to the territory of a Contracting Party other than the competent State in order to receive the treatment required by their condition,

shall receive--

(i) benefits in kind, provided by the institution of the place of residence or temporary residence in accordance with the provisions of the legislation applied by that institution, as if these persons were affiliated to it;

(ii) cash benefits, paid by the competent institution in accordance with the provisions of the legislation which it applies, as if these persons were in the territory of the competent State. However, by agreement between the competent institution and the institution of the place of residence or temporary residence, cash benefits may be paid through the latter institution, on behalf of the competent institution.

2. The provisions of the preceding paragraph shall apply, mutatis mutandis, to members of the family in respect of medical care, sickness and maternity benefits.

2. Unemployment Benefit

Article 21

1. Unemployed workers who satisfy the conditions for right to benefit prescribed by the legislation of one Contracting Party in respect of the completion of periods of insurance, employment, occupational activity or residence, regard being had, where appropriate, to the provisions of Article 4, and who transfer their residence to the territory of another Contracting Party, shall be deemed to have also satisfied the conditions for right to benefit prescribed by the legislation of the second Party, provided that they place themselves at the disposal of the employment services in the territory of that Party and file acclaim with the institution of their new place of residence within 30 days of their transfer of residence, or such longer period as may be fixed by mutual agreement between the Contracting Parties. The benefit shall be paid by the institution of the place of residence, in accordance with the provisions of the legislation which that institution applies, the cost being borne by the competent institution of the first Party,

(Alternative I) for a period not exceeding any period which may be prescribed by the legislation of that Party.

(Alternative II) for a period not exceeding the shortest of the periods fixed by the legislation of each of the two Contracting Parties concerned.

(Alternative III) for a period not exceeding that prescribed by mutual agreement between the Contracting Parties.

2. Without prejudice to the provisions of the preceding paragraph, an unemployed person who, during his last employment, was resident in the territory of a Contracting Party other than the competent State shall receive benefit in accordance with the following provisions:

(a) (i) a frontier worker who is partially or incidentally unemployed in the undertaking which employs him shall receive benefit in accordance with the provisions of the legislation of the competent State, as if he were resident in the territory of that State, regard being had, where appropriate, to the provisions of Article 4; such benefit shall be paid by the competent institution;

(ii) a frontier worker who is wholly unemployed shall receive benefit in accordance with the provisions of the Contracting Party in whose territory he resides, as if he had been subject to that legislation during his last employment, regard being had, where appropriate, to the provisions of Article 4; such benefit shall be paid by the institution of the place of residence at its own cost;

(b) (i) a worker, other than a frontier worker, who becomes partially, incidentally or wholly unemployed and remains available to his employer or to the employment services in the territory of the competent State, shall receive benefit in accordance with the provisions of the legislation of the competent State, as if he were resident in the territory of that State, regard being had, where appropriate, to the provisions of Article 4; such benefit shall be paid by the competent institution;

(ii) a worker, other than a frontier worker, who becomes wholly unemployed makes himself available to the employment services in the territory of the Contracting Party where he resides, or returns to that territory, shall receive benefit in accordance with the provisions of the legislation of that Party, as if he had been subject to that legislation during his last employment, regard being had, where appropriate, to the provisions of Article 4; such benefit shall be paid by the institution of the place of residence at its own cost;

(iii) however, if the worker referred to in subparagraph (b) (ii) of this paragraph has become entitled to benefit from the competent institution of the Contracting Party to whose legislation he was last subject, he shall receive benefit in accordance with the provisions of the preceding paragraph, as if he had transferred his residence to the territory of the Contracting Party referred to in subparagraph (b) (ii) of this paragraph, for a period not exceeding the period laid down in the preceding paragraph.

3. As long as an unemployed person is entitled to benefit by virtue of subparagraph (a) (i) or subparagraph (b) (i) of the preceding paragraph, he shall not be entitled to benefit under the legislation of the Contracting Party in the territory of which he resides.

3. Family Benefit

ALTERNATIVE I - FAMILY ALLOWANCES

Article 22

1. Persons who are subject to the legislation of a Contracting Party, regard being had, where appropriate, to the provisions of Article 3, shall receive, in respect of the members of their family who are resident in the territory of another Contracting Party, the family allowances provided under the legislation of the first Party, as if these members of the family were resident in the territory of that Party.

2. The family allowances shall be paid in accordance with the provisions of the legislation of the Contracting Party to which the beneficiary is subject, even if the person or body corporate to whom these allowances are payable is resident or is located in the territory of another Contracting Party. In that case, by agreement between the competent institution and the institution of the place of residence of the members of the family, the family allowances may also be paid through the latter institution, on behalf of the competent institution.

ALTERNATIVE II - FAMILY BENEFIT

Article 23

(Alternative A)

1. Persons who are subject to the legislation of a Contracting Party shall receive, regard being had, where appropriate, to the provisions of Article 3, in respect of the members of their family who reside in the territory of another Contracting Party, the family benefit provided under the legislation of the latter party, as if the said persons were subject to its legislation.

2. The family benefit shall be paid to the members of the family by the institution of their place of residence, in accordance with the provisions of the legislation which that institution applies, at the expense of the competent institution, in an amount not exceeding the amount of the benefit due by the latter institution.

(Alternative B)

Where the members of the family of a person who works or resides in the territory of a Contracting Party reside in the territory of another Contracting Party, family benefits shall be paid to them by and at the expense of the institution of their place of residence.

4. Non-contributory Invalidity, Old-age and Survivors' Benefit

Article 24

(Alternative I) Where the provisions of Article 8 are not applicable, and where the beneficiary of non-contributory invalidity, old-age or survivors' benefit, the amount of which does not depend on the length of the periods of residence completed, is resident in the territory of a Contracting Party other then the tone under whose legislation he is entitled to benefit, the benefit may be calculated in accordance with the following provisions :

(a) in the case of invalidity or death, in proportion to the ratio of the number of years of residence completed by the person concerned or the deceased under the said legislation between the date on which he reached the age of 15 or a higher age fixed by mutual agreement between the Contracting Parties concerned and the date of incapacity for work followed by invalidity or of death, to two-thirds of the number of years separating those two dates, disregarding any years subsequent to pensionable age;

(b) in the case of old-age, in proportion to the ratio of the number of years of residence completed by the person concerned under the said legislation between the date on which he reached the age of 15 or a higher age fixed by mutual agreement between the Contracting Parties concerned and the date on which he reached the pensionable age, to 30 years.

