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Managing labour mobility:

Opportunities and challenges
for employers in the ASEAN region

Bureau for Employers' Activities (ACT/EMP) and the
Tripartite Action for the Protection and Promotion of the
Rights of Migrant Workers in the ASEAN Region
(ASEAN TRIANGLE Project)

Regional Office for Asia and the Pacific



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First published 2015

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Managing labour mobility : opportunities and challenges for employers in the ASEAN region / Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region (ASEAN TRIANGLE project), ILO Regional Office for Asia and the Pacific ; International Labour Office, Bureau of Employers Activities (ACT/EMP). – Bangkok : ILO, 2015

ISBN: 9789221302209 ; 9789221302216 (web pdf)

ILO Regional Office for Asia and the Pacific, Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region (ASEAN TRIANGLE project) ; International Labour Office, Bureau of Employers Activities (ACT/EMP)

labour mobility / labour migration / labour policy / migration policy / migrant worker / skilled worker / skill requirements / recruitment / health / forced labour / trafficking in persons / ASEAN countries

13.01.2

ILO Cataloguing in Publication Data

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Printed in Thailand

Foreword

The International Labour Organization (ILO) has long been working to maximize the benefits of labour migration across the region. Globally there are 247 million international migrant workers and this number continues to rise.

Under the ASEAN TRIANGLE Project (ATP), the ILO's work on labour migration has been furthered and focused on the ASEAN region. This region is undergoing major change with the approaching ASEAN Economic Community (AEC) fast approaching, bringing with it increased regional integration and key changes for labour mobility. Many countries in the ASEAN region are facing demographic shifts and their economies require migrant workers to support economic growth. Labour migration is consequently of significant importance for the economic growth of ASEAN Member States and is firmly on the agenda of enterprises and the organizations that represent them.

National Employers' organizations are fully aware that individual bad practices can tarnish the reputation of entire industries or countries, and subsequently the region. This risk becomes heightened, as ASEAN moves towards greater integration. Consequently, a more focused and scaled up approach to creating an effective policy and regulatory environment for labour migration has become imperative. Through the ATP, the ASEAN Confederation of Employers (ACE) identified five priority areas for intensive policy work at the regional level along with an implementation plan

The project has principally served to help employers' organizations become better versed in aspects of labour migration and, in turn, to better support their members through the transition under the AEC and with the challenges that labour migration brings. While much is still to be done to change the realities of labour migration in the ASEAN region, the employer component of the ATP has equipped employers' organizations with important tools to advocate for policy and legislative change to make labour mobility across the region safer and more effective for workers and enterprises.

Business through its representative bodies has a critical role in contributing to a policy framework along with effective practices that ensure that mobility across the region is force for positive economic and social progress. The ILO will continue in its focus on supporting these efforts.



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Acknowledgements

This report and the related workshops were prepared with the support of Gary Rynhart, Senior Employers' Specialist, ILO Bureau for Employers' Activities (ACT/EMP), Tang Miaw Tiang, Senior Employers' Specialist, ACT/EMP, Jae-Hee Chang, Regional Project Coordinator, ACT/EMP, Manuel Imson, Senior Project Coordinator, ASEAN TRIANGLE Project, ILO, and Heike Lautenschlager, Technical Officer, ASEAN TRIANGLE Project, ILO.

The content of this report, including the drafting of the background and policy papers, was produced by Connor McGuinness, Siew Sze Lee, Davide Lythe and Alex Phuong Nguyen. The final report was compiled by Laura Greene and edited by John Maloy. The graphic design and layout were done by Matthew Parkes.

We are grateful to the Department of Foreign Affairs, Trade, and Development of Canada for providing financial support for this report and its associated workshops under the ASEAN TRIANGLE Project.

The participation in the workshops, support and inputs of the ASEAN Confederation of Employers' (ACE) and their members were key to this publication. In addition thanks are due to the following employers' organizations: National Chamber of Commerce and Industry Brunei Darussalam, Cambodia Federation of Employers and Business Associations, Employers' Association of Indonesia, Lao People's Democratic Republic National Chamber of Commerce and Industry, Malaysia Employers' Federation, Union of Myanmar Federation of Chambers of Commerce and Industry, Employers Confederation of the Philippines, Singapore National Employers Federation, Employers' Confederation of Thailand and Viet Nam Chamber of Commerce and Industry.

Abbreviations

ACE	ASEAN Confederation of Employers
ACF	ASEAN Constructors' Federation
ACT/EMP	Bureau for Employers' Activities
AEC	ASEAN Economic Community
APINDO	Employers' Association of Indonesia
ASEAN	Association of Southeast Asian Nations
ASEAN-OSHNET	ASEAN Occupational Safety and Health Network
ATP	Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN region
CAMFEBA	Cambodian Federation of Employers and Business Associations
CIETT	International Confederation of Private Employment Agencies
DOE	Department of Employment
ECOP	Employers' Confederation of the Philippines
ECOT	Employers' Confederation of Thailand
EOSH	Essentials of Occupational Safety and Health
ESG	environmental, social and governance
GDP	gross domestic product
GMS	Greater Mekong Subregion
ILAB	International Labor Affairs Bureau [United States]
ILO	International Labour Organization
ILO-OSH 2001	Guidelines on Occupational Safety and Health Management Systems
LNCCI	Laos National Chamber of Commerce and Industry
MEF	Malaysian Employers Federation
MOA	Memorandum of Agreement

MOM	Ministry of Manpower [Singapore]
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
MYR	Malaysian Ringgit [currency]
NUPW	National Union of Plantation Workers [Malaysia]
OECD	Organisation for Economic Co-operation and Development
OSH	occupational safety and health
OUMWA	Office of the Undersecretary of Migrant Workers Affairs
OWWA	Overseas Workers Welfare Administration
PAOS	post-arrival orientation seminar
PDOS	pre-departure orientation seminar
PEOS	pre-employment orientation seminar
POEA	Philippines Overseas Employment Administration
SME	Small and Medium-sized Enterprises
SNEF	Singapore National Employers Federation
TIP	Trafficking in Persons
TOEA	Thailand Overseas Employment Agency
TPP	Trans-Pacific Partnership Agreement
UMFCCI	Myanmar Federation of Chambers of Commerce and Industry
UNPRI	United Nations Principles of Responsible Investment
VAMAS	Vietnamese Association of Manpower Supply
VCCI	Viet Nam Chamber of Commerce and Industry
WIMWE	Work Improvement for Migrant Workers and their Employers
WTO	World Trade Organization

About ASEAN Confederation of Employers (ACE):

The ASEAN Confederation of Employers (ACE) was established in 1978 and represented by Employers' Organizations in ASEAN, to optimize liaison, co-operation and representation in the fields of labour and social legislation, industrial relations and practices.

The five founding members, Employers' Association of Indonesia (APINDO), Employers' Confederation of The Philippines (ECOP), Employers' Confederation of Thailand (ECOT), Malaysian Employers Federation (MEF), and Singapore National Employers Federation (SNEF), firmly supporting the fundamental objectives of ASEAN in its pursuits of effective measure for regional economic co-operation, declared their agreement to unite and establish the ASEAN Confederation of Employers. The Cambodian Federation of Employers and Business Associations (CAMFEBA) later became a member of ACE in 2004.

ACE is governed and administered by a Board of Directors consisting of a designated representative from each member. The President holds office for a period of two-years at which point it is rotated amongst the board members. Annual meetings for the Board and Chief Executive Officers take place. Overall ACE's objectives are to:

- safeguard and promote the interests of ASEAN employers;
- collate and disseminate information on legislative changes and general developments in the fields of labour, social and economic matters, which are likely to affect the interests of employers;
- foster closer relations and co-operation between and among the members, and to render mutual assistance in matters of common interest;
- maintain closer relations and co-operation with regional and international organizations having similar aims and objectives;
- promote harmonious industrial relations, help maintain peace, and encourage improved productivity; and
- coordinate the views of members and to represent their views at regional and international levels.

About International Labour Organization's Bureau for Employers' Activities:

The Bureau for Employers' Activities (ACT/EMP) is the specialized unit within the International Labour Office that maintains direct and close relationships with employers' organizations. Employers' organizations advance the collective interests of employers at country and regional levels. ACT/EMP assists employers' organizations with becoming strong representative organizations that help to shape conducive business environments.

About ILO Tripartite Action for the Protection and Promotion of Rights of Migrant Workers (ASEAN TRIANGLE Project):

The ASEAN TRIANGLE Project (ATP) was launched in April 2012 and aims to increase labour rights protection, labour mobility, and decent work opportunities for women and men migrant workers in the ASEAN Region. ATP promotes regional approaches to address shared concerns, makes regionalism more effective and enhances the capacity of institutions, such as the regional representative bodies of workers' and employers' organizations, in the ASEAN region. The ATP promotes close engagement with social partners on all aspects of migration management and one of its three objectives is to enhance the capacity of social partners to influence labour migration policy and protect the rights of women and men migrant workers. The ATP is funded by the Government of Canada.

1. Introduction

In recent years, labour migration flows within and from South-East Asia have grown in volume and complexity. According to the World Bank (2015), the number of international migrants was estimated at 247 million in 2013 and is expected to surpass 250 million in 2015. The number of migrant workers departing Association of Southeast Asian Nations (ASEAN) countries each year is estimated to be over 14 million, and the number of documented migrant workers within the region is close to 6 million (UNDP, 2015). Business and its representatives are key stakeholders in the migration process, and it is imperative that national business communities across the ASEAN region prepare for ASEAN Economic Community (AEC) in 2015. Many of ASEAN's fast-growing economies will continue to rely on migrant workers to address labour shortages, and both sending and receiving countries will face challenges related to migration, making awareness on migration-related issue even more important for ASEAN countries. Under the AEC, labour and social policies matter, particularly in terms of intraregional labour motility, making this publication relevant to the future of businesses and their representative organizations (ILO, 2014e).

In order to fully engage employers' organizations in the ASEAN processes on labour migration, an Action Plan was developed for the employers' component of the ASEAN TRIANGLE Project (ATP) of the International Labour Organization (ILO). Overall, the Action Plan entailed regional meetings, training, policy work, and research work undertaken with the main implementing partners, the ASEAN Confederation of Employers (ACE) together with ten national employers' organizations: National Chamber of Commerce and Industry Brunei Darussalam; Cambodian Federation of Employers and Business Associations (CAMFEBA); Employers' Association of Indonesia (APINDO); Laos National Chamber of Commerce and Industry (LNCCI); Malaysian Employers Federation (MEF); Myanmar Federation of Chambers of Commerce and Industry (UMFCCI); Employers' Confederation of the Philippines (ECOP); Singapore National Employers Federation (SNEF); Employers' Confederation of Thailand (ECOT); Viet Nam Chamber of Commerce and Industry (VCCI). The activities aimed to strengthen the voice of employers, through ACE, at national- and regional-level policy discussions on labour migration. This three-year ATP programme with ACE was designed to have a relevant impact at the regional level and has three main objectives:

1. To strengthen the capacity of ACE and its members to engage in effective policy dialogues based on empirical evidence to promote a sound governance framework for mobility and migration in the ASEAN region.
2. To strengthen the capacity of ACE to convene members around labour migration-related issues, in order to raise awareness and share good practices among them.

3. To develop regional guidelines and other tools and products that can be customized at the national level by employers' organizations into demand-driven products that can practically assist enterprises.

Five priority areas in relation to labour migration and mobility were identified and agreed on by ACE at a regional employers' meeting in Bangkok, Thailand, in October 2013. Regional employers' workshops, background papers, and policy position papers were held and developed on each area. These are as follows:

- The Role of Employers' Organizations in Matching Skills and Increasing Mobility across the ASEAN Region, 6 November 2013, Bali, Indonesia;
- Increasing Productivity through Enhancing the Safety and Health of Migrant Workers, 29–30 April 2014, Bangkok, Thailand;
- The Role of the Recruitment Sector in Facilitating More Effective ASEAN Intraregional Labour Mobility, 6–7 November 2014, Bangkok, Thailand;
- Businesses' Perspective on Addressing Forced Labour in ASEAN Migration – Reputational Risks and Practical Responses, 31 March – 1 April 2015, Bangkok, Thailand; and
- Managing Diversity and Workplace Integration in the ASEAN countries, 2016.

After a further rigorous consultative process, these four positions were agreed at an ACE board meeting held in Kuala Lumpur in May 2015.

This publication series documents and consolidates the outputs of the regional meetings to better inform employers' activities, and summarizes the position of employers' on the priority issues. It gives the context of these priority areas as well as the policy position papers agreed upon as a result of the regional workshops.

2. Skills matching and mobility

This section covers matching skills and mobility in ASEAN as well preparedness for the AEC in terms of mutual recognition arrangements (MRAs).

An Employers' Regional Workshop on the Role of Employers' Organizations in Matching Skills and Increasing Mobility across the ASEAN Region was held on 6 November 2013 in Bali, Indonesia. A background paper was drafted for the workshop, and an agreed upon ACE policy position paper was created as a result of the workshop. The workshop aimed to:

- identify priority areas related to skills matching and mobility leading up to the AEC; and
- develop a clearly defined position on skills recognition and labour mobility policy for each stage of the labour migration process, with a particular focus on:
 - o recruitment and placement of migrant workers;
 - o national and regional processes for skills recognition and assessing industry demand for skilled labour; and
 - o opportunities for migrant workers to upgrade their skill sets and the role of employers in facilitating this.

2.1 Flow of skilled labour in ASEAN:

Demand and supply for skilled workers and employer preparedness for increased flow of skilled labour

Highly industrialized ASEAN economies rely significantly on the flow of skilled migrant labour to meet demand. Enhanced labour mobility through the AEC is likely to amplify this need. For example, according to 2010–2011 data (UNDESA, 2010; World Bank, 2011):¹

¹ Data sourced from the United Nations Department of Economic and Social Affairs' *World Population's Prospects: The 2010 Revision and the World Bank's World Development Indicators 2011*. Analysis was also sourced from Danes, 2011, pp. 1–24, especially pp. 8–13.

- if Malaysia utilized its entire non-employed working population of around 400,000 people, only about one-tenth of Malaysia's labour demand in sectors currently reliant on migrant workers would be met;
- Singapore's working age population is expected to decline between 2020 and 2030 at a rate of about 24,000 per year, leading to further reliance on migrant labour to meet the deficit in local supply; and
- between 2020 and 2030, Thailand's working age population is anticipated to decline even more drastically, by a rate of 150,000 per year, leading to severe labour shortages and a near critical reliance on migrant labour.

A notable issue in relation to demand for skilled labour is the apparent lack of consistency across ASEAN Member States in assessing which occupations are in demand. This has been exacerbated in part by inconsistencies and inefficiencies in formal labour migration policies. Some highly migrant labour-dependent economies, such as Singapore, maintain a robust approach to determining which sectors are currently in demand and/or forecasted to be in demand. By contrast, a similarly migrant labour-dependent economy such as Thailand takes a far more limited approach to formally assessing the demand for skilled labour by sector (ILO, 2013f, p. 47).² Matching the supply of skilled labour with demand on a regional basis will be a critical area in determining ASEAN's success in transitioning to the AEC in 2015. In this context, employers' and their representative organizations possess a profound interest in ensuring that this occurs. However, as outlined below, it is not apparent that this has been fully grasped by all employer stakeholders.

Recent survey work commissioned by the ILO has illustrated mixed levels of awareness and preparation with regard to both the AEC and policy work related to effectively matching skilled labour with demand. In particular, the majority of firms surveyed (about 60 per cent) reported that they had little idea what impact the AEC – and by extension the free flow skilled labour – would have on their industries (ILO, 2014e).

In contrast, a number of firms surveyed in heavily migration-dependent economies, such as Malaysia, the Philippines, and Singapore, responded they had plans in place for the AEC. They indicated that they were moving to expand across ASEAN by looking at:

- broadening their labour source bases;
- upgrading technology assets; and
- increasing and diversifying the range of services they offer.

This forward-thinking approach to matching broader market opportunities with diversified labour and technology bases represents the likely path most ASEAN enterprises will need to adopt in order to adapt to the new operating environment in the AEC.

¹ Data sourced from the United Nations Department of Economic and Social Affairs' *World Population's Prospects: The 2010 Revision and the World Bank's World Development Indicators 2011*. Analysis was also sourced from Danes, 2011, pp. 1–24, especially pp. 8–13.

² It should be noted, however, that Thailand's Ministry of Labour has recently undertaken some analysis in this area and estimated that in 2013 Thailand would require 116,000 workers to fill rising demand and balance the national labour market. The issue here is that Thailand will likely need to build on this work in order to establish robust systems for assessing and (rapidly) responding to demand on a sectoral/occupational basis.

2.2. Mutual Recognition Arrangements in ASEAN:

Status and readiness of ASEAN Member States

A central component of the AEC calls for the free flow of skilled labour to cope with demand for qualified professionals as the region moves closer towards economic integration. The AEC Blueprint identifies several key areas that will be essential to facilitating the flow of labour in line with demand, including the:

- issuance of visas and employment permits;
- execution of MRAs for major professional services;
- benchmarking of services skills and qualifications; and
- enhanced cooperation between ASEAN universities to enhance regional mobility for both academics and graduates.

To date, in order to facilitate the freer flow of professional services, ASEAN Member States have concluded seven MRAs and one framework agreement:

- MRA on Engineering Services (December 2005);
- MRA on Nursing Services (December 2006);
- MRA on Tourism Professionals (January 2007);
- MRA on Architectural Services (November 2007);
- Framework Arrangement for the Mutual Recognition of Surveying Qualifications (November 2007);
- MRA on Medical Practitioners (February 2009);
- MRA Framework on Accountancy Services (February 2009).

Different mechanisms are present in the respective MRAs to maximize market access. For example, multiple job titles can be covered, such as with the MRA on Tourism, which currently covers 32 occupations.

While MRAs greatly facilitate the flow of skilled labour in their respective professions, they represent only one component of the AEC Blueprint described above. MRAs must operate in line with the respective national laws and regulations covering labour migration in each ASEAN Member State. As such, the free flow of skilled labour in the professional areas covered by the MRAs may still remain relatively constrained where national laws and regulations are not (yet) consistent with MRAs. In addition, the execution of MRAs does not prevent ASEAN Member States from arbitrarily limiting labour migration into the sectors covered by the current MRAs. Therefore, the presence of an MRA does not necessarily equate to market access. Practical

barriers, such as language, or admission into industry associations, also remain to be addressed.

Given that MRAs have been negotiated and agreed upon by ASEAN governments, it will become increasingly important for ASEAN employers, through the ACE, to actively engage with governments to ensure that MRAs are used appropriately to facilitate the free flow of skilled labour in these areas. Employers' have a role in ensuring national laws and regulations operate in line with MRAs and other facilitation arrangements.

Certain sectoral organizations in the region such as the ASEAN Constructors' Federation (ACF) have independently taken steps to enhance recognition of skills and streamline labour mobility (see box 1). The development of harmonized procedures for all seven MRAs is currently underway, but this effort would benefit from strong initiatives and the specialized knowledge of employers' organizations, such as those provided by sectoral organizations like the ACF.

Box 1

ASEAN Constructors' Federation (ACF)

The ACF aims to promote harmonization of construction skills standards across ASEAN countries to increase the productivity and value creation of their respective workforces.

The ACF considers that sectoral employers' organizations can and should take a proactive approach to mainstreaming skills recognition within the region. The ACF's strategy for achieving this sets a positive example for all employers' organizations, particularly national-level bodies represented in the ACE.

In addition to taking an industry-led approach to improving skills recognition and regional integration, the ACF has identified a range of critical areas where industry and ASEAN governments must work together in achieving this goal. It is significant to note the similarity between the ACF's efforts to promote ASEAN integration and the advances made through MRAs, the ASEAN Skills Qualifications Framework, and other mechanisms under the AEC Blueprint. As early as 1990 the ACF has called for the industry to work with ASEAN governments to (an abbreviated list):

- Encourage free flow of construction professionals and workforce;
- Promote ASEAN building materials exchange and supply as well as to harmonize quality and standards;
- Redefine ASEAN nationals and entities to encourage ASEAN construction cooperation and assistance;
- Adopt fair contract conditions and create a healthy environment for fair competition;
- Programme construction demand towards continuing development of the construction industry;
- Set up construction industry development board/authority/council;
- Develop ASEAN skill standards and certification;
- Standardize codes of practice; and
- Create an ASEAN common construction policy and market.

Source: (ACF, 2015)

As outlined previously ASEAN Member States are still working on streamlining a broad range of laws and regulations to meet the objective of a free flow of skilled labour by 2015. The level of preparedness differs between ASEAN Member States, and it will be incumbent upon national-level organizations, particularly those representing employers, to assist governments to make the appropriate arrangements in time for 2015. ASEAN Member States will require sustained contribution from ACE members at the national and regional levels, in particular to establish robust regulatory frameworks in line with the AEC Blueprint.

In addition, given the uneven levels of preparedness among ASEAN Member States in implementing the MRAs, there exists varying degrees of demand for assistance (see table 1). International organizations and partners such as the ILO can provide high-level technical assistance, however this would require the active cooperation of the respective industrial associations in each MRA category in order to achieve effective coverage. Notably, a number of ASEAN Member States are considering joint collaboration on priority skills areas; for example, Malaysia and Singapore are considering cooperation on the flow of information and communications technology professionals. Therefore, the cooperation of national representative organizations, i.e., ACE members and sectoral associations, would greatly strengthen current efforts to implement the MRAs and other necessary arrangements for the free flow of skilled labour.

Table 1: Readiness of ASEAN Member States to implement MRAs

Member State(s)	Readiness
Brunei Darussalam, Malaysia, Singapore	Some technical level work needs to progress but external support is not required. Participation in regional activities to resolve outstanding policy and implementation issues would be of benefit.
Cambodia, Lao PDR, Myanmar	Sustained support is required to develop national qualifications arrangements and to establish robust implementation in priority migrant worker skill areas.
Indonesia	Support is required for the comprehensive development of policies and implementation processes for the full establishment of the Indonesian Qualifications Framework. Some technical and vocational education and training technical advice for relevant implementing ministries is also required.
Philippines and Viet Nam	Short-term external assistance is required to complete the development of the national qualifications frameworks in line with the ASEAN Qualifications Reference Framework.
Thailand	Short- to medium-term technical advice required.

2.3. Informing future policy on skills matching and mobility

Matching the supply of skilled labour with demand on a regional basis will be a critical area in determining ASEAN's success in transitioning to the AEC in 2015. Given the broad ranging objectives of the AEC Blueprint and the scheduled launch of the AEC in 2015, employers need to start assessing the impacts of regional integration on their operations.

In order to inform future policy, as the arrangements for the AEC 2015 are currently being developed and implemented by ASEAN Member States, it will be essential that employers and their representative organizations actively engage with ASEAN governments through both regional- and national-level processes. Employers' organizations will also need to consider cooperation with other partners, including regional and international partners such as the ASEAN Secretariat and the ILO.

As the AEC nears, the benefits of reaching out to other sector-based organizations in the region will become clearer, and likely more compelling, for employers seeking skilled labour. This can include industry-based organizations (e.g., construction, information communication technologies, etc.), but more importantly the role of recruitment/employment agencies in contributing to the region's labour migration infrastructure should be both acknowledged and further defined. Recruitment agencies are existential and potentially vital actors in facilitating the free flow of skilled labour, given that their services aim to get the right people to enterprises at the right time.

Some of the challenges to the free flow of skilled labour may still need to be addressed. These challenges include:

- assessing occupations in demand and having consistent and effective processes in place to ensure the timely supply of skilled labour;
- managing common issues that arise from increased workplace diversity (e.g., communications issues arising from a multi-lingual workforce);
- on-going work on the harmonization and evolution of skills standards; and
- ensuring that opportunities exist to retain skilled labour in labour-sending countries.

In particular, it will be the role of employers from the enterprise level upward that will be well placed to inform the integration of skills matching and mobility policies and practices for the AEC. Therefore, employers, governments, and other partners will need to continue to work beyond 2015 to maintain and further refine the arrangements in place to manage regional labour mobility.

2.4 ACE policy positions on skills matching and labour mobility in the AEC 2015

Background

In preparation for ASEAN economic integration in 2015 the ASEAN Confederation of Employers (ACE) adopted an Employers' policy framework for sustainable labour migration in the ASEAN region. In this framework ACE identifies five key areas requiring the attention of ASEAN businesses and policy-makers in order to achieve effective labour mobility in 2015 and beyond:

- better matching of workers' skills and employers' labour demands;
- increasing productivity and migrant workers' safety and health at the workplace;
- effective recruitment procedures to facilitate labour migration;
- enhancing competitiveness through embracing diversity; and
- a commitment to combating forced labour and human trafficking.

In this overarching framework:

- ACE **recognizes** that the right balance of skills and competencies is crucial for effectively competing in the knowledge economy. Enhanced labour mobility will therefore be critical in meeting current and future labour market needs.
- ACE **welcomes and supports** the free flow of skilled labour as outlined in the ASEAN Economic Community (AEC) Blueprint and concluded through business-related Mutual Recognition Agreements (MRAs). MRAs represent a major facilitating instrument for building and furthering skilled labour mobility by providing a greater human resource base with improved employment opportunities.
- ACE **believes** that the involvement of ASEAN employers in identifying and responding to current and future skills shortages and surpluses will be essential in formulating effective labour market and labour mobility policies and in addressing current and future challenges.

This paper will outline in broader detail ACE's policy positions on skills matching and labour mobility in the AEC to be taken forward by ACE members when engaging national policy-makers on the necessary reforms, policies, and programmes, required for effective integration in 2015.

Employers' organizations and skills development policy

- ACE **considers** that employers' organizations should lead skills development policy. EOs are best placed to assess skills demand through their membership networks and to advocate policy options to meet current and forecasted demand.

- Furthermore ACE **considers** that employers' organizations have a uniquely central role in being able to educate and mobilize their membership bases to pursue the necessary skills and labour mobility reform at the regional, national, and enterprise levels. In particular, ACE **recognizes** the high potential for collaboration with sectoral organizations on increasing the portability of skills and the mobility of skilled workers.
- To ensure employers take a lead role in developing skills policy agenda ACE **strongly encourages employers' organizations** and their members to base their recommendations and policy proposals on accurate, up to date, and empirically based evidence. ACE **considers** it imperative that employers take action to improve their evidence bases for AEC skills policy proposals.

Skills recognition and competency measures

- Acknowledging the benefits of enhanced skills recognition in the ASEAN region, ACE **emphasizes** the need for skills recognition mechanisms to be linked to competency measures.
- ACE **believes** that more robust competency measures in skills recognition processes will ensure the right people are placed in the right job at the right time. In addition competency measures will reduce the disproportionate incidence of formally skilled workers participating in low skilled transactional occupations.