(Alternative II) Where the provisions of Article 8 are not applicable, and where the legislation of a Contracting Party provides for both contributory and non-contributory invalidity, old-age or survivors' benefits, the non-contributory invalidity, old-age or survivors' benefits whose amount does not depend on the length of the periods of residence are paid to the beneficiary who is resident in the territory of another Contracting Party in the same proportion that the contributory benefits to which that beneficiary is entitled bear to the total amount of the contributory benefits to which he would been titled if he had completed the total duration of the periods required for entitlement.

V. REGULATION OF UNDUE PLURALITY

Article 25

Provisions in the legislation of a Contracting Party for the reduction, suspension or suppression of benefits where there is undue plurality with other

benefits or other income, or because the person otherwise entitled is in employment or in an occupational activity, shall apply also to a beneficiary even in respect of benefits acquired under the legislation of another Contracting Party or of income obtained or employment or occupational activity undertaken in the territory of another Contracting Party. However, in applying this rule no account shall be taken of benefits of the same nature awarded in respect of invalidity, old-age, survivors or occupational disease by the institutions of two or more contracting Parties in accordance with the provisions of Article 8 or Article 18, subparagraph (b).

Article 26

Where a person in receipt of benefit under the legislation of one Contracting Party is also entitled to benefit under the legislation of one or more of the other Contracting Parties, the following rules shall apply :

(a) where the application of the provisions of the legislation of two or more Contracting Parties would entail the concomitant reduction, suspension or suppression of such benefits, none of them may be reduced, suspended or suppressed to an extent greater that the amount which would be obtained by dividing the sum affected by the reduction, suspension or suppression in accordance with the legislation under which benefit is due by the number of benefits subject to reduction, suspension or suppression to which the beneficiary is entitled;

(b) notwithstanding the foregoing, where the benefits concerned are invalidity, old-age or survivors' benefits paid in conformity with the provisions of Article 8 by the institution of a Contracting Party, that institution shall take account of the benefits, income or remuneration entailing the reduction, suspension or suppression of the benefits due from it solely for the purposes of the reduction, suspension or suppression of the benefits due from it solely for the purposes of the reduction, suspension or suppression of the amount referred to in paragraph 2 or paragraph 5 of Article 8, but not for the calculation of the theoretical amount referred to in paragraphs 3 and 4 of the said Article 8; however, account shall be taken o of such benefits, income or remuneration only to the extent of that fraction of their amount corresponding to the ratio of the periods completed, as prescribed in Article 8, paragraph 5.

Article 27

Where a person has a claim to medical care or sickness benefit under the legislation of two or more Contracting Parties, such benefit may be provided solely under the legislation of the Party in the territory of which he resides or, if he does not reside in the territory of one of those Parties, solely under the legislation of the Party to which this person or the person through whom entitlement to the said benefits arises was last subject.

Article 28

Where a person has a claim to maternity benefit under the legislation of two or more Contracting Parties, such benefit may be provided solely under the legislation of the Party in the territory of which the birth took place or, if the birth did not take place in the territory of one of those Parties, solely under the legislation of the Party

to which this person or the person through whom entitlement to the said benefits arises was last subject.

Article 29

1. Where death occurs in the territory of a Contracting Party, the right to a death grant acquired under the legislation of that Party may be alone recognised, to the exclusion of any right acquired under the legislation of any other Contracting Party.

2. Where death occurs in the territory of a Contracting Party and the right to a death grant has been acquired solely under the legislation of two or more other Contracting Parties, the right acquired under the legislation of the Contracting Party to which the deceased was last subject may be alone recognised, to the exclusion of any right acquired under the legislation of any other Contracting Party.

3. Where death occurs outside the territory of the Contracting Parties and the right to death grant has been acquired under the legislation of two or more Contracting Parties, the right acquired under the legislation of the Contracting Party to which the deceased was last subject may be alone recognised, to the exclusion of any right acquired under the legislation of any other Contracting Party.

Article 30

(Alternative I) Where, over the same period, family allowances are payable for the same members of the family under the provisions of Article 22 and under the legislation of the Contracting Party in the territory of which those members of the family reside, the right to family allowances payable under the legislation of the latter shall be suspended. However, in the case where a member of the family is engaged in an occupation in the territory of the said Party, that right shall be maintained, whereas the right to family allowances payable under the provisions of Article 22 shall be suspended.

(Alternative II) Where, over the same period, family allowances are payable for the same members of the family under the provisions of Article 22 and under the legislation of the Contracting Party in the territory of which those members of the family reside, the right to family allowances payable under the provisions of Article 22 shall be suspended.

VI. MISCELLANEOUS PROVISIONS

Article 31

Medical examinations prescribed by the legislation of one Contracting Party may be carried out, at the request of the institution which applies this legislation, in the territory of another Contracting Party, by the institution of the place of residence or temporary residence. In such event, they shall be deemed to have been carried out in the territory of the first Party.

Article 32

1. For the calculation of the amount of contributions due to the institution of a Contracting Party, account shall be taken, where appropriate, of any income received in the territory of any other Contracting Party.

2. The recovery of contributions due to the institution of one Contracting Party may be effected in the territory of another Contracting Party in accordance with the administrative procedures and subject to the guarantees and privileges applicable to the recovery of contributions due to a corresponding institution of the latter Party.

Article 33

Any exemption from, or reduction of, taxes, stamp duty, legal dues or registration fees provided for in the legislation of one Contracting Party in connection with certificates or documents required to be produced for the purposes of the legislation of that Party shall be extended to similar certificates and documents required to be produced for the purposes of the legislation of another Contracting Party or of these model provisions.

Article 34

1. The competent authorities of the Contracting Parties may designate liaison bodies empowered to communicate directly with one another and, provided they are authorised to do so by the competent authorities of that Party, with the institutions of any Contracting Party.

2. Any institution of a Contracting Party, and likewise any person residing or temporarily residing in the territory of a Contracting Party, may approach the institution of another Contracting Party either directly or through the liaison bodies.

Article 35

1. Any dispute which arises between two or more Contracting Parties concerning the interpretation or application of these model provisions shall be settled by means of direct negotiation between the competent authorities of the Contracting Parties concerned.

2. If the dispute cannot be so settled within a period of six months from the beginning of negotiations, it shall be submitted to a commission of arbitration; the composition and the procedure of this commission shall be determined by mutual agreement among the Contracting Parties concerned.

3. The decisions of the commission of arbitration shall be binding and final.

VII. PROVISIONS CONCERNING THE MAINTENANCE OF RIGHTS IN THE RELATIONS BETWEEN OR WITH PROVIDENT FUNDS

ALTERNATIVE I

Article 36

1. Where a person ceases to be subject to the legislation of a Contracting Party under which he has been registered with a provident fund, before the occurrence of a risk entitling him to obtain the payment of the amount credited to his account, he may, upon request, either withdraw the total amount or have it transferred to the institution to which he is affiliated in the territory of the Contracting Party to whose legislation he is now subject.