Soft skills and employability

ACE **recognizes** that current deficits in soft skills such as leadership, communication (particularly English proficiency), inter alia, adversely affects the potential for skilled labour mobility in the region. ACE therefore **encourages** employers' organizations to collaborate with members, training institutions, and other partners to ensure that ASEAN workers have the right combination of formal and soft skills to meet employers' needs in the AEC.

ACE **encourages** employers' organizations to work with their members to better define their workforce needs in terms of formal and job-specific requirements to assist the process of placing the right worker at the right time.

Increasing the supply of skilled workers through upskilling

ACE **envisions** that more workers will be able to formally participate in an integrated ASEAN economy if workers had the opportunity to upgrade these skills. There is also high potential for a significant productivity dividend in certain sectors.

ACE **believes** that employers' organizations and their members are well placed to initiate training at the enterprise level as part of this process. ACE **encourages** partnerships with sectoral organizations and governments to facilitate skills upgrading of workers. In addition policy frameworks should have consideration of workers' capacity to effectively participate in skills upgrading, particularly in terms of language and information and communication technology skills.

3. Increasing enterprise productivity through enhancing the safety and health of migrant workers

A Workshop on Increasing Productivity through Enhancing the Safety and Health of Migrant Workers was held from 29 to 30 April 2014 in Bangkok, Thailand. The workshop aimed for:

- ACE members to identify priority issues related to the productivity and safety of migrant workers leading up to the AEC in 2015 and to develop draft policy positions to address each issue;
- ACE's draft policy positions will be consolidated by the ILO into a comprehensive ACE policy paper and adopted; and
- ACE members' capacity to price and promote their occupational safety and health (OSH) related services to be enhanced

On a global level the human cost of OSH accidents and diseases remains very high. Every day an average of about 1,000 people die in workplace accidents and thousands more die as a result of work-related diseases (ILO, 2013e, p. 1).

These often preventable work-related deaths and injuries take a similarly high economic toll and play a significant role in retarding economic and social development. The ILO estimates that in some cases the impact on national wealth can be as much as 10 per cent (ILO, 2013e, p. 4). As outlined below, productivity levels are also directly and indirectly affected by accidents and ill health brought about through inadequate workplace safety conditions and practices. Despite this, the cost to enterprises of work-related accidents and ill health are often underappreciated or not recognized at all.

As ASEAN approaches integration in 2015 and the freer movement of labour flows, it will be increasingly more urgent for ASEAN businesses to adopt innovative approaches to ensure that national OSH frameworks and standards are conducive to consistent and enhanced productivity levels (see box 2). In particular it will be essential that national OSH systems are applicable and accessible to both national and migrant workers. To date the ASEAN record in this area has been mixed and there is considerable room for improvement (Lee, McGuinness and Kawakami, 2011).

As ASEAN economies continue to rely more on the free flow of labour in 2015 and beyond, the importance of effective and consistently applied OSH will have a direct impact on the

productivity of workers and their employers. The equation is relatively simple: if migrant workers in ASEAN do not enjoy acceptable OSH standards, as defined by national laws and practice, or are not captured within national OSH frameworks, productivity levels will suffer – decreasing the region’s competitiveness and economic potential.

Box 2 Defining productivity

Productivity can be defined in strict economic terms as ‘the ratio of what is produced to what is required to produce it’. However, this can be further expanded by describing productivity, particularly increased productivity, as:

- greater efficiencies and profitability for enterprises;
- better product quality at a given price for consumers; and
- enhanced incomes and security for workers.

Source: ILO, 2006a p, 2

3.1. The economic occupational safety and health imperatives for the contemporary business community

Enterprise productivity can be jeopardized by the direct and indirect costs of occupational accidents and ill health. Cumulatively, these costs can severely impact enterprises and adversely affect the prosperity of national and regional economies. Indeed utilizing the Disability Adjusted Life Year metric of the World Health Organization suggests that work-related morbidity and mortality accounts for twice the burden of tuberculosis, HIV/AIDS, or malaria – or the equivalent of all three combined (Dorman, 2012, p. 4).

Direct costs

- Disruption to business and ongoing lost production from worker absence;
- Lost wages and potential retraining costs;
- First aid, medical, and rehabilitation costs;

- Compensation and insurance;
- Fines and/or legal proceedings following OSH incident; and
- Replacing or repairing damaged equipment.

Indirect costs

- Management time invested in accident investigation;
- Costs of retraining/recruiting replacement workers;
- Reduced worker employability due to injury;
- Decreased worker motivation and increased rates of absenteeism;
- Reputational damage leading to loss of clients; and
- Environmental damage and further legal action (e.g., from chemical accidents).

Just as occupational accidents and ill health negatively impact productivity the opposite is also true: workplaces with appropriate safety and health practices enjoy consistently improved productivity. Overall, good safety and health practices mean good business.

Indeed there are two types of applicable standards (Lopez-Valcarcel, 2002) that are of increasing relevance to regions transitioning to economic integration (such as ASEAN) and that demonstrate the compelling business case for safety and health at work (see box 3).

Box 3 OSH standards

Harmonized regional OSH standards concerning labour

The principle objective of harmonizing these standards is to prevent 'social dumping', i.e., to prevent the comparative advantages that would be derived from lower production costs at the expense of inferior working conditions in competing enterprises. This type of harmonization therefore ensures a level playing field for all enterprises in a regionally integrated economy.

OSH standards concerning product safety

As global tariff regimes progressively decline, the potential for product safety standards to assume their place in manipulating the flow of trade has grown significantly. For this reason the harmonization of product safety standards has become an increasingly necessary prerequisite for economic integration.

Source: Lopez-Vacarcnel, 2002

The increasing transparency of the global market also highlights the importance of getting both of the above factors right. Consequently, appropriate OSH practices will play a direct role in intra- and extra-regional competitiveness as well as global market access. In order to survive in the global economy, ASEAN enterprises will therefore need to adapt OSH practices and standards that at least meet the minimum standards of their global market competitors.

Positively, data from the World Economic Forum, the Lausanne International Institute for Management Development, and the ILO indicate a strong correlation between national competitiveness and the national incidence rate of occupation accidents (ILO, 2013g, p. 9). In addition, the past decade has witnessed the increasing desirability and efficacy of various forms of private and non-governmental labour regulation in global supply chains. Data analysis suggests that better labour standard compliance is playing an increasing influential role among buyers in the international market (ILO, 2013b, p, 24).

Considering the existing asymmetry in OSH standards across ASEAN, particularly as they relate to migrant workers, the capacity of ASEAN business to innovate in this area will be critical in ensuring this market access and competitiveness. As discussed in further detail below, this is not an impossible challenge to overcome.

Robust and highly relevant international instruments developed and adopted by sessions of the International Labour Conference are available to assist ILO member States in developing and implementing appropriate national and sectoral level standards and policies. The key international instruments are outlined in the Table 2 on the following page.

Table 2: Key international instruments related to occupational safety and health

Convention and purpose	Ratifications ³ (Global/ASEAN)
<p>Occupational Safety and Health Convention, 1981 (No. 155)</p> <p>This Convention obliges ratifying member States in consultation with the most representative organizations of employers and workers, to formulate, implement, and periodically review a coherent national policy to prevent accidents and injury to health by minimizing hazards.</p>	62/1 (Viet Nam)
<p>Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (P155)</p> <p>This Protocol obliges ratifying member States to establish and periodically review the requirements and procedures for the recording of:</p> <ul style="list-style-type: none">• occupational accidents;• occupational diseases; and as appropriate• dangerous occurrences, commuting accidents, and suspected cases of occupational diseases. <p>The annual publication of national statistics in this area is also a requirement of the Protocol.</p>	9/0
<p>Occupational Health Services Convention, 1985 (No. 161)</p> <p>Convention No. 161 obliges ratifying member States to formulate, implement, and periodically review a coherent national policy on occupational health services.</p> <ul style="list-style-type: none">• Occupational health services are services entrusted with preventative functions and responsible for advising employers, workers, and their representatives in enterprises on the:<ul style="list-style-type: none">○ requirements for establishing and maintaining a safe and healthy working environment; and○ adaptation of work to the physical and mental capabilities of workers.	31/0
<p>Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)</p> <p>Convention No. 187 requires that ratifying member States shall promote the continuous improvement of OSH to prevent occupational injuries and deaths by the development of national policy, national systems, and national programmes (in consultation with workers' and employers' organizations).</p>	29/2 (Singapore, Myanmar)
Source: ILO, 2008b	

³ As at April 2013.

Under these broad framework Conventions exist a number of industry-specific instruments:

- Radiation Protection Convention, 1960 (No. 115);
- Occupational Cancer Convention, 1974 (No. 139);
- Working Environment (Air Pollution, Noise, and Vibration) Convention, 1977 (No. 148);
- Asbestos Convention, 1986 (No. 162);
- Safety and Health in Construction Convention, 1988 (No. 167);
- Chemicals Convention, 1990 (No. 170);
- Prevention of Major Industrial Accidents Convention, 1993 (No. 174);
- Safety and Health in Mines Convention, 1995 (No. 176); and
- Safety and Health in Agriculture Convention, 2001 (No. 184).

An additional factor influencing the relevance of OSH standards to formal economic integration is the growing body of national and international law and practice, which complements the rights and responsibilities enshrined in ILO Conventions. Notably:

- “The framework directive of the European Union (89/391/EEC) ... appears to put the right to safer ... working conditions ahead of other considerations. ...An even stronger position is set forth in the Seoul Declaration [on Safety and Health at Work] 2008, which refers at the outset to ‘a basic right for workers to work in a safe and healthful working environment...’, echoing Article 3 of ILO [Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and] couples with a second principle finding ‘a positive impact on economic and social development by investing in OSH” (Dorman, 2012, p. 8, emphasis in original).
- This is further underpinned by overarching international statute, including but not limited to, the Universal Declaration on Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1966/1976, which enshrine right of everyone to work in safe and healthy conditions.

ASEAN Occupational Safety and Health Network

The pursuit of harmonized levels of OSH regulations and policies has also been undertaken at the ASEAN level through the ASEAN Occupational Safety and Health Network (ASEAN-OSHNET). Established in the mid-1990s, the ASEAN-OSHNET evolved into a regional centre to collect and disseminate information within ASEAN so as to better manage research and training initiatives designed to improve working conditions and working environments in the region.

The ASEAN-OSHNET’s goal is to also engage in the harmonization of standards and guidelines to minimize intraregional technical barriers as well as barriers to free trade and services in the region and beyond.

The network would likely be able to enhance its capacity if it expanded its membership beyond government circles. Notably, the ASEAN Trade Union Council has recently participated in some of the network's activities. This suggests a clear opportunity for the network to reach out to employers' organizations such as ACE to strengthen the efficacy and reach of the network.

Comparative advantages of good OSH practices

What is perhaps a more difficult challenge is overcoming longstanding perceptions or misperceptions on the role of OSH in enhancing enterprise competitiveness and sustainability. Various studies have confirmed that small and medium-sized enterprise (SME) owners and operators often lack a critical awareness of the cost implications of accidents or work-related ill health, instead tending to be reactive rather than adopting a preventative stance towards OSH. As such there is a role for employers' organizations to play in addressing the unproductive short-term OSH outlooks of some of their smaller members. Indeed it is critical that employers' organizations ensure that their members, particularly at the managerial level, recognize the economic basis for why investing in OSH reaps positive rates of return both in terms of productivity and costs saved (Dorman, 2012).

Better working conditions, including approaches to OSH at the enterprise level, can and do result in gains that promote greater productivity. Recent research undertaken by the ILO in 2013 demonstrates links between good practices and positive enterprise-level outcomes in SMEs (Dorman, 2012, p. 1). Positive outcomes included:

- reduced employee turnover;
- higher contributions by employees to enterprise capacities;
- higher levels of customer satisfaction and sales; and
- improved productivity and profitability.

As mentioned above, too often businesses, particularly in the ASEAN region, discount the economic impact on their businesses of not investing enough in preventing OSH injuries and illnesses. This lack of awareness can easily be countered by illustrating the costs to a business in the event of an OSH incident. The ILO has developed a simplified cost calculator for enterprises to demonstrate the significant add-on costs of permitting an environment of high OSH risk. An example of the tool can be found in Table 3 on the following page.

Table 3: Enterprise OSH cost calculator

Costs and losses	Time (hr)	Costs per hour (US\$)	Total cost (US\$)
Immediate costs and losses			
Wage of the work on the day of injury			
Transporting injured person to hospital/home			
Lost profits of enterprise			
Other			
Costs and losses related to disruption of production process			
Wages of downtime workers			
Restoring safe working conditions on the site of the accident			
Lost profits of the enterprise			
Other			
Damage to equipment, raw materials, end products, and structures			
Damage resulting from broken equipment			
Damage resulting from destroyed/ damaged materials/semi-finished products, etc.			
Reorganization of production process			
Overtime pay to substituting workers			
Wage of substitute worker			
Accident investigation			
Expenses for internal investigation			
Expenses for external experts			
Others			
Implementation of improvement notices from OSH authority			
Off-schedule instruction to workers			
Eliminating cause/s of accident			
Legal expenses			
Other			
Treatment and rehabilitation of injured worker/s			
Medical services, treatment, and medicines			
Sick leave payment			
Retraining			
Other			
Total cost			

3.2. Best practice OSH mechanisms and practical tools for achieving OSH at work

At a more practical level the ILO has developed Guidelines on occupational safety and health management systems (ILO-OSH 2001). The guidelines provide organizational-level recommendations for all those with responsibility for OSH management. They have been designed to operate in harmony with national laws and regulations (and international labour standards) (ILO, 2001, p. 4). The guidelines further establish the general principles regarding the roles of the employer and workers and how both can cooperate to ensure effective OSH management systems in the workplace.

The ILO-OSH 2001 guidelines establish five key areas for any OSH management system:

- policy;
- organizing;
- planning and implementation;
- evaluation; and
- action for improvement.

Central to such a system is the capacity to audit each key area so as to support the principle of continual improvement.

The principle of “good safety and health as good business” is often misconstrued as only being applicable to fully industrialized economies and the formal sector, which may go some way to explaining the poor ratification rate of the above ILO Conventions. However, such an assumption has been repeatedly proven inaccurate. Indeed OSH has proven to be equally important to productivity in developing economies and informal sectors. Moreover, appropriate OSH practices are not necessarily prohibitively expensive, as is sometimes alleged, particularly when compared to the costs of an OSH incident. Effective safety and health in enterprises can be achieved at all stages of national economic development.

Simple measures can serve highly valuable preventative purposes and be as effective as many technically sophisticated approaches. Indeed, OSH is measured by its effectiveness, not its sophistication. The ILO has developed an entire suite of relevant participatory manuals designed to assist employers and workers to identify equally effective, low cost ways to improve safety and health at the enterprise level. These include the Essentials of Occupational Safety and Health (EOSH) training package designed to enhance the OSH training services delivered by employers’ organizations; and the WISE and WIND initiatives that have paved the way in demonstrating that it can be relatively easy to promote OSH and enterprise-level productivity using easy-to-apply preventative tools (ILO, 2013b, p, 24). Most recently in 2011, the ILO Decent Work Team for Asia and the Pacific developed a specific tool aimed at improving the approach of migrant workers and small to medium-sized enterprises (SMEs) to OSH: the Work Improvement

for “Migrant Workers and their Employers (WIMWE)” manual. The manual was built based on the practical experiences of pilot training conducted with migrant workers and their employers in Thailand (McGuinness and Kawakami, 2011: 27).

The EOSH package is aimed at employers’ organizations seeking to develop or enhance the OSH training services provided to their members. The package comprises three tiers of courses aimed at:

- Workers
 - o 10-hour course for workers with no previous OSH knowledge. This course provides a range of compulsory and optional modules with the objective of creating awareness of safe work behaviour and practical tips for improving OSH conditions at work.
- Supervisors
 - o 20-hour course for supervisors with responsibilities for instructing workers in following safe working practices. This course also provides a mix of compulsory and optional modules.
- OSH practitioners (Full course diploma)
 - o 50-hour course for OSH practitioners who do not have previous specialization in OSH. It comprises 40 compulsory modules (none are optional).

The package is sufficiently flexible so as to be adapted by employers’ organizations to local contexts and to different training styles. It provides high-level technical information, training tools, and practical tips for improving OSH in a modular format. It is complemented by videos, animations, and interactive quizzes. Each of the EOSH courses can also be certified by the ILO International Training Centre (Turin) through standardized testing.

The structure of the WIMWE manual is similar to its sister training programmes WISE and WIND, and consists of an action checklist and 31 checkpoints with practical tips and good practice illustrations. In this way the manual is easy-to-understand for migrant workers, local workers, and their employers, and also promotes practical solutions instead of unproductively focusing on workplace problems in isolation.

The WIMWE training programme has the five technical areas of OSH: “materials storage and handling”, “work-station”, “physical environment”, “welfare facilities and work organization”, plus “protecting workers and business from influenza”. Machine safety can also be added to the checklist where necessary. Illustrations are attached to each of these items to assist participating workers and employers in easily understanding the points. The checklist requires the participants to answer the question, “Do you propose action?” for each of the items listed. The participants can choose an option from “no”, “yes”, or “priority” to identify priority action areas.

Notably a particular lesson learned from the ILO’s work in this area includes demonstrating sensitivity to both local culture and the multiple cultures that may be present in workplaces engaging migrant workers. This can greatly facilitate the acceptance of innovative approaches to OSH.

3.3. Informing future policy work:

The role of employers' organizations and businesses in setting the OSH agenda for the AEC

Sustainable enterprise requires that workers remain employable and productive. It logically follows that every person in the workplace requires adequate levels of protection, including physical protection through appropriate OSH practices and standards. The creation and imposition of technical standards, while important, will not achieve their objectives unless policy-makers, businesses, and workers are aware of the strong business case for appropriate OSH policies and practices.

Many regional governments have recently introduced or are actively considering significant legislative OSH reform. Efforts to modernize national OSH regulation and policy should be welcomed, but such efforts should also be undertaken in a manner reflective of regional circumstances. In particular, there should be significant consideration of the impact of the freer flow of skilled labour and of the means that may be necessary to ensure that all workers, both national and foreign, enjoy equitable consideration, particularly in terms of rights and responsibilities. ASEAN employers' organizations, particularly through the ACE, are well placed at this juncture to ensure that national policy and legislative reform is reflective of contemporary regional circumstances, including the current and emerging needs of the business community.

Moreover the development of legal frameworks for the management of OSH will not achieve their objectives unless appropriate measures are taken to implement these frameworks. This includes ensuring that the business community has role in developing these frameworks and that enterprises are aware of how they should comply with them (ILO, 2009a, p. 13). Furthermore the way in which the workplace safety and health agenda is pursued is important. The principle of "safety and health pays" should be the guiding principle for business when discussing regulatory reform. In pursuing reform, employers' organizations should ensure that regulatory frameworks are equitably applied to both national and migrant workers. In this sense employers' organizations play a unique role in ensuring that national OSH frameworks contribute to national productivity and competitiveness, while their members play a vital implementation role at the enterprise level.

3.4. ACE policy position paper: Increasing productivity through enhancing migrant workers' safety and health at work

Background

In preparation for ASEAN economic integration in 2015 the ASEAN Confederation of Employers' (ACE) adopted an Employers' policy framework for sustainable labour migration in the ASEAN region. This framework identifies five key areas requiring the attention of ASEAN businesses and policy-makers in order to achieve effective labour mobility in 2015 and beyond:

- better matching of employers' skills needs and increasing mobility across the ASEAN region;
- increasing productivity through enhancing migrant workers' safety and health at the workplace;
- effective recruitment procedures to facilitate labour migration;
- enhancing competitiveness through embracing diversity; and
- a commitment to combating forced labour and human trafficking.

In this overarching framework ACE:

- **strongly believes** that appropriate safety and health arrangements are key drivers of productivity and economic development. ACE **affirms** its commitment to protecting all workers' safety and health; and ACE
- **recognizes** that providing safe and healthy working environments, not only ensures that workers are adequately protected, but also reduces business risk of being associated with inadequate OSH practices. In addition, safe and healthy working environments enhance the long-term sustainability of enterprises by reducing the potential for workplace safety and health incidents to impact on the wellbeing, financial security, and productivity of employers and workers.

This paper will outline in broader detail ACE's policy positions on increasing productivity through enhancing safety and health at work to be taken forward by ACE members when engaging national policy-makers on the necessary reforms, policies, and programmes required for effective integration in 2015.

ACE policy positions on increasing productivity through enhancing migrant workers' safety and health at work

Accessibility and consistency

- ACE **acknowledges** that OSH frameworks at all levels (i.e. from national laws and regulations through to workplace policies and practices) should be applicable to all workers as defined by occupation. Furthermore, policy-makers should ensure the equity of access to and information regarding relevant OSH services, orientation and training, and the consistent application of any remedies.
- ACE **considers** that accessible and consistently applied OSH frameworks are conducive to industrial stability and certainty, which assists in building and maintaining business and investor confidence.
- In addition, fair and equitable OSH frameworks can greatly assist in retaining workers and in encouraging workers to actively contribute to enterprise productivity.

The business case for OSH at work

- ACE **recognizes** that safety standards and transparency in global supply chains are of increasing relevance to global market access and brand reputation. Accordingly, ACE **appreciates** that effective, accessible, and consistent OSH policies and practices are essential for any business operating in ASEAN now and as integration occurs in 2015. ACE **realizes** the competitiveness brought about by global markets and that at a regional and national level ASEAN businesses should strive to formulate and achieve safety and health standards and programmes on par with global standards.
- ACE **acknowledges** the correlation between competitiveness and the incidence rate of occupational incidents. ACE **urges** both policymakers and ASEAN businesses to work together to achieve consistently low rates of OSH incidents to enhance investor confidence in ASEAN through a stable OSH environment. Indeed, ACE believes that given its industry-specific knowledge, the ASEAN business community should be actively engaged in the development and implementation of appropriate OSH policies and practices. ACE **encourages** ASEAN businesses to share their safety and health standards, practices, and programmes with business membership organizations including national employers' organizations to promote the disseminations of best practices.
- ACE explicitly **recognizes** that, as well as being unethical, compromising OSH standards to lower production cost is a short-sighted and an increasingly commercially unviable approach to conducting business. ACE stands ready to support members in providing evidenced based analysis to support enterprise investments in OSH, particularly at a preventative level. Furthermore, ACE **understands** that this shall be the shared responsibility of all stakeholders, including inter alia, employers, employees, manufacturers, products and processes, workplace designers, employer representatives, labour and trade unions.

- ACE **advocates** the establishment of effective OSH management systems to ensure the maximum OSH protection in the work environment. OSH management systems offer enterprises considerable return on investment in terms of productivity and in ensuring the financial security of enterprises and their workers through the reductions of incidents and illnesses.
- In addition, ACE **recognizes** the role of the worker in the reduction of financial and business risks and the valuable contribution for the growth of the organization. ACE encourages the leadership in OSH at all levels to support both employees and employers and in effect a sustainable business environment.

Prevention enhances productivity

- ACE **considers** that enterprise productivity is in part dependent on the level of OSH risk at the workplace.
- Accordingly, ACE **considers** that enterprises small and large should work towards achieving the necessary OSH environment at the workplace to ensure consistent levels of productivity. ACE therefore encourages all enterprises, in particular Small and Medium Enterprises (SMEs), to consider innovative means of achieving effective OSH in line with national law and practice. ACE **acknowledges** that many tools are already available to assist SMEs in complying with national OSH law and practice. According ACE **affirms** its support for governments to collaborate with employer organizations to raise awareness of these tools and to enhance the accessibility of OSH resources to SMEs.
- ACE **affirms** its support for preventative and consultative approaches to OSH at the enterprise level. This reduces the potential for avoidable productivity losses and other costs incurred by OSH incidents (e.g. physical injury, workers' compensation, fines, reputation, etc.).

OSH is a shared responsibility

- ACE **believes** that governments, employers, and workers share tripartite responsibility in implementing and achieving appropriate OSH practices at the workplace. ACE **encourages** the development of OSH frameworks that ensure that tripartite partners, including migrant workers, clearly understand their OSH rights and responsibilities. This will be of particular importance where workplaces employ a proportion of foreign workers.
- ACE **encourages** governments and employers to take additional measures to ensure that migrant workers are able to clearly understand their OSH rights and responsibilities and contribute to workplace safety and health. In particular, ACE **supports** enhanced resources and efforts to facilitate cooperation and dialogue between employers and all workers on maintaining and improving workplace safety and health and productivity.

4. The role of recruitment

This chapter covers the recruitment process where recruitment refers to the overall process of attracting, selecting, and appointing suitable candidates for jobs within an organization. Cross-border recruitment processes, if managed soundly, could facilitate labour migration, since it is through recruitment that employers fill their labour and skill needs and workers obtain employment. Policy and regulatory settings affecting recruitment can facilitate or impede labour mobility. Hence, looking at policies and regulations affecting recruitment provides us with crucial insights into the labour mobility situation in the ASEAN region.

An employers' Regional Workshop on the Role of the Recruitment Sector in Facilitating More Effective ASEAN Intraregional Labour Mobility was held from 6 to 7 November 2014 in Bangkok, Thailand. The workshop aimed to:

- Provide a better understanding of the recruitment industry and the opportunities it can provide to facilitate more effective labour market outcomes, nationally and across the ASEAN region;
- Increase businesses' understanding of the implications of having regional recruitment infrastructure conducive to the freer flow of labour; and
- Enable ASEAN employers' organizations to identify priority issues related to recruiting workers leading up to the AEC in 2015 and develop draft policy positions to address each issue.

This chapter consolidates the outcomes of this meeting to present the context surrounding the recruitment and mobility of migrant workers, as well as presenting the ACE policy position paper drafted in preparation for the workshop. Enterprise-level best practices based on case studies conducted in Malaysia and Singapore, as the region's largest receiving countries, are contained in Annex 1.

4.1. Cross-border recruitment

Cross-border recruitment can take place via three channels: 1) direct hiring by employers across borders without any support from recruitment agencies;⁴ 2) direct hiring by employers with limited support from recruitment agencies (local and/or overseas); 3) hiring via recruitment agencies and public employment agencies. Recruitment agencies may also involve sub-agents to help source potential candidates from villages in countries of origin.

The use of internet-based services and computer technologies to support all aspects of recruitment activity and processes has become widespread. The internet is an important facilitator, as it makes it easy and relatively cost-free to post advertisements and to source from a bigger workforce pool. Companies can choose to publish job openings on their own websites or on private and public job portals. It is typically more skilled workers who use the internet, as it makes it easy for jobseekers to research the companies seeking employees and to submit their applications.

Companies may involve recruitment agencies, local or overseas, to support their cross-border recruitment. Recruitment agencies' involvement and functions can vary depending on the type of the agency and the employer seeking the service. For example, some recruitment agencies are staffing agencies that assume the role of both direct recruiter of workers and the sole employer of these workers at the workplace. Some recruitment agencies are joint employers with the firm where the workers are placed. Others provide the matching service but are not involved in the hiring decision and do not have any employment relationship with the workers they help place.