2. If this institution is itself a provident fund, the amount transferred shall be credited to the account opened by this institution in the name of the person concerned.

3. If the institution referred to in paragraph 1 of this Article is competent in respect of pensions, the amount transferred shall be paid to the institution concerned in order to enable the person concerned to buy back periods for the purpose of acquiring or improving his rights to benefits under the legislation applied by this institution. The method of buying back periods shall be determined either in accordance with the provisions of that legislation or by mutual agreement between the Contracting Parties concerned.

Article 37

Where a person ceases to be subject to the legislation of a Contracting Party under which he had been affiliated to a pensions scheme in order to move to the territory of another Contracting Party under whose legislation he is registered with a provident fund, before having acquired the right to a pension under the legislation of the first Party,

(Alternative A) the pension rights in course of acquisition of this person for himself and his survivors are maintained until the conditions required for the receipt of the pension are satisfied. Failing this, the amount of the contributions paid by this person or on his behalf shall be transferred to the provident fund under conditions fixed by mutual agreement between the Contracting Parties concerned.

(Alternative B) the amount of the contributions paid by this person or on his behalf shall be transferred to the provident fund under the conditions fixed by mutual agreement between the Contracting Parties concerned.

ALTERNATIVE II

Article 38

1. Where the legislation of a Contracting Party makes the acquisition, maintenance or recovery of the right to pension conditional upon the completion of periods of insurance, employment, occupational activity or residence, the institution

which applies that legislation shall, for the purpose of adding periods together, take account of periods during which a person was registered with a provident fund and required to make contributions to that fund.

2. Where the person concerned satisfies the conditions for payment of a pension taking account of paragraph 1 of this Article, the amount of the pension shall be determined in accordance with Article 8 to 13.

3. Where the legislation of a Contracting Party makes the payment of amounts credited to a person's account under a provident fund conditional upon the completion of periods of contributions, the institution which applies that legislation shall, for the purpose of adding periods together, take account of periods of insurance, employment, occupational activity and residence completed under the legislation of a Contracting Party under which he was affiliated to a pensions scheme.

ANNEX II.B

Model Agreement for the co-ordination of bilateral or multilateral social security instruments

Article 1

For the purpose of this agreement--

(a) the term Contracting Party means any State Member of the International Labour Organisation that is bound by the agreement;
(b) the term legislation includes any social security rules as well as laws and regulations;
(c) the term refugee has the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 and in paragraph 2 of Article 1 of the Protocol relating to the Status of Refugees of 31 January 1967, without geographical limitation;
(d) the term stateless person has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954;
(e) the term instrument means any bilateral or multilateral instrument concerning the maintenance of rights in course of acquisition in social security that is binding or will be binding on two or more Contracting parties;
(f) the term institution means any body or authority directly responsible for applying all or part of the legislation of a Contracting Party;
(g) the term periods of insurance means periods of contribution, employment, occupational activity or residence which are defined or recognised as periods of insurance by the legislation under which they were completed, and such other periods as are regarded by that legislation as equivalent to periods of insurance;
(h) the terms periods of employment and periods of occupational activity mean periods defined or recognised as such by the legislation under which they were completed, and such other periods as are regarded by that legislation as equivalent to periods of employment or periods of occupational activity, respectively;

(i) the term periods of residence means periods of residence defined or recognised as such by the legislation under which they were completed;
(j) the term benefits means all benefits in kind and in cash provided in respect of the contingency concerned, including death grants and--
    (i) as benefits in kind, benefits aimed at the prevention of any contingency covered by social security, physical rehabilitation and vocational rehabilitation;
    (ii) as benefits in cash, all components there of provided out of public funds, and all increases, revaluation allowances or supplementary allowances, and only benefits awarded for the purpose of maintaining or improving earning capacity, lump-sum benefits which may be paid in lieu of pensions and, where applicable, any payments made by way of refund of contributions.

Article 2

In the field governed by this agreement, coverage by the provisions of each instrument binding on two or more Contracting Parties shall be extended to the nationals of any other Contracting Party, as well as to the refugees and stateless persons resident in the territory of any Contracting Party.

Article 3

This agreement shall be applicable to all persons covered by the provisions of two or more instruments.

Article 4

1. The provisions of an instrument binding on two or more Contracting Parties, concerning the adding together of periods of insurance, employment, occupational activity or residence for the acquisition, maintenance or recovery of the right to benefit shall be applicable to corresponding periods completed under the legislation of any other Contracting Party bound with the said Parties by an instrument which also comprises provisions concerning the adding together of such periods, provided that the periods to be added together are not overlapping.

2. If, under the provisions of paragraph 1 of this Article, the institution of a Contracting Party should apply the provisions of two or more instruments which contain different modalities for the adding together of periods, this institution shall apply exclusively the provisions which are most favourable for the person concerned.

3. In the case of benefits which, under all relevant instruments, are awarded in conformity with the legislation of only one Contracting Party, the adding together referred to in paragraph 1 of this Article is carried out only to the extent necessary for the acquisition, maintenance or recovery of the right to the most favourable benefits provided for under this legislation.

Article 5

1. If the provisions of Article 4 are applicable, invalidity, old-age and survivors' benefits are determined in conformity with the provisions of paragraphs 2 to 4 of this Article.

2. If all the relevant instruments have recourse to the method of apportionment, the institution of each Contracting Party shall apply the provisions of the instruments by which this Party is bound, regard being had to the adding together of periods carried out according to the provisions of Article 4, paragraphs 1 and 2; however, it shall only award the highest amount of the benefits determined under these instruments.

3. If all the relevant instruments have recourse to the method of integration, the institution of the Contracting Party which should award the benefits shall take into account for this purpose the provisions of Article 4.

4. If the relevant instruments have recourse respectively to the method of apportionment and the method of integration, the institution of each Contracting Party shall apply the provisions of the instruments by which this Party is bound, regard being had to the adding together of periods carried out according to the provisions of Article 4; however, only the benefits resulting from the application of the most favourable method shall be awarded to the person concerned.

Cross references
Conventions: C118 *Equality of Treatment (Social Security) Convention, 1962*
Conventions: C157 *Maintenance of Social Rights Convention, 1982*

Annex III. Social security programs in ASEAN countries, by branch, 2006

The tables which follow summarize the aspects of the social security programs of ASEAN member countries that are of particular relevance to migrant workers. There is a separate table for each of the following branches of social security: old age, invalidity, survivors, medical care, sickness and maternity (cash benefits), and employment injury. Information in the tables was primarily obtained from the publication *Social Security Programs Throughout the World: Asia and the Pacific, 2006* which is published by the United States Social Security Administration based on surveys conducted by the International Social Security Association (ISSA). The tables take account only of programs for workers in the private sector. They do not include the special schemes found in many countries for groups such as civil servants and armed forces personnel.