Cross-border recruitment is more complex and risky than local recruitment due to the fact that individuals are being moved from one country to another. Given this increased complexity, employers in migrant-receiving countries will utilize the expertise of local and overseas recruitment agencies. Hence, there are specific regulations targeting recruitment agencies and the use of recruitment agencies by employers and workers.

Modes of cross-border recruitment approaches adopted

Based on case studies undertaken in Singapore and Malaysia, as the region's largest receiving countries, there are several conditions that affect the extent to which companies are involved in the recruitment process:

- a. Bilateral agreements between governments A and B may stipulate the way in which companies from country A can hire from country B. There may be different stipulations for different sectors and/or company sizes.
- b. The resources (financial, human, and expertise) available for an employer to handle their own cross-border recruitment. For example, SMEs in Singapore generally prefer to outsource cross-border recruitment to recruitment agencies based in Singapore in order

⁴ In this document, the terms "recruitment agencies", "staffing agencies", and "employment agencies" are used interchangeably.

to tap into these agencies' know-how. The Singaporean recruitment agents are in charge of liaising with recruitment agencies in the source countries, and also coordinate the paperwork required for migrant workers to hold the legal right to work in Singapore.

- c. Breadth and depth of companies' networks in the source countries they hire from. Companies that do not engage recruitment agencies in Singapore and Malaysia, might still engage recruitment agencies in source countries to take advantage of these agencies' local networks.
- d. Skill levels of foreign employees. The internet is more commonly used to reach out to skilled workers directly. So with skilled workers employers are often in charge of the entire recruitment process and do not involve recruitment agencies, whether local or overseas.

4.2. Common policies and regulations across ASEAN countries

There are many policies and regulations aimed at governments, employers, and workers that affect the recruitment, placement, and protection of migrant workers. The most common policies and regulations across ASEAN countries are highlighted and summarized below.

4.2.1 Agreements and national regulations to fight trafficking in persons and irregular migration

The objective of these regulations is to curb human trafficking and irregular migration through collaboration between governments, imposing penalties on employers found to be employing such workers, and/or regularizing workers to ensure they have legal status. These regulations may affect the way cross-border recruitment takes place. The agreements include Memoranda of Understanding (MOUs) between countries as well as Memoranda of Agreement (MOAs) between central government and local government units.

In order for these agreements and national regulations to be successful the following elements are crucial:

- Political will and capacity are vital. Governments in ASEAN need to be willing to include more comprehensive action plans in their agreements. For example, in signing MOUs, governments will need to include detailed provisions and common standards on forced labour, child labour, trafficking in persons, and recruitment of migrant workers, as well as to identify coordinating mechanisms to implement such agreements.
- MOUs between governments need to go beyond general guidelines while still remaining practical to enforce.
- Interests and mandates between national and local government units and between

countries need to be well-aligned, and mechanisms need to be put in place to create and reinforce these alignments.

- Partners need to be clear about their respective responsibilities, budgetary requirements, and the key performance indicators that will be used to track their progress. The indicators used to measure performance of the actors must lead firmly towards established goals. For monitoring purposes, transparency is crucial in any partnership.

4.2.2. Establishment of specialized offices to manage cross-border recruitment processes

Several ASEAN governments have set up specialized administrative and/or regulatory offices to manage cross-border recruitment. These offices can be useful in protecting both workers and employers as well as facilitating labour mobility.

Some key factors for such offices to be successful include:

- Streamlining administrative procedures. Cumbersome application processes may make it unlikely that employers, workers, and recruitment agencies will use regular migration channels, , instead preferring to hire irregular workers.
- Building the reputation of these offices. This requires active awareness-raising activities to promote the presence of these agencies and the roles they perform, and deliberate efforts are needed to build confidence in these institutions.
- Localization (or decentralization) of services: Many migrant workers come from smaller provinces, towns, and villages. In order to have impact, the offices need to be set up in places easily reachable by these workers.
- Establishing coordination mechanisms: Regulation of recruitment is a cross-sectoral concern, and thus may involve several agencies within one ministry, or even several ministries. Mechanisms for cooperation should be established.
- Having a well-defined mandate to avoid overlapping responsibilities.

4.2.3. Educational programmes

Educational programmes are an instrumental element in policies and regulations on recruitment used by both sending and receiving countries in ASEAN. The impacts of these educational programmes are less immediate than those from the policies above, but are expected to improve labour mobility over the long term. They also protect workers and employers by empowering them with information that is otherwise difficult to obtain. Educational programmes can target workers, employers, and recruitment agencies, and they can take place pre-departure, post-arrival, and/or pre-employment.

In the Philippines, a mandatory pre-departure orientation seminar (PDOS) was launched in 1983. Since that time, PDOS has expanded and been supplemented by two other information programmes – the pre-employment seminar (PEOS), which takes place before the PDOS, and the post-arrival orientation seminar (PAOS). The PDOS programme contains seven modules: migration realities; host country profile; the employment contract; health and safety; financial literacy; OWWA programmes and services; and other government programmes such as the social security system, travel procedures, and tips (Asis and Agunias, 2012).

Educational programmes can maximize impact by:

- Designing the curriculum according to countries and sectors of employment. For example, different content can be designed for workers employed in different sectors.
- Making them a mandatory step of any cross-border recruitment process.
- Helping to inform workers early on in the process about the challenges and opportunities, perhaps even before they have made the decision to migrate. Media greatly enhances the penetration of information into hard-to-reach communities.
- Taking a multi-stakeholder approach that involves government units, civil society, and the private sector in developing and delivering the contents of the educational programmes can create buy-in and improve the end product.
- Incorporating anti-illegal recruitment campaigns and informing potential migrant workers of the risks of using irregular migration channels.

4.2.4 Policies and regulations targeting private recruitment agencies

Private recruitment agencies orchestrate much of the migration process, from pre-departure to return. Recruitment agencies bridge the gap between employers/sponsors and prospective workers; assist employers with their local networks; provide expertise on immigration laws, requirements, and procedures; and provide information, assistance, and sometimes, financial support to workers. Agencies guide migrants through immigration policies, match them with employers, and provide information about living and working conditions in distant locations in order to facilitate the transition between countries of origin and countries of employment (Agunias, 2013).

Some agencies have also been known to advocate for migrant workers, by removing workers from abusive workplaces or even organizing repatriation (Agunias, 2013). Private recruitment agencies can also help to bridge skills and talent gaps, thus improving the functioning of international labour markets (IOE, 2013).

Despite these positives, however, the recruitment sector is particularly vulnerable to malpractices. By moving people across borders, recruitment agencies work across multiple jurisdictions, which can create opportunities for malfeasance if monitoring and enforcement of rules and regulations is weak. The recruitment sector is highly competitive, prompting some participants to resort to irresponsible or illegal behaviour. Furthermore, in a competitive international labour market where the supply of labour typically outweighs demand, fierce competition for jobs, coupled with poor monitoring and enforcement of rules and regulations, make migrant workers vulnerable to abuse and exploitation. A layered recruitment process (i.e., from recruiters in receiving countries to recruiters in sending countries located in capital cities to sub-agents in rural areas) also creates miscommunication and opportunities for exploitation, abuse, and violations. Exploitation and abuse among agents at origin and destination increases the costs of recruitment and the cost of doing business, thus affecting both workers and employers.

The ILO Convention on Private Employment Agencies, 1997 (No. 181) signifies a change in the Organization's position regarding the private employment services industry, from prohibition (see the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)) to legal recognition and support of the development of the activities of the private employment agencies. Convention No. 181 recognizes the role of private employment agencies in a well-functioning labour market. The Convention was adopted with the purpose of allowing the operations of private employment agencies while protecting workers who use their services. As of 2014, 28 countries have adopted Convention No. 181 and its accompanying Private Employment Agencies Recommendation, 1997 (No. 188). In Asia, only Japan has ratified this Convention.

The ILO has since been increasing efforts at the international level to promote further regulation of the recruitment agency sector and to ensure proper application of the existing rules, including through the October 2009 Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181) held in Geneva. In 2007, the ILO prepared a Guide on Private Employment Agencies to provide assistance to national legislators and social partners in drafting legal frameworks in line with Convention No. 181 and Recommendation No. 188 on private employment agencies.

Typically, regulations targeting recruitment agencies are implemented through measures such as licensing, accreditation, and holding them liable for any violations. Bilateral cooperation is also typical between countries of origin and countries of destination to avoid loopholes created by policy mismatches. There are also activities to educate staff of recruitment agencies on labour and immigration laws, good practices, etc.

Some ASEAN governments regulate the recruitment process or channels through which migrant workers can be recruited. These laws and regulations can be national or they can result from bilateral agreements, either facilitating or impeding labour mobility depending on how they are designed.

Overall, recruitment processes mandated by government(s) should be practical, efficient, simplified, without corrupt personnel, and with well-coordinated inter-agency interaction (or

minimization of the number of agencies involved) in order to be effective in facilitating labour mobility while protecting and advancing the interests of employers and the fundamental rights of workers.

The following are examples of rules and regulations enacted by each of the ten ASEAN Member States to regulate the activity of recruitment agencies with regard to cross-border migration:

Brunei Darussalam

The Employment Agencies Order (2004) came fully into effect in 2012, and it covers the licensing of recruitment agencies as well as penalties for non-compliance (ILO, 2013a).

Cambodia

Prakas No. 47/13 on Private Recruitment Agencies requires agencies to sign an agreement with the Ministry of Labour and Vocational Training on procedures for recruitment, pre-departure and orientation training, and proper management of Cambodian workers. *Prakas* No. 250 mandates the inspection of private recruitment agencies, whereas *Prakas* No. 251 on Penalty and Reward to the Private Recruitment Agency in Management of Sending Cambodian Workers to Work Abroad created a performance rating system covering aspects from pre-departure training to job placement (ILO, 2013a).

Indonesia

Presidential Decree No. 46 and Law No. 39 of 2004 on Placement of Indonesian Migrant Worker in Foreign Country details placement procedures – including manpower supply permits, education and training, recruitment and selection, health and psychological examination – as well as post-placement procedures. Advocacy teams ensure the rights of Indonesian workers are protected through the process of recruitment, placement, and return. Local action plans have also been drafted to strengthen the role of local government in monitoring recruitment agencies and assisting workers. An MOU between the Indonesian Police and the Ministry of Manpower and Transmigration allows for joint investigation on illegal or unlawful recruitment practices (ILO, 2013a).

Lao People's Democratic Republic

Decree 68/2002 on the Export of Lao Workers Working Abroad regulates the recruitment of workers and the sending of Lao workers overseas. The Decree also supports skills upgrading in order to maximize opportunity. Pre-departure training as well as fees are also covered under this Decree (ILO, 2013a).

Malaysia

The Private Employment Agencies Act of 1981 regulates private employment agencies, covering licenses and fees. The Employment Information Act of 1955 assists with the collection of information on the terms of service and working conditions of the employed person. The information collected should be treated confidentially and employers who do not cooperate are fined (ILO, 2013a).

Myanmar

The Ministry of Labour, Employment and Social Security are mandated to oversee migrant worker issues, including regulating licensed overseas employment agencies. Discussions with international agencies will help to review and revise these laws (ILO, 2013a).

Philippines

The Philippines reward good recruiters through an incentive-based approach to encourage good practices. Awards are given to the best recruitment agencies and the best foreign employers. This programme is called the Best Partner in Anti-illegal Recruitment Award. These awards often provide pertinent benefits, such as extension of the validity of licenses, exemption from authentication/verification by Philippine Embassy/Philippine Overseas Labour Office, and other perks depending on their awards category, saving winning agencies considerable time and money (POEA, 2014). In the Philippines, the Government also provides orientations for managers and staff of recruitment agencies in order to professionalize the labour migration industry and promote ethical practices (Asis and Agunias, 2012). The Philippines regulatory system was created primarily to deter what Filipino policy-makers characterized as “cut-throat competition” among recruitment agencies. To serve the objective of guaranteeing worker protections, Philippine regulators have imposed stiff entry conditions to weed out potential violators and keep the market from becoming saturated. Regulators require recruitment agencies to prove competence in four areas: financial capacity; personal and professional qualifications; management; and marketing capabilities. The Government’s hard-to-enter policy is coupled with an easy-out approach. In cases of violation of regulations, a suspension order or an outright cancellation of an agency’s license can be called upon depending on the nature of the violations (Agunias, 2013).

Singapore

The Employment Agencies Act, enacted in 1959 and last amended in 2011, is intended to tackle unlicensed and errant employment agencies, raise professionalism and accountability of the employment agencies industry, and regularize employment agency processes. All employment agencies active in Singapore must be licensed (Chan, 2012). The Singaporean Government requires applicants for a recruitment license to undergo training and pass a test. The certification is meant to maintain the standards in an industry of some 700 employment agencies and is valid for four years (Piper, n.d.). There are no caps for fees charged to employers, but for workers, fees charged cannot exceed one month of salary per year for the duration of their work pass or employment contract, subjected to a maximum of two months of salary in total. Agencies who overcharge fees are subject to a fine of 5,000 Singapore dollars (SGD) (Chan, 2012). Employment agencies must issue receipts for all monetary transactions with workers. Employment agencies must refund at least 50 per cent of agency fees collected from the worker if employment is terminated within six months, unless termination was requested, or caused, by the worker. This puts responsibility on employment agencies in matching candidates to jobs. All employment agency personnel must be registered with Ministry of Manpower (MOM) and will also be held personally liable for offences (MOM, 2012).

Thailand

Under the Recruitment and Job Seekers Protection Act, a licensed private recruitment agency must have a publicly displayed recruitment license; employees of the agency must be

registered with Thailand Overseas Employment Agency (TOEA); commission collection must be according to the law; and a receipt must be issued when payment is received. Agencies are also required to abide by a checklist issued by the Department of Employment, otherwise they will be penalized (Kachonpadungkitti, 2012).

Viet Nam

Related legislation includes Decree No. 144/ND-CP, which allows for the imposition of penalties including fines, prohibition to recruit, compulsory repatriation of workers, or payment of compensation on service enterprises for recruitment malpractice or violation of obligations under the law. Under Vietnamese law, pre-departure training is also mandatory and should be specific to each worker's destination country. There are also a number of regulations pertaining to fees, certifications, obligations of recruitment agencies and Vietnamese embassies, contracts, medical check-ups, and penalties (ILO, 2013a).

4.2.5. Self-regulation

Self-regulation is also an important aspect of recruitment promoted by ILO Convention No. 181. Representative bodies and enterprises can use codes of conduct to encourage and regulate compliance, even in excess of what is required under national laws, and through implementing international labour standards. The International Confederation of Private Employment Agencies (CIETT) also fully endorses ILO Convention No. 181 and supports its members to adopt the standards laid out in this instrument. In addition, CIETT has established a global Code of Conduct that provides General Agreed Principles on private employment agency practices shared by all CIETT members.

As an example within ASEAN, the Vietnamese Association of Manpower Supply (VAMAS) implemented a code of conduct for Vietnamese licensed enterprises. The VAMAS code of conduct does not replace laws and regulations, but it was created to work in accordance with the laws and regulations of Viet Nam as well as international labour instruments. Commitment to the implementation of the code of conduct is voluntary and more than 100 licensed enterprises have registered their commitment to upholding the code (VAMAS, 2012). The code of conduct covers law compliance; business standards; job advertisements; recruiting, training, and dispatching workers for overseas employment; the signing of contracts; return and reintegration; disputes and handling mechanisms; building up partnership relations; and building up collegial relations between licensed enterprises.

Successful codes of conduct should be discussed with representative bodies, such as members of civil society, government, and trade unions. Independent monitoring is also crucial, wherein mechanisms and penalties for non-compliance are clearly understood by all parties. Transparency, such as public access to the code of conduct as well as subsequent reports, is important for ensuring that violations are publicized (ILO, 2013d).

4.2.6. Complaints mechanisms

Complaints mechanisms are an important compliance tool that allow migrant workers to report mistreatment or deception and work as an effective check and balance on recruitment agencies. Not only should a compliant mechanism be in place, but complaints should be investigated and action taken on the basis of the findings.

ILO Convention No. 181 indicates that a competent authority should ensure that mechanisms and procedures are in place to investigate complaints registered against the activities of private recruitment agencies and that remediation measures are taken. Through this authority remediation should first be explored through alternative channels before proceeding to court. In order to be effective, it is important that all migrant workers should be made aware of the complaints mechanisms pre-departure (ILO, 2013d).

4.3. Key factors to better regulate private recruitment agencies while facilitating labour mobility

Having governments adopt common standards can effectively regulate private recruitment agencies involved in cross-border recruitment. For example, ASEAN governments can come together to establish a common code of conduct for recruitment agencies that references international standards such as ILO Convention No. 181 and Recommendation No. 188.

Political will and the capacity to enforce regulations on recruitment agencies are crucial. Government officials who are assigned to manage regulations on recruitment agencies should be consistently monitored and audited to make sure they are not leveraging their positions to exploit workers or to impose more costs on employers seeking to legally recruit migrant workers.

Given that the recruitment agency sector is highly competitive and that this intense competition has led to less than desirable behaviours, it is important to raise barriers of entry in the sector. The employment agency regulatory frameworks of both the Philippines and Singapore achieve this by putting strict requirements for recruitment agencies to meet and placing checks on agencies using the hard-to-enter but easy-out strategy.

Regulations should not only aim to penalize, as such a reactive approach will have limited impacts on behavioural changes. Pertinent incentives that could improve efficiencies and cut time and cost for recruitment agencies who are lawfully recruiting and placing migrant workers should be built into the mechanism to encourage recruitment agencies to adopt good practices. This reward-based approach is integrated into the Philippines' system, but is not a prominent regulatory feature in other ASEAN Member States.

Finally, education is important. Recruitment agencies and their staff need to be well-versed in labour and immigration laws and aware of the regulatory framework that is applied to them.

they should also be educated on good practices and encouraged to uphold best-practice approaches. There is a business case for having good practices, and peers with good practices do better in the business.

Good practices for recruitment agencies

Governments need to recognize the pertinence of recruitment agencies in improving labour market efficiency. Moreover, recruitment agencies can support governments' efforts to clamp down on malpractices. Good practices for recruitment agencies should be promoted and reinforced by governments. Some good practices for recruitment derived from enterprise case studies in Malaysia and Singapore include:

- Adopting international codes of conduct in line with ILO Convention No. 181 and CIETT's self-regulation Code of Conduct;
- Being willing to walk away from employers found not to be operating in line with the agency's code of conduct and principles; and
- Conducting trainings for recruiting and hiring managers and the human resource departments of employers to increase their awareness of good recruitment practices and reduce discriminatory employment behaviours and recruitment practices.

4.4. Informing future policy:

Balancing worker protection and labour mobility

Policies and regulations on recruitment in ASEAN targeted at workers tend to focus on education and regulation of status. Those policies focused on employers or recruitment agencies generally focus on regulations and penalties for non-compliance. Few governments put in incentives to encourage compliance and good practice, or stress education of employers and recruitment agencies.

The goals of the policies and regulations in the region are largely focused on protecting migrant workers and lack a focus on labour mobility. This could lead to over-complication of recruitment processes and serve as an impediment to labour mobility. To overcome this, the link between facilitating labour mobility and protecting workers needs to be better appreciated. For example, restricting employment terms (such as requiring employers to only employ foreigners in full-time positions, as opposed to part-time work) could become counterproductive, especially where enforcement of regulations is difficult, as it could make it harder for migrant workers to find employment in the formal economy. Increasing regulation and administrative requirements may not be the best way to protect workers.

Protection of employers seems to be lacking in the existing policies and regulations regarding recruitment. Incorporating this focus could improve the recruitment and protection of migrant workers. For example, employers need a recourse system in the event of misconduct by migrant

workers (such as workers fleeing the workplace before the end of service or theft). If such a recourse system were in place, it may reduce the tendency of some employers to withhold the travel documents of their migrant workers. While some countries have prohibited employers from withholding the passports of their migrant workers, this approach coupled with a large informal economy or limited enforcement capacity will not be able to effectively resolve the situation.

In considering policies and regulations on recruitment, placement, and protection of migrant workers, a broad approach is necessary. Recruitment regulations need to be flexible enough to allow employers to recruit workers into the sectors where labour shortages exist. Therefore, recruitment and migration policies need to be designed taking into consideration the needs of the overall labour market.

Making the environment for cross-border recruitment conducive for employers and workers is crucial. Employers and workers should not be penalized for offering and seeking employment. Support should be given to encourage employers to adopt best practice approaches when they recruit migrant workers. Such support does not have to be elaborate or costly. This is especially relevant to SMEs, given their resource constraints (in terms of staff availability, expertise, and local networks in countries of origin), making it difficult for them to go beyond their basic practices to better monitor and audit their labour supply chains.

Political will and capacity to enforce policies and regulations should be a key factor for consideration in policy development. This includes assessing the ability to enforce policies and regulations in the informal economy. Beyond political will, many ASEAN governments that have established maximum fees that can be charged from workers for recruitment services still did not manage to find a way of checking whether the regulation is being observed, especially since many of these actors conduct their activities in the informal economy. Indeed, ILO Convention No. 181 calls for no fees to be charged to migrant workers. This being said, the nature of the labour market also makes strict regulations sometimes irrelevant. In practice, workers are often willing to absorb the recruitment costs, and the challenge therefore becomes on how to balance the realities of the labour market in the interest of fairness (ILO, 2007b; Agunias, 2013).

Finally, a coordinated approach across ASEAN countries with regard to their policies and regulations on recruitment, placement, and protection of migrant workers is crucial but missing. The mismatch between different countries' policies and regulations can open opportunities for violations. Regulatory and enforcement efforts would be more effective if both destination and origin countries were equally committed to introducing and enforcing compatible rules (Agunias, 2013). Some actions to be taken include the creation of enforceable standards within the ASEAN framework and the exploration of ways to establish a common compliance enforcement mechanism to overcome difficulties related to the movement of labour across multiple jurisdictions.

4.5. ACE policy position paper on the policy and regulatory environment for recruiting, placing and protecting ASEAN migrant workers

Background

In preparation for the ASEAN economic integration in 2015 the ASEAN Confederation of Employers (ACE) adopted an Employers' Policy Framework for Sustainable Labour Migration in the ASEAN Region. This framework identifies five key areas requiring the attention of ASEAN businesses and policy-makers in order to achieve effective labour mobility in 2015 and beyond:

- better matching of employers' skills needs and increasing mobility across the ASEAN region;
- increasing productivity through enhancing migrant workers' safety and health at the workplace;
- effective recruitment procedures to facilitate labour migration;
- enhancing competitiveness through embracing diversity; and
- a commitment to combating forced labour and human trafficking.

The ASEAN employers strongly believe that promoting labour mobility is crucial for all workers regardless of their skill levels. However, to date, there are two dynamics running at parallel at the regional level regarding labour movement. One concerns higher skilled workers, where the aim is to improve their mobility in conjunction with the ASEAN Economic Community (AEC). The other concerns low- and semi-skilled workers, where the approach is aimed at protection and promotion of their rights and less on promoting their mobility.

At the same time, concrete progress made on promoting labour mobility, even for the higher-skilled workers, has been limited, largely due to restrictive national laws and regulations on employment of foreigners in the ASEAN Member States.

As for low- and semi-skilled workers, while attempting to protect and promote their rights, recruitment process in some countries and/or for some sectors are laden with bureaucracies, impeding these workers' labour mobility while not necessarily improving their protection.

Indeed, labour mobility within the ASEAN region must be taken seriously. Labour mobility can benefit both labour-receiving and labour-sending countries and their workers if well managed. ASEAN governments need to establish a vision of what mobility is, focus on legal and regulatory changes to facilitate mobility and optimize the benefits it can bring to ASEAN economies and its people.

ASEAN employers should be actively involved in the formulation of national labour migration laws, policies and procedures concerning recruitment and admissions of migrant workers, as any

change in policy could affect their manpower planning. Hence, this paper that outlines in broader detail ASEAN employers' policy positions on recruitment, is pertinent. It can be taken forward by ACE members when engaging with policy-makers on necessary reforms, policies and programmes required for enabling effective labour mobility and protecting ASEAN migrant workers.

ACE policy positions on improving the environment for recruiting, placing and protecting ASEAN migrant workers

In order to facilitate labour mobility while protecting ASEAN migrant workers and employers involved in cross-border recruitment, the ASEAN governments should:

- Set a three-pronged goal – made up of facilitating labour mobility, protecting workers and protecting employers – and clearly orientate each policy and regulation concerning cross-border recruitment in ASEAN around these three prongs. This includes revisiting existing national legislations to assess them vis-a-vis their relevance to these three pillars.
- Put in place predictable, accessible and simplified policies, regulations and administrative procedures – since uncertainty, cumbersome or incomprehensible requirements open doors for malpractices, exploitations and violations, and prompt actors to seek less legal or formalized methods to bypass bureaucracies in order to speed up the process.
- Ensure transparency of policies and regulations and widely disseminate information on them. One-stop centres should be created and expanded to enable potential and existing migrant workers, employers and recruitment agencies to access information on policy and regulatory requirements, and their individual rights, roles and responsibilities. A database identifying good employers and recruitment agencies should be built and made accessible to all; this also provides incentives to be good employers and recruitment agencies.
- Build incentive mechanisms into regulatory structures to incentivize employers and recruitment agencies to comply with laws and regulations and to adopt good practices.
- Take into consideration capacities to enforce regulations when designing them to ensure they remain realistic and impactful. Legal and enforcement infrastructures need to be strengthened alongside changes to regulations. This should include putting in place heavy penalties and enforcing them to prevent government personnel involved in the recruitment process from exploiting their positions.
- Adopt a broad based perspective by considering other policies and regulations related to labour mobility, such as wage policies towards foreign workers, as they can have indirect impacts on the dynamics in cross-border recruitment.

ASEAN governments should take a coordinated approach – mismatches between national policies and regulations with respect to cross-border recruitment fuel manipulations by unscrupulous actors. Some actions ASEAN governments can take to reinforce co-ordinations are:

- creating standards within the ASEAN framework to be followed by all ASEAN members,

- such as on eliminating child labour and forced labour, and referencing the relevant ILO labour standards where applicable;
- establishing common mechanism to enforce compliance. This is particularly important to overcome issues of multiple jurisdictions involved in cross-border recruitment. Discussions should start by first evaluating what such a common mechanism should mean and how it can be established;
- expanding the 1998 Hanoi Plan for a more cohesive and less abusive ASEAN region and extend to less skilled workers in order to address abuses (ASEAN Secretariat, 1998). Technical assistance from the International Labour Office, involving consultations with workers and employers in this region, could be useful; and
- shifting mind-sets to see each other as collaborators rather than competitors. Win-win situations can be created with collaborations, without having to compromise national competitiveness, which in the global economy today goes beyond cost competitions.