Table AIII.1. Old age

Country	Type of program	Mandatory coverage	Qualifying conditions	Notes
Brunei	Provident fund	• Employees aged less than 55 who are nationals or permanent residents of Brunei.	*For a periodic benefit:* • None available. *For a lump-sum payment:* • For members in Brunei: Age 55. • For members who emigrate permanently from Brunei: At emigration, regardless of age. • Retirement is not required. • No minimum qualifying period.	(a) Excluded from coverage: foreign workers. (b) Voluntary coverage: self-employed persons, employees aged 55 or more. (c) Special systems: armed forces personnel, police force personnel, prison wardens. (d) Drawdown payments (early withdrawals) are permitted, in prescribed circumstances, prior to age 55.
	Universal	• All residents of Brunei.	*For a periodic benefit:* • Age 60 and residing in Brunei. • For persons born in Brunei, residence in Brunei during the 10 years immediately before claiming the pension. • For persons born outside Brunei, residence in Brunei during the 30 years immediately before claiming the pension.	
Cambodia	None			
Indonesia	Provident fund	• Employees of establishments with 10 or more employees or a monthly payroll exceeding IDR one million, except employees with	*For a periodic benefit (optional, instead of a lump-sum payment):* • Age 55 • More than IDR 3 million in the member's provident fund account. • Retirement is not necessary.	(a) Excluded from coverage: self-employed persons. (b) Coverage is being extended to employees of smaller establishments and to organized informal-sector workers, including family labour, fishermen and employees of rural cooperatives.

Table AIII.1. Old age				
Country	**Type of program**	**Mandatory coverage**	**Qualifying conditions**	**Notes**
		contracts of less than 3 months' duration.	*For a lump-sum payment:* • For members in Indonesia: Age 55 [see note (f)]. • For members who emigrate permanently from Indonesia: At emigration, regardless of age. • Retirement is not required. • No minimum qualifying period.	(c) Voluntary coverage: workers not subject to mandatory coverage. (d) Special schemes: public-sector employees, military personnel. (e) At age 55 a member with more than IDR 3 million in his/her provident fund account can choose either a periodic benefit or a lump-sum payment. The periodic payment is for a period up to five years. (f) Drawdown payments (early withdrawals) are permitted, in prescribed circumstances, prior to age 55. (g) A member who has been unemployed for at least 6 months and who has been a member of the provident fund for at least 5 years can receive a lump-sum payment irrespective of age.
Lao PRD	Social insurance	• Employees of establishments with 10 or more employees.	*For a periodic benefit:* • Age 60. • At least 5 years of covered employment. • Retirement is not required. *For a lump-sum payment:* • Age 60. • Less than 5 years of covered employment. • Retirement is not required.	(a) Voluntary coverage: employees of establishments with less than 10 employees. (b) Coverage is limited to parts of the country. (c) Special systems: civil servants, police, armed forces personnel.
Malaysia	Provident fund	• Employees in the private sector. • Non-pensionable	*For a monthly benefit:* • For members who have made voluntary contributions to	(a) Voluntary coverage: foreign workers, domestic servants, self-employed persons, pensionable public-

Table AIII.1. Old age				
Country	**Type of program**	**Mandatory coverage**	**Qualifying conditions**	**Notes**
		public-sector employees.	account 4 and have at least MYR 24,000 in account 4, age 55. *For a lump-sum payment:* • For members in Malaysia: Age 55. • For members who emigrate permanently from Malaysia: At emigration, regardless of age. • Retirement is not required. • No minimum qualifying period.	sector employees. The term 'foreign worker' means any person (i) who is employed in Malaysia, (ii) whose country of domicile is other than Malaysia, and (iii) who enters Malaysia and stays temporarily in Malaysia under the terms of any written law relating to immigration. Since 1 March 1993, foreign workers have not been subject to *mandatory* coverage for old age; they can, however, be covered *voluntarily*. (b) Special system: government employees. (c) All members of the provident fund have three mandatory accounts: (i) account 1, for old age, disability and survivor benefits and the purchase of approved investments; (ii) account 2, for old age, disability and survivor benefits and the purchase of a house; (iii) account 3, for old age, disability and survivor benefits and to pay for designated medical costs and prosthetic appliances. Members, other than foreign workers, may voluntarily open an account 4 to finance periodic benefits between age 55 and 75. (d) Foreign workers are paid a lump-sum when they leave Malaysia (i.e. at the termination of the work permit, at which time the worker is required to leave Malaysia).

Table AIII.1. Old age				
Country	**Type of program**	**Mandatory coverage**	**Qualifying conditions**	**Notes**
Myanmar	None			(a) Special systems: civil servants, permanent employees of state boards and corporations and municipal authorities, armed forces personnel.
Philippines	Social insurance	• Employees in the private sector age 60 or less and earning at least PHP 1,000 a month. • Domestic employees age 60 or less and earning at least PHP 1,000 a month • Self-employed persons age 60 or less with a monthly income of at least PHP 1,000.	*For a monthly old age pension:* • Age 65, with at least 120 months of contributions, regardless of employment. • Age 60, with at least 120 months of contributions before the 6-month period (January-June or July-December) in which the pension is first paid, provided that employment or self-employment has ceased. • Special conditions apply to workers in underground mines – see note (c). *For a lump-sum old age grant:* • Age 65, regardless of employment. • Age 60, provided that employment or self-employment has ceased. • Less than 120 months of contributions.	(a) Voluntary coverage: Filipinos recruited by a foreign-based employer for employment abroad, members who are no longer subject to mandatory coverage, non-working spouses of members. (b) Special system: public-sector employees, military personnel. (c) Workers in underground mines are eligible for a monthly old age pension 5 years earlier than other workers provided they have completed at least 5 years of such work (either continuous or accumulated).
Singapore	Provident fund.	• Employees, including most categories of public-sector employees, earning more than SGD 50 per	*For a monthly old age annuity (retirement account):* • Age 62 (60 for some occupations). • Payable until the funds in the	(a) Excluded from coverage: self-employed persons. (b) Special systems: certain categories of public-sector employees, including administrative service staff.