Recruitment agencies facilitate labour mobility by providing information, matching assistance and logistical support. They act as coordinators of the recruitment process and their presence is necessary to cope with the distance between labour supply and demand. However, ASEAN employers acknowledge that laws regulating recruitment agencies sometimes present serious gaps that could lead to malpractices and abuses. To better regulate recruitment agencies:

- each country should create or strengthen national recruitment agency regulatory frameworks to ensure accountable, transparent and responsible recruitment agencies; and
- ASEAN Member States can come together to establish a regional common code of conduct for recruitment agencies, referencing international standards such as the ILO Private Employment Agencies Convention, 1997 (No. 181) and its associated Recommendation No. 188. This can help to reduce mismatches between policies and regulations.

In designing and implementing policies and regulations related to recruitment, the ASEAN governments should consult actors on the ground, such as employers, recruitment agencies and workers, in order to understand the realities of labour migration to prevent designing counterproductive policies and risk expanding informal economy where rules and regulations are harder to apply. Effective action will require working relationships between governments, business and other non-state actors to produce a coordinated approach. A multi-stakeholder perspective is needed in regulating the recruitment process to ensure both the needs of migrant workers and employers are heeded.

Some initiatives ASEAN governments can embark on that involve other actors:

- engage media, employers, recruitment agencies and migrant workers' centres to raise awareness and improve perception of migrant workers, mitigating prejudice against them;
- work closely with recruitment agencies to tap on the information advantage they possess due to their roles of being intermediaries;

- identify a set of common policies or regulations for the adoption of tripartite partners that is applicable to both labour sending and receiving countries; and
- institutionalize consultation mechanisms at the regional and national level to ensure employers' voices are heard, given they are the clients of recruitment agencies and/or are the actors directly involved in the recruitment process. Such consultations need to be on an ongoing basis to enable feedback mechanisms for continuous improvements. Indeed, business have strong interests in ensuring workers are recruited through proper channels and are not exploited or abused in the recruitment process, since it can affect workers' productivity and companies' reputations.

Ultimately, full commitment from ASEAN governments is needed. Governments must initiate and lead the changes ahead because political will is crucial for the success of any policies and regulations. Governments have a clear obligation to protect human rights, including those of migrant workers. Governments are the primary duty bearers under international law.

Employers, on the other hand, must respect national laws and regulations where they operate. Where employers recruit from another country, they must also respect the laws, regulations and practices of the source countries. Employers have responsibilities and roles to ensure, within the best of their capacities, that they obtain employees through proper channels and that migrant workers are protected during the recruitment process.

While some employers have more resources and capacities to monitor their labour supply chains and have developed sophisticated approaches to monitor the recruitment process, there is a limit to how much they can do, given they are not in the source countries themselves. The real possibilities for employers to influence the labour supply chains are very varied and depend especially on the number of agents and sub-agents, structure and complexity of the labour supply chains as well as on the personnel and financial capacities of the companies. Other actors need to realize that there are limits to what business and employers who are at the end of the labour supply chain can do and should frame their expectations grounded in reality.

Furthermore, efforts by employers to protect and promote the rights of migrant workers should not divert attention from the urgent need for national governments to create the underlying legal framework for protecting and promoting the rights of migrant workers and to take action when those rights are denied.

Next steps for ACE and national employers' organizations

To enhance labour mobility while protecting workers and employers in cross-border recruitment, ACE and its member organizations will commit to the following actions:

- provide a platform for best practice sharing between member companies;
- publicize good practices by member companies to encourage other companies to do the same;
- build business case for small- and medium-sized enterprises to improve their recruitment practices;

- raise awareness of recruitment policies and regulations across ASEAN countries through its meetings and websites;
- identify responsible and accountable recruitment agencies and inform employers through media engagements, seminars etc.;
- actively engage in policy dialogues on labour migration at the regional level;
- seek to develop regional guidelines and tools to practically guide enterprises seeking to lawfully recruit migrant workers; and
- organize activities, both national and regional, to educate human resource and hiring managers of member companies on good recruitment practices.

5. Forced labour and human trafficking in ASEAN countries

An Employers' Regional Workshop on Businesses' Perspective on Addressing Forced Labour in ASEAN Migration: Reputational Risks and Practical Responses was held from 31 March to 1 April 2015 in Bangkok, Thailand. Through presentations by regional and global experts and open discussion between ASEAN employers, the aims of the workshop were:

- Provide a better understanding of the risk of forced labour in company's operations and in the supply chain, nationally and across the ASEAN region
- Increase businesses' understanding of the business case against forced labour.
- Enable ASEAN employers' organizations identify priority issues related to the forced labour in ASEAN labour migration and develop draft policy positions to address each issue.

This section presents the background paper and resulting, agreed-upon ACE policy position paper.

5.1. Definition of forced labour:

Detecting forced labour and human trafficking

Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers, or threats of denunciation to immigration authorities.

Formally, at the international level, the term "forced labour" is defined in the ILO Convention on Forced Labour, 1930 (No. 29) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Article 2). As such, forced labour is characterized by the presence of two elements:

- a. **Menace of penalty.** Menace can take different forms and may consist of a punitive sanction or in the suppression of rights and privileges. Coercion can include use of violence, physical obligations, psychological threats, or even death. Psychological threats can include, for instance, the denunciation of an illegal worker to the authorities. Other penalties can be of a financial nature, including economic penalties linked to debts.
- b. **Work or service undertaken involuntarily.** This refers to the principle that all work relations should be founded on mutual consent of the contracting parties. It implies that both parties may leave the work relationship at any moment by providing the applicable notice period. If the worker is prevented from leaving the work previously accepted voluntarily, it may be considered forced labour starting from the moment the possibility of withdrawal has been denied. Similarly, if the worker is made to work in circumstances where the agreement to work cannot have been freely given, this may also be considered forced labour.

Detecting forced labour may be difficult, particularly given different cultural and national understandings and practices. To facilitate self-assessment, one may refer to the ILO's 11 indicators of forced labour, which include:

- abuse of vulnerability;
- deception;
- restriction of movement;
- retention of identity documents;
- withholding wages;
- debt bondage;
- abusive working and living conditions;
- excessive overtime (ILO, 2012).

However, these are only indicators, and not necessarily definitive evidence of forced labour. For example, excessive overtime is a practice that may indicate forced labour, but it is not considered forced labour on its own. It is important to return to the fundamental definition, which requires coexistence of “menace of penalty” and “work or service undertaken involuntarily” to constitute forced labour.

Forced labour is not:

- Defined by the type of activity performed nor the legality of the activity under national law, as forced labour is defined by the nature of the relationship between a “worker” and an “employer”;
- Forced labour cannot be equated only to low wages and poor or hazardous working conditions. There must be a certain level of compulsion or threat of penalty in order to have a case of forced labour (ILO, 2009b).

5.1.1. Forced labour as an outcome of human trafficking

Forced labour as an outcome of human trafficking occurs when people are forced or tricked into going somewhere else by exploitative recruiters or companies with the promise of work. Often, on arrival in the destination country, jobs or terms of contracts are changed and the victims are unable to leave for various reasons, such as having their identity papers and wages withheld.

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) sets out an explicit link between human trafficking and forced labour by stating that “trafficking in persons shall mean the recruit, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of forced or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (UNODC, 2003). There is also a close linkage between two ILO fundamental Conventions on forced labour and the Palermo Protocol.

Not all forced labour is the result of human trafficking and not all trafficking-related activities necessarily result in forced labour. However, human trafficking is conducive to forced labour. Forced labour that results from human trafficking largely affects persons working at the margins of the formal economy, those with irregular employment or migration status (ILO, 2008a).

5.2. Forced labour in ASEAN countries

The victims of forced labour are largely low-skilled migrant workers, particularly more vulnerable groups such as undocumented migrants, certain population groups or ethnic minorities, women, persons with disabilities, young people, and workers in informal enterprises (ILO, 2013c). While incidences of forced labour are not limited to migrant workers, they can be the most vulnerable due to factors such as difficulty in leaving misrepresented jobs, lack of resources, lack of awareness of their rights, and/or being denied access to exercising their rights.

At a sectoral level there is still a lack of data for ASEAN countries in terms of forced labour occurrence. The United States Department of Labour’s International Labour Affairs Bureau (ILAB)’s “List of goods produced by child labour or forced labour” and “List of products produced by forced or indentured child labour” are chosen to be the primary references to guide sector analysis in this document due to the lack of data. However, it is recognized that there are inherent weaknesses in this data as they may mask understanding of local cultures, labour practices and possible political motivations.

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Agriculture, fishery and forestry

A large proportion of the world’s forced labour is estimated to take place in the agriculture sector in the production of commodities. According to the ILAB 2014 “List of goods produced by child labour or forced labour”, agricultural exports from the ASEAN region that are produced using forced labour are as below:

Table 4: Agricultural exports produced by child or forced labour in ASEAN

Country	Good
Myanmar	Bamboo* Beans (green, soy, yellow)* Bricks* Palm Thatch Physic nuts / castor beans Rice* Rubber* Sesame Sugarcane* Sunflowers Teak*
Malaysia	Palm oil
Thailand	Fish Shrimp*
Source: United States Department of Labour, 2014a; 2014b	

*These goods also appeared on the “List of products produced by forced or indentured child labor”.

* 129 workers and 92 employers participated in the survey.

According to the Mekong Challenge Study (ILO, 2006b), which surveyed situations of migrant workers in livestock and crop-farming in Nakhom Pathom province in Thailand, identity documents were taken away from 43 per cent of workers, limiting their freedom of movement.

In 2012 and 2013, Verité conducted appraisals of the risks of forced labour and human trafficking in Malaysia and Indonesia, and found vulnerability to these abuses among migrant workers in the palm oil sector. In Malaysia, research was centred in Sabah based on the region’s high volume of palm production. Indicators of forced labour were found, such as passport retention, threat of denunciation to manipulate workers to work, isolation and limited mobility of workers, deceptive recruitment, and some evidence of pay being withheld with no recourse for workers (Verité, 2013).

The ILO Greater Mekong Subregion (GMS) TRIANGLE Project and the Asian Research Centre for Migration found in 2013 that approximately 16.9 per cent of the fishers surveyed identified themselves as working against their will and unable to leave for threat of penalty, thus fulfilling the two key elements characterizing the definition of “forced labour” according to ILO Convention No. 29. The majority working against their will were from Myanmar and Cambodia. Forced labour was more prevalent on long-haul fishing boats than short-haul ones, since fishers on long-haul boats are unable to escape and also more likely to have been recruited through deceptive recruitment practices.

More recently, according to the Associated Press, more than 300 fishermen who were victims of trafficking were rescued from an Indonesian island on 3 April 2015. Many were tricked into going to Thailand, where they were put on boats and taken to Indonesia. In Indonesia, they were forced to catch seafood that was shipped back to Thailand and exported to consumers around the world (Associated Press, 2015).

Manufacturing

The following goods were named in the ILAB 2014 “List of goods produced by child labour or forced labour” as using forced labour:

Table 5: Manufacturing goods produced by child or forced labour in ASEAN

Country	Good
Malaysia	Electronics Garments
Myanmar	Jade Rubies
Thailand	Garments*
Viet Nam	Garments*

Source: United States Department of Labour, 2014a; 2014b

*These goods also appeared on the “List of products produced by forced or indentured child labor”.

Electronics, a significant contributor to gross domestic product (GDP) in Malaysia, is a new addition to the ILAB list in 2014. A Verité study indicates that one in three migrant workers surveyed in Malaysian electronics was in a condition of forced labour (Verité, 2014).

Domestic work:

The Mekong Challenge (ILO, 2006b) found that domestic workers in Thailand suffered restricted freedom of movement. Sixty per cent of domestic workers surveyed were not permitted by their employers to go outside the household to meet with others, nor were they allowed to have visitors.⁶

5.3. Business case for combating forced labour

Legal aspects

Forced labour is a criminal act in both international and national laws across all ASEAN countries. Business are required to, at the least, comply with national legislation and to organize their operations accordingly (see box 4 for examples from Singapore).

Elimination of all forms of forced or compulsory labour is one of the four fundamental principles and rights at work enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work addressing ILO member States, which means that ASEAN governments that are ILO member States have obligations to promote and work towards the realisation of the principles.

All ASEAN countries, with the exception of Brunei Darussalam, have ratified Convention No. 29, in which Article 25 states that “the illegal extraction of forced or compulsory labour shall be punished as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.” Hence, under the Convention, forced labour is or should be criminal offense in all ASEAN countries, with the exception of Brunei Darussalam. In fact, even though Brunei Darussalam has not yet ratified Convention No. 29, forced labour is included in the country’s Penal Code, 1951 (Cap. 22) (NATLEX, ILO).

⁶ This study surveyed working conditions of migrant domestic workers in Thailand. The survey sample included 320 domestic workers. In addition, 19 domestic workers and 15 employers were interviewed.

Box 4

Singapore's response to forced labour

According to Singapore's detailed response to the United States Trafficking in Persons (TIP) report in 2010, Singapore has prosecuted behaviour "indicative of forced labour" under clauses in the Penal Code or other Acts, which have penalties comparable to or harsher than s374 of the Penal Code on unlawful compulsory labour. In 2010, the Ministry of Manpower (MOM) revoked the licenses of three employment agencies, forfeited their security deposits, and prosecuted them in court for withholding workers' passports. Furthermore, the Employment of Foreign Manpower Act was amended in November 2012 to step up enforcement against syndicates and errant employers and to build more effective deterrence, through new presumption clauses, enhanced investigatory powers, and creation of new offences and infringements with higher penalties.

Source: Singapore Government, 2010

Trade aspects

Forced labour practices can lead to imposition of sanctions by trade partners, and increasingly more trade policies incorporate labour provisions, including binding prohibition of forced labour. These are policies that ASEAN countries must comply with to ensure continued trade relations or trade advantages.