Table AIII.1. Old age				
Country	**Type of program**	**Mandatory coverage**	**Qualifying conditions**	**Notes**
		month, who are nationals or permanent residents of Singapore.	member's 'retirement account' are exhausted, unless a member has purchased a life annuity from a life insurance company. • Retirement is not required. *For a lump-sum payment (for all members, from their ordinary, special and Medisave accounts; in addition, for members who emigrate permanently from Singapore, from their retirement accounts):* • For members in Singapore: Age 55, subject to certain conditions. • For members who emigrate permanently from Singapore: At emigration, regardless of age. • No minimum qualifying period.	(c) All members of the provident fund have three accounts: (i) ordinary account, for purchase of a home, approved investments, insurance operated by the Central Provident Fund, and education; (ii) special account, principally for old age; (iii) Medisave account, for hospital treatment, medical benefits and approved medical insurance. When a member reaches age 55, there is a mandatory transfer of part of the funds in the member's accounts into a retirement account, from which the member's monthly old-age benefits will be financed. (d) Drawdown payments (early withdrawals) are permitted, in prescribed circumstances, prior to age 55.
Thailand	Social insurance	• Employees age 15 to 60.	*For a monthly old age pension:* • Age 55. • At least 180 months of contributions. • Cessation of employment. *For a lump-sum old age settlement:* • Age 55.	(a) Excluded from coverage: employees of state enterprises; agricultural, forestry and fishery employees; temporary and seasonal workers; Thais working abroad. (b) Voluntary coverage: self-employed persons, persons who cease to be covered after having compulsory coverage for at least 12 months. (c) Special systems: judges, civil

Table AIII.1. Old age				
Country	**Type of program**	**Mandatory coverage**	**Qualifying conditions**	**Notes**
			• At least one month of contributions but less than 180 months of contributions. • Cessation of employment.	servants, employees of state enterprises, employees of private schools.
Viet Nam	Social insurance	• Employees in the private and public sector with employment contracts of at least 3 months' duration. • Domestic workers. • Employees in agriculture, fishing and salt production. • Civil servants. • Officers of the armed forces.	*For a monthly old age pension:* • Age 60 (men) or 55 (women), with at least 15 years of contributions. • Age 55 (men) or 50 (women), with at least 30 years of contributions. • Age 55 (men) or 50 (women), with at least 20 years of contributions, including at least 15 years of employment in hazardous or arduous working conditions or in certain geographic regions or at least 10 years of work in South Viet Nam or Laos before 30 April 1975 or Cambodia before 31 August 1989. • Cessation of employment. *For a lump-sum old age grant:* • Age 60 (men) or age 55 (women). • Less than 15 years of contributions. • Cessation of employment.	(a) Excluded from coverage: self-employed persons. (b) In determining the length of an insured person's period of contributions, periods of employment in the public sector before 1995 are credited (treated as equivalent to periods of contributions). (c) A pensioner residing abroad may nominate a relative residing in Viet Nam to receive the pension on his/her behalf. (d) In addition to a monthly old age pension, a person with more than 30 years of contributions also receives a lump-sum payment. (e) Reduced early pensions can be paid before the ages shown.

Table AIII.2. Invalidity

Country	Type of program	Coverage	Qualifying conditions	Notes
Brunei	Provident fund	Same as for old age.	*For a periodic benefit:* • None available. *For a lump-sum payment:* • Unable to work as a result of a mental or physical disability. • No minimum qualifying period.	(a) See notes (a), (b) and (c) under 'old age'.
	Universal	Same as for old age.	*For a periodic benefit:* • Unable to work as a result of a mental or physical disability. • Residence in Brunei during the 10 years immediately before the start of the disability.	
Cambodia	No information available			
Indonesia	Provident fund	Same as for old age.	*For a periodic benefit (optional, instead of a lump-sum payment):* • Totally and permanently unable to work as a result of a work injury. • Less than age 55. • More than IDR 3 million in the member's provident fund account. • No minimum qualifying period *For a lump-sum payment:* • Totally and permanently unable to work as a result of a work injury. • Less than age 55. • No minimum qualifying period.	(a) See notes (a), (b), (c) and (d) under 'old age'. (b) A medical doctor must certify the incapacity. (c) An incapacitated member with more than IDR 3 million in his/her provident fund account can choose either a periodic benefit or a lump-sum payment.
Lao PDR	Social insurance	Same as for old age.	*For a periodic benefit:* • Permanent or long-term inability to	(a) See notes (a), (b) and (c) under 'old age'.

Table AIII.2. Invalidity

Country	Type of program	Coverage	Qualifying conditions	Notes
			earn normal income as a result of a disability. • At least 5 years of covered employment. • In covered employment at the time of the occurrence of the contingency. *For a lump-sum grant:* • Permanent or long-term inability to earn normal income as a result of a disability. • Less than 5 years of covered employment. • No minimum qualifying period.	
Malaysia	Provident fund	Same as for old age.	*For a periodic benefit:* • None available. *For a lump-sum payment:* • Mentally or physically unable to work. • No minimum qualifying period.	(a) See notes (a), (b), (c) and (d) under 'old age'.
	Social insurance	• Employees age 55 or less earning MYR 2,000 or less a month currently or when first employed; casual workers.	*For a full monthly benefit:* • At least 24 months of contributions in the 40 months before the start of the disability, *or* contributions in at least 2/3rd of the months since first becoming insured, with a minimum of 24 months of contributions *For a reduced monthly benefit:* • Contributions in at least 1/3rd of the months since first becoming insured, with a minimum of 24 months of contributions	(a) Excluded from coverage: foreign workers, domestic servants, self-employed persons. For a definition of 'foreign worker', see note (a) under 'old age'. (b) Foreign workers have been excluded from coverage under the law regarding invalidity and employment injury, including death, since 1 March 1993.

Table AIII.2. Invalidity

Country	Type of program	Coverage	Qualifying conditions	Notes
			For a lump-sum payment: • Not eligible for a full or reduced monthly benefit. • At least 12 months of contributions.	
Myanmar	None			
Philippines	Social insurance	Same as for old age.	*For a monthly disability pension:* • Permanent total or partial disability of at least 20 percent. • At least 36 months of contributions before the 6-month period (January-June or July-December) in which the disability began. *For a lump-sum disability grant:* • Permanent total or partial disability of at least 20 percent. • Less than 36 months of contributions.	(a) See notes (a) and (b) under 'old age'.
Singapore	Provident fund	Same as for old age.	*For a monthly benefit:* • Total permanent incapacity for any work. • No minimum qualifying period. *For a lump-sum payment:* • Total permanent incapacity for any work. • No minimum qualifying period.	(a) See notes (a), (b) and (c) under 'old age'. (b) Disability is assessed either by a registered doctor in any government hospital or by the Central Provident Fund's panel of doctors. (c) The monthly benefit, which is paid for 7 years, is financed from the funds in the member's accounts. The lump-sum payment is the balance in the member's accounts after funds have been allocated for the monthly benefit and a minimum

Table AIII.2. Invalidity				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
				balance (SGD 28,000) has been left in the member's Medisave account.
Thailand	Social insurance	Same as for old age.	*For a periodic disability pension:* • Incapacity for work due to a total mental or physical disability. • At least 3 months of contributions in the 15 months before the onset of the disability. • Payable after the cessation of cash sickness benefit. *For a lump-sum payment:* • None available.	(a) See notes (a), (b) and (c) under 'old age'. (b) Medical officers assigned by the Social Security Office assess the degree of disability annually. The benefit may be suspended of the medical committee of the Social Security Office determines that the pensioner is rehabilitated.
Viet Nam	Social insurance	Same as for old age.	*For a monthly disability pension:* • Assessed degree of disability of at least 61 percent. • Age 50 (men) or 45 (women) with at least 20 years of contributions; *or* at any age with at least 20 years of contributions, including at least 15 years in hazardous or arduous working conditions. • Cessation of employment. *For a lump-sum disability grant:* • Assessed degree of disability of at least 61 percent. • In covered employment at the time of the occurrence of the contingency.	(a) See notes (a), (b) and (c) under 'old age'. (b) The monthly disability pension is considered, under Viet Nam's legislation, to be an old age pension. (c) A medical board of the Ministry of Health assesses the degree of disability.

Table AIII.3. Survivors

Country	Type of program	Coverage	Qualifying conditions	Notes
Brunei	Provident fund	Same as for old age.	*For a periodic benefit:* • None available. *For a lump-sum payment:* • No minimum qualifying period.	(a) See notes (a) and (b) under 'old age'. (b) Paid to the next of kin or named survivors.
Cambodia	No information available			
Indonesia	Provident fund	Same as for old age.	*For a periodic benefit (optional, instead of a lump-sum payment):* • More than IDR 3 million in the deceased member's provident fund account. • No minimum qualifying period *For a lump-sum payment:* • Deceased member was less than age 55 at the time of death *or* was receiving an optional periodic benefit. • No minimum qualifying period.	(a) See notes (a), (b), (c) and (d) under 'old age'. (b) Paid to the spouse or, in the absence of a spouse, to dependent children.
	Social insurance	Employees of establishments with 10 or more employees or a monthly payroll exceeding IDR one million.	*For a periodic benefit:* • None available. *For a lump-sum death grant and a lump-sum funeral grant:* • No minimum qualifying period.	(a) Paid (in order of priority) to the spouse, children, parents, grandchildren, grandparents, siblings or parents-in-law. In the absence of eligible survivors, the death and funeral grants are paid to a person named by the deceased; in the absence of a named survivor, only the funeral grant is paid to the person who pays for the funeral.
Lao PDR	Social insurance	Same as for old age.	*For a monthly adaptation benefit, payable to the spouse for 12 months following the*	(a) See notes (a) and (b) under 'old age'.

Table AIII.3. Survivors				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			death of the member: • Deceased insured person was in covered employment at the time of death. • No minimum qualifying period. *For a monthly survivor pension, payable to the spouse after the adaptation benefit ceases:* • At least 5 years of covered employment by the deceased insured person. • Spouse was married to the deceased insured person at the time of death and has not remarried. • For a widow, (i) age 44 or more, *or* (ii) less than age 44 with a dependent child aged less than 15 or disabled, or (iii) disabled or incapable of finding suitable employment • For a widower, disabled or incapable of finding suitable employment. *For a lump-sum payment:* • Less than 5 years of covered employment by the deceased insured person. • No minimum qualifying period.	
Malaysia	Provident fund	Same as for old age.	*For a periodic benefit:* • None available. *For a lump-sum payment:* • No minimum qualifying period.	
	Social insurance	Same as for invalidity.	*For a full or reduced monthly survivor pension:*	

Table AIII.3. Survivors				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			• Deceased member was receiving an invalidity benefit, *or* the deceased member fulfilled the contribution conditions for a full or reduced invalidity benefit at the time of death. *For a lump-sum funeral grant:* • Same as for a monthly survivor pension.	
Myanmar	None			
Philippines	Social insurance	Same as for old age.	*For a monthly survivor pension:* • Deceased member was receiving an old age or disability pension, *or* the deceased member fulfilled the contributory conditions for a disability pension at the time of death. *For a lump-sum survivor grant:* • Deceased member had less than 36 months of contributions.	
Singapore	Provident fund	Same as for old age.	*For a periodic benefit:* • None available, unless the deceased member had purchased a term life insurance policy. *For a lump-sum payment:* • No minimum qualifying period.	(a) See notes (a), (b) and (c) under 'old age'.
Thailand	Social insurance	Same as for old age.	*For a periodic benefit:* • None available. *For a lump-sum survivor benefit:* • Death of the pensioner within 60 months after becoming entitled to an old age pension.	(a) See notes (a), (b) and (c) under 'old age'. (b) If the death was due to an occupational disease of injury, benefits may be paid under the work injury scheme. (c) The lump-sum survivor

Table AIII.3. Survivors				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			• Death was not due to an occupational injury or disease. *For a lump-sum death grant and a funeral grant:* • Deceased insured person had at least one month of contributions in the 6 months before death, *or* was receiving a disability pension. • Death was not due to an occupational injury or disease.	benefit is split between the surviving spouse, legitimate children, and a surviving mother or father, according to the number and category of survivor. (d) The lump-sum death grant is paid to the deceased insured person's named beneficiary. If there is no named beneficiary, the grant is split equally among the surviving spouse, children and parents. (e) The funeral grant is paid to the person who paid for the funeral.
Viet Nam	Social insurance	Same as for old age.	*For a monthly survivor pension:* • Deceased was a pensioner *or* had at least 15 years of contributions. • For a spouse, age 60 or more (husband) or 55 or more (wife), with income less than the minimum wage. • For a dependent child, age less than 15 (18 if a student). • For a dependent parent, age 60 or more (father) or 55 or more (mother). *For a lump-sum survivor grant:* • Deceased insured person was a pensioner *or* had no survivor eligible for a survivor pension (spouse, dependent child or dependent parent) fulfilling the age and income requirements for a survivor pension) *or* had less than 15	(a) See notes (a), (b) and (c) under 'old age'. (b) Survivor pensions can be paid for up to four survivors. (c) On the death of a pensioner, a lump-sum survivor grant is paid, in addition to the lump-sum funeral grant, even if there is a survivor eligible for a survivor pension.

Table AIII.3. Survivors				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			years of contributions. *For a lump-sum funeral grant:* • Deceased was an insured person (had contributed or been credited with contributions in his/her working life). • No minimum qualifying period.	

Table AIII.4. Medical care				
Country	**Type of program**	**Coverage**	**• Qualifying conditions**	**Notes**
Brunei	Universal	• All residents of Brunei.	• Residence in Brunei. • No minimum qualifying period.	
Cambodia	No information available			
Indonesia	Social insurance	Same as for old age.	• In covered employment at the time of the occurrence of the contingency. • No minimum qualifying period.	(a) See notes (a), (b) (c) and (d) under 'old age'. Employees of employers providing medical care benefits that are more comprehensive than those provided by the public program (Jamsostek) are also excluded. (b) Special systems: civil servants, civil service pensioners, military and police pensioners, veterans, national independence pioneers, dependants aged less than 25 of any of the preceding. (c) Benefits are delivered by public- and private-sector contractors.
Lao PDR	Social insurance	Same as for old age.	• In covered employment for at least 3 of the last 12 months before the occurrence of the contingency.	(a) See notes (a) and (b) under 'old age'.
Malaysia	Provident fund	Same as for old age.	• No minimum qualifying condition.	(a) See note (a) under 'old age'.
Myanmar	Social insurance	• Temporary and permanent employees in establishments with 5 or more employees in industry and commerce or in specified sectors (railways, ports,	• In covered employment at the time of the occurrence of the contingency *or* within 26 weeks from the last day of covered employment for involuntarily unemployed persons registered as unemployed who were in covered employment on the	(a) Excluded from coverage: self-employed persons, construction workers, agricultural workers, fishermen, employees in establishments with less than 5 employees. (b) Coverage is limited to major cities and townships.

Table AIII.4. Medical care				
Country	**Type of program**	**Coverage**	**• Qualifying conditions**	**Notes**
		mines and oilfields).	date of dismissal. • No minimum qualifying period.	
Philippines	Social insurance	• Nationals of the Philippines who are: . • Employees in the private sector age 60 or less and earning at least PHP 1,000 a month. • Domestic employees age 60 or less and earning at least PHP 1,000 a month • Self-employed persons age 60 or less with a monthly income of at least PHP 1,000. • Pensioners and retired persons (full coverage). • Some categories of persons with low or no income (limited coverage).	*For employees and self-employed persons:* • At least 3 months of contributions in the 6 months before the occurrence of the contingency. *For pensioners, retired persons and covered persons with low or no income*: • No minimum qualifying period.	(a) Voluntary coverage: Filipinos recruited by a foreign-based employer for employment abroad, some other categories of persons.
Singapore	Provident fund	• Employees earning more than SGD 50 per month. • Self-employed persons with annual net trade incomes	• Membership in the provident fund (Medisave account). • No minimum qualifying condition.	(a) Medical services are delivered through government hospitals and approved private hospitals and medical institutions. (b) Coverage of dependent family members: spouse, children, parents and

Table AIII.4. Medical care				
Country	**Type of program**	**Coverage**	**• Qualifying conditions**	**Notes**
		greater than SGD 6,000.		grandparents of a member. Grandparents must be nationals or permanent residents of Singapore.
	Social assistance	• Nationals of Singapore.	• Residence in Singapore. • Inability to pay for medical treatment in approved hospitals and medical institutions, as determined by income and means tests.	
Thailand	Social insurance	Same as for old age.	*For contingencies other than maternity:* • At least 3 months of contributions in the 15 months before the onset of incapacity or the date of treatment. *For maternity:* • At least 7 months of contributions in the 15 months before the expected date of birth.	(a) See notes (a), (b) and (c) under 'old age'. (b) Medical services are delivered by hospitals under contract to the Social Security Office. (c) Coverage of dependent family members: medical care related to childbirth of the wife of, or woman who cohabits with, an insured man.
Viet Nam	Social insurance	• Employees in the private and public sector with employment contracts of at least 3 months' duration. • Domestic workers. • Employees in agriculture, fishing and salt production. • Members of	• At least 45 days of contributions. • Illness or injury giving rise to the need for medical care was not work-related.	(a) In the event of a work-related illness or injury, medical care is provided under the work injury scheme. (b) Medical services are delivered by public or private providers under contract to Viet Nam Social Security. (c) Coverage of dependent family members: none.

Table AIII.4. Medical care				
Country	**Type of program**	**Coverage**	**• Qualifying conditions**	**Notes**
		cooperatives. • Pensioners. • War veterans affected by agent orange and receiving a pension. • Dependents of army officers. • Persons who have received an old age grant. • Civil servants. • Officers of the armed forces.		

Table AIII.5. Sickness and maternity (cash benefits)				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
Brunei	None			
Cambodia	No information available			
Indonesia	None			(a) Under Indonesia's *Manpower Law* (Law No.13 of 2003, Article 82) a female worker is entitled to three months paid maternity leave, of which 1.5 months can be taken in the pre-natal period and 1.5 months in the post-natal period. (b) As well, under the medical care scheme, an insured worker is entitled to reimbursement of up to IRP 400,000 for the birth of each of the first three children. There is no reimbursement for a child after the first three.
Lao PDR	Social insurance	Same as for old age.	*For a periodic cash sickness benefit:* • At least 3 months of covered employment before the occurrence of the contingency. • No longer eligible for statutory sick pay (paid by the employer for 30 days). *For a periodic cash maternity benefit:* • At least 9 months of covered employment in the 12 months before ceasing work.	

Table AIII.5. Sickness and maternity (cash benefits)				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			• For a female insured person, cessation of work because of pregnancy, childbirth or miscarriage. • For a female or a male insured person, adoption of a child age less than one. *For a lump-sum birth grant:* • At least 9 months of covered employment in the 18 months before the birth. • For a female insured person or the spouse of a male insured person, birth of a child. • For a female or a male insured person, adoption of a child age less than one.	
Malaysia	None			
Myanmar	Social insurance	Same as for medical care.	*For a periodic cash sickness benefit:* • 17 weeks of contributions in the 26 weeks before the occurrence of the contingency. *For a periodic cash maternity benefit:* • 26 weeks of contributions in the 52 weeks before the expected date of birth.	See notes (a), (b) and (c) under 'medical care'.
Philippines	Social insurance	Same as for old age.	*For a daily cash sickness allowance:*	See note (a) under 'old age'.

Table AIII.5. Sickness and maternity (cash benefits)				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			• At least 3 months of contributions in the 12 months immediately before the 6-month period (January-June or July-December) in which the illness began. • Hospitalized or incapacitated at home for at least 4 days. *For a daily cash maternity allowance:* • At least 3 months of contributions in the 12 months immediately before the 6-month period (January-June or July-December) in which the birth or miscarriage occurred.	
Singapore	Employer liability	• All employed persons.	*For a periodic cash sickness benefit:* • At least 6 months of employment prior to the occurrence of the contingency. *For a periodic cash maternity benefit:* • At least 180 days of employment immediately before the birth.	(a) Cash maternity payments are only made for the first to the fourth child (in birth order).
Thailand	Social insurance	Same as for old age and medical care.	*For a daily cash sickness benefit:* • At least 3 months of contributions in the 15 months	(a) See notes (a), (b) and (c) under 'old age'. (b) To qualify for a cash sickness benefit,

Table AIII.5. Sickness and maternity (cash benefits)				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
			before the onset of incapacity or the date of treatment. *For a daily maternity benefit:* • At least 7 months of contributions in the 15 months before the expected date of birth. *For a lump-sum childbirth grant:* • At least 7 months of contributions in the 15 months before the expected date of birth.	the insured person must provide medical certification. (c) The cash maternity benefit is paid to an insured woman. The childbirth grant is paid to the wife of, or the woman who cohabits with, an insured man.
Viet Nam	Social insurance	Same as for old age.	*For a daily cash sickness benefit:* • In covered employment at the time of the occurrence of the contingency. • Illness or injury giving rise to the need for a cash sickness benefit was not work-related. • No minimum qualifying period. *For a lump-sum birth grant:* • In covered employment immediately before the cessation of work. • No minimum qualifying period.	(a) Voluntary coverage: self-employed persons, school children, students. (b) In the event of a work-related illness or injury, cash sickness benefits are provided under the work injury scheme. (c) Cash sickness benefits are also paid to an insured mother (and, in unusual circumstances, to an insured father) during periods spent providing care to a child aged less than 7 (first two children only). (d) Cash maternity benefits are only paid for the births of the first two children; if one of the first two children dies, benefits are paid for the birth of a third child. (e) Cash maternity benefits are paid to a mother who adopts a newborn child.

Table AIII.6. Employment injury				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
Brunei	Employer liability	• Employees who are nationals or permanent residents of Brunei.	*For a monthly benefit for temporary disability, a lump-sum benefit for permanent disability, a lump-sum survivor benefit, and medical benefits:* • No minimum qualifying period.	(a) Excluded from coverage: domestic servants, home workers, security personnel.
Cambodia	No information available			
Indonesia	Social insurance	Same as for old age.	*For a monthly benefit for temporary disability, a lump-sum benefit for permanent disability, a lump-sum survivor benefit and medical benefits:* • Less than age 55. • No minimum qualifying period.	(a) See notes (a), (b), (c) and (d) under 'old age'.
Lao PDR	Social insurance	Same as for old age.	*For a monthly benefit for temporary or permanent disability, a monthly survivor benefit (surviving spouse's, parent's or orphan's pension), a lump-sum death grant, and medical benefits:* • No minimum qualifying period.	
Malaysia	Social insurance	• Employees earning MYR 2,000 or less a month currently or when first employed; casual workers.	*For a daily benefit for temporary or permanent disability, a daily survivor benefit, a lump-sum funeral grant, and medical benefits:* • No minimum qualifying period.	(a) Voluntary coverage: employees earning more than MYR 2,000 a month currently or when first hired, on agreement between the employer and the employee. (b) Excluded from coverage: foreign workers (for whom a special work injury scheme exists; see below). For a

Table AIII.6. Employment injury

Country	Type of program	Coverage	Qualifying conditions	Notes
				definition of 'foreign worker', see note (a) under 'old age'.
	Employer liability	• Foreign workers.	*For a monthly benefit for temporary disability, a lump-sum benefit for permanent disability, a lumps-sum benefit for the dependants of a deceased worker, a lump-sum repatriation allowance (to country of origin), and medial care:* • Claim must be submitted within 10 days of the occurrence of the work accident. • No minimum qualifying period.	(a) The Foreign Workers Compensation Scheme, which has been in operation since 1 March 1993, ensures benefits for work accidents suffered by foreign workers employed in Malaysia. The employer must purchase an insurance policy for its foreign workers. No work permit is issued for a foreign worker until such a policy has been purchased. (b) The Foreign Workers Compensation Scheme applies only to work accidents and not to occupational diseases or diseases. (c) Costs of medical care are limited to MYR 750. A foreign worker may purchase optional insurance for additional medical care, subject to an annual maximum of MYR 5,000.
Myanmar	Social insurance	Same as for medical care.	*For a weekly benefit for temporary or permanent disability, a monthly survivor benefit, and medical benefits::* • No minimum qualifying period.	(a) See notes (a) and (b) under 'medical care'.
Philippines	Social insurance	• Employees and employers in the private sector age 60 or less, including domestic employees and Filipinos recruited by a	*For a daily benefit for temporary disability, a monthly benefit for permanent disability, a monthly survivor benefit, a lump-sum funeral grant and medical benefits:* • At least one month of	

Table AIII.6. Employment injury				
Country	**Type of program**	**Coverage**	**Qualifying conditions**	**Notes**
		foreign-based employer for employment abroad.	contributions. • Claim must be submitted within one year of the occurrence of the contingency.	
Singapore	Employer liability	• All employees engaged in manual labour. • Employees engaged in non-manual labour earning SGD 1,600 or less a month.	*For a daily/monthly benefit for temporary disability, a lump-sum benefit for permanent disability and a lump-sum survivor benefit:* • Claim must be submitted within one year of the occurrence of the contingency. • No minimum qualifying period.	(a) Excluded from coverage: self-employed persons, employees engaged in non-manual labour earning more than SGD 1,600 a month, domestic and casual workers, home workers, family labour. (b) For a disability benefit, medical certification must be provided by a registered doctor.
Thailand	Social insurance	• Employees of industrial and commercial firms.	*For a monthly benefit for temporary or permanent disability, a monthly survivor benefit, a lump-sum funeral grant and medical benefits:* • No minimum qualifying period.	(a) See notes (a) and (c) under 'old age'.
Viet Nam	Social insurance	Same as for old age.	*For a daily benefit for temporary disability, a monthly benefit for permanent disability, a lump-sum disability grant, a monthly survivor benefit, a lump-sum survivor or funeral grant, and medical benefits:* • No minimum qualifying period.	

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This paper looks at specific actions that ASEAN countries can take to strengthen the social protection of migrant workers within the region. It argues for the importance of agreements between countries to coordinate their social security systems in order to ensure that migrant workers and their families have access to the programs of the countries in which they are working. The paper further argues that without social security agreements, greater integration of the ASEAN region will be severely impeded.

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