All World Trade Organization (WTO) member governments are committed to internationally recognized "core" standards – freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination). Globally, about 60 per cent of labour provisions in trade agreements in force by the end of 2009 specifically referred to the 1998 ILO Declaration of Fundamental Principles and Rights at Work or ILO Conventions.

There is increasing pressure on the global trading system to incorporate labour issues:

- Within Generalized System of Preferences programmes, special arrangements are made for countries complying with the core labour standards, including the elimination of all forms of forced or compulsory labour. An arrangement may be temporarily withdrawn at any time, in respect of all or some products from a beneficiary country, in the case of non-compliance.
- United States foreign trade policy includes mandatory labour provisions based on the 2007 Bipartisan Agreement on Trade Policy negotiated between the then-US Administration and Congress (USTR, 2007). This stipulates that US trade agreements must incorporate enforceable obligations whereby parties must adopt and maintain in their national legislation five internationally recognized labour principles identified in the 1998 ILO Declaration of Fundamental Principles and Rights at Work. In the negotiations of the Trans-Pacific Partnership Agreement (TPP), there is a possibility that the

agreement may include binding obligation on the participating countries to effectively enforce the US's domestic labour laws based on the 2007 Bipartisan Agreement on Trade Policy. ASEAN governments involved in the negotiations and employers need to be prepared to address noticeable gaps, if any, in labour law and practice.

Beyond trade agreements, there are also other pressure points with potential impacts on ASEAN countries' trade. Examples include:

- **US 2014 TIP report:** Thailand and Malaysia faced particular pressure in that both were downgraded to "Tier 3" status (the lowest). This may have impacts on exports of goods from Thailand and Malaysia, especially the ones from sectors found to be at highest risk of human trafficking (Oxford Analytica, 2014).
- **US ILAB 2014 list:** As illustrated above, several products from Malaysia, Myanmar, Thailand, and Viet Nam were identified as being made using forced or child labour.

There were several cases in the past demonstrating the willingness and ability of trade partners to take action against forced labour findings in ASEAN countries:

- In 1997, Myanmar was withdrawn from the list of countries part of the European Union Generalized Scheme of Preferences (GSP) (a scheme of generalized tariff preference that offers preferential access to imports in the EU market from developing countries) due to routine and widespread practice of forced labour, confirmed by the ILO in a special procedure of its Commission of Inquiry but has since been reinstated.
- Suppliers to US Federal Government bodies are prohibited from supplying made-in-Viet Nam garments unless they prove that such garments do not use forced labour, as a result of Viet Nam's garment sector being listed on the US ILAB list.

Commercial aspects

Global buyers are facing mounting pressures from national regulations and international frameworks such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), the UN Global Compact, and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. At the same time, investors and consumers are increasingly aware of and concerned with human rights issues in supply chains, leading to buyers increasingly implementing codes of conduct and sourcing policies to avoid negative publicity. Findings of forced labour could lead to reduction in orders or even suspension of supplier contracts with international buyers (see boxes 6 and 7). Conversely, compliance with core labour standards is attractive to responsible buyers and may lead to more commercial rewards, such as more businesses and awarding of licenses to carry global brand names (see box 5).

Box 5

Nike's supplier performance system

Nike Inc. uses a medal-based system to evaluate and score its sourcing factories. Factories are required to meet Nike's minimum standards of good labour performance. This medal-based system is in line with Nike's Sourcing & Manufacturing Sustainability Index (SMSI), which is one tool used to select factories with which to do business. The SMSI puts sustainability consideration on equal footing with quality, cost, and delivery. The SMSI includes assessments such as whether employment is voluntary, compensation is paid timely, presence of harassment /abuse, and working hours.

The SMSI gives Nike a platform to incentivize performance improvements with more business directed to high-performing factories (i.e., bronze or better) while factories that fail to achieve bronze level performance within a defined timeframe are reviewed by senior leadership and are assessed penalties, such as a reduction in orders and removal from Nike's contract factory base.

Source: Nike Inc., 2013

Box 6

Forced labour claims in spinning mills in India

Following reports by welfare organizations regarding poor vigilance against forced labour and child labour in Indian spinning mills in 2011, global buyers such as GAP, Walmart, C&A, H&M, Primark, Mothercare, and Tesco instructed their Indian suppliers to stop sourcing raw materials from textile mills that employed girls under "Sumangali", a contractual agreement said to involve unfair practices and amount to bonded labour. As a result, exporters in Tirupur, one of the largest foreign exchange earning towns in India due to its export-oriented garment industry, cut links with the mills that have the "Sumangali" scheme, requested the Southern India Mills' Association and the Tamil Nadu Spinning Mills Association to abolish the scheme and encourage fair employment practices, despite not considering the scheme as slavery.

In 2014, following the report Flawed fabrics by Centre for Research on Multinational Corporations and the India Committee of the Netherlands, which alleged that rampant labour and human rights abuses occurred in India's garment hub, Tamil Nadu, H&M blacklisted a southern Indian textile mill upon finding that the spinning mill was unwilling to cooperate with H&M in a transparent way. Suppliers of H&M were prohibited from ordering yarn from this spinning mill for H&M's orders.

Source: Economic Times, 2011; Ecouterre, 2014

Box 7

Republic of Korea company's purchase of cotton from Uzbekistan

In 2014, leading retailers including Nike, H&M, C&A, Jones Group, and Michael Kors pushed Daewoo International Corporation, the Republic of Korea's largest trading company, out of their supply chains in response to a two-year campaign by protesters demanding Daewoo International Corporation cease purchasing cotton in Uzbekistan, where the Uzbek Government requires more than a million children and adults to grow and harvest cotton each year in a state-orchestrated forced labour. The protesters delivered a petition signed by nearly 230,000 people from more than 190 countries.

Source: Cotton Campaign, 2014

There is hence a strong business case for ASEAN companies to market themselves as having high standards in employment practices to meet the growing expectations of buyers and investors in the global business community. Failing which, they may lose their footing in the global buyers' market.

Investment aspects

Socially responsible investors address labour issues in proxy voting and corporate engagement strategies (Ho, 2011). Meeting social compliance criteria can allow a business to expand its funding resources by improving its investment attractiveness. Some initiatives that include labour issues in their investment assessments and decisions are:

United Nations' Principles for Responsible Investment (UNPRI)

The UNPRI was initiated by an international network of investors who worked together to develop the six Principles for Responsible Investment.⁷ Signatories of UNPRI committed themselves to the six Principles, which include incorporating Environmental, Social and Corporate Governance (ESG) issues into investment analysis and decision-making processes, and in ownership policies and practices; seeking appropriate disclosure on ESG issues by entities in which they invest; and reporting on their activities and progress towards implementing the Principles. To date, the UNPRI has been signed by 291 asset owners, 896 investment managers, and 188 professional service partners. These signatories also include several investment managers based in ASEAN countries (UNPRI, 2015).

⁷ For more information on the UNPRI, please see <http://www.unpri.org/about-pri/the-six-principles/>

Requirement to disclose on ESG issues by stock exchanges

Several stock exchanges have set new requirements. For example, the Hong Kong Stock Exchange requires listed companies to follow ESG guidelines and to report on their ESG activities.

The London-based FTSE4Good Index launched a new set of criteria in 2004 to cover supply chain labour standards based on the four ILO Core Conventions. It addressed “first-tier” suppliers, or those with whom companies have a direct commercial relationship and thus have most influence. Sectors covered include clothing and footwear, food processors, and discount stores. Companies currently in the index that do not fully meet the criteria will need to make changes to remain included (FTSE GM News, 2012).

ASEAN companies are affected by this shift in investment criteria through their own search for investors (such as the impacts of the US TIP report or international financial institutions) or through their connection with buyers, given buyers’ shareholders and potential investors take into account their sourcing practices.

Reputational aspects

The reputational cost resulted from forced labour allegations or findings is high, reflected through falls in sales and share prices. For example, negative publicity following reports and allegations of labour violations in its contracted factories led to a fall in the sales of Nike’s trainers by nearly 8 per cent in 1999, and while rival shoemaker Reebok saw its share price rise from \$8 to \$30 in 2000, Nike’s stock fell by 15 per cent (Observer, 2011).

Forced labour practices by one player can tarnish the entire industry/country’s reputation. All suppliers have a stake, even if they do not have forced labour practices in their own operations or supply chains (ILO, 2009b). For example, an increasing number of international trade agreements, including the TPP and EU-Viet Nam Free Trade Agreement (both under negotiations), permit development of trade barriers if violations, such as forced labour, are identified. This means that the whole industry exporting a specific product can be implicated when the importing countries impose trade barriers on said product, even if only some of the firms in the industry are using forced labour. One whole sector can be affected regardless of efforts by individual companies.

Productivity aspects

Tolerance of forced labour in an industry works to the detriment of the law-abiding employers and enterprises in the same industry, which face unfair competition from those who operate outside the law. Latest estimates from the ILO put illegal profits from forced labour in the Asia-Pacific region at \$51.8 billion annually. Out of these profits, US\$13.4 billion are made in the manufacturing, construction, mining, and utilities sectors (ILO, 2014b). Ultimately, it is in the interest of law-abiding enterprises in the same industry to take action against these unlawful practices to level the playing field and prevent unfair competition from non-law-abiding enterprises. Furthermore, the use of forced labour may lead to additional cost items previously unaccounted for in business operations, such as additional audit fees or penalties for violation imposed by buyers, which can be more taxing for business operations than when the costs were regularized and planned for.

Conversely, businesses in compliance of core labour standards, which include non-use of forced labour, can see increase in productivity which may come from reduction in real costs of contracting (as a result of higher job satisfaction and a positive labour relations environment), more commercial gains (as a result of more orders), and improvements in efficiency (trainings from buyers). Business also benefit through higher productivity, and through competitiveness as workers experience job satisfaction, safe and healthy working conditions and environment resulting in lower employee turnover rates, and improved cooperation leading to more stable and positive labour relations and reducing risk of industrial action (Samuel, 2014, p. 89).

5.4. Looking forward: Addressing and preventing forced labour

Action points for enterprises

Globally, to guide business action, a number of principles and practical tips have been developed by the ILO. Employers may refer to the ILO Handbook for Employers for more detailed guiding principles to combat each form of forced labour.⁸ Seven key action points for all ASEAN enterprises are summarized below:

1. Understand national legal obligations: At the very least, ASEAN businesses need to comply with their national laws. It is hence important that ASEAN businesses know all the relevant national laws, particularly how forced labour is defined and interpreted, as well as the penalties for violations.
2. Become familiar with potential pressure points: These effect ASEAN countries particularly through trade. ASEAN companies need to be aware of key international instruments related to labour standards that global buyers comply with or implement, which include the elimination of all forced or compulsory work. By being familiar with potential pressure points, ASEAN companies can better prepare themselves to avoid being adversely affected.
3. Know buyers' codes of conduct and sourcing policies, and communicate them to suppliers: This should be regarded as a prerequisite for doing business with global buyers. Some buyers have supplier codes of conduct that are stricter than national laws of the countries in which the suppliers operate, hence merely complying with national laws may not be sufficient for suppliers. ASEAN companies need to communicate their buyers' policies to their own contractors and suppliers, given that the labour practices of downstream suppliers were shown to have impacts on global buyers, who in turn, exerted pressure on their Tier 1 suppliers.

⁸ These guiding principles are contained in the ILO Handbook for Employers on Combating Forced Labour, 2008. They are derived from ILO Conventions and Recommendations, the comments of the CEACR, other ILO instruments such as the Declaration on Fundamental Principles and Rights at Work and The Tripartite Declaration of Principles Concerning Multinational Enterprise and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

4. Develop a company policy on preventing and addressing forced labour in order to have a comprehensive and cohesive strategy that allows a more pre-emptive, effective approach.
5. Assess company operations and supply chains: ASEAN companies need to conduct self-assessment of their recruitment and employment practices. For recruitment practices, some of the important areas companies should look into are the following:
 - engagement of recruitment agencies (at the very least, engage only licensed and accredited ones);
 - recruitment fees (especially since many buyers have specified the maximum amount that can be charged to workers);
 - transparency of information for jobseekers;
 - ethics of the hiring personnel; and
 - legitimacy of the hiring process and practices.

In terms of employment practices, companies should review the following:

- human resource policies for migrant workers;
 - on-boarding process;
 - employment contract (whether it is clearly written with the necessary details and whether it can be easily understood by migrant workers);
 - wage payments and deductions;
 - loans and advances to employees (particularly on the amount advanced to employees);
 - working hours;
 - disciplinary measures;
 - withholding of personal documents of workers;
 - personal freedom of workers; and
 - termination of employment.
6. Document findings and corrective actions: It is crucial for companies to ensure the findings of their self-assessment and audits of suppliers are properly documented, including any corrective actions taken. Such documentation is useful for tracking progress and identifying improvements. It is also useful as basis for conversations with other stakeholders such as governments and buyers.

7. Establish relevant partnerships: ASEAN companies can seek partnerships where appropriate to amplify their efforts, especially where individual resources are limited. Partnerships can be sought with peers in the same industry, buyers, employers' organizations, workers' organizations, and governments. Companies need to make decisions based on their needs, priorities, and preferred means of engagement.

The role of employers' organizations

As representative of ASEAN business and employers, ASEAN employers' organizations have an important role to play and need to be able to take up the challenge swiftly and concretely. For example, having grasped the increasing value placed by the international market on labour standards and human rights, the Employer Federation of Ceylon in Sri Lanka and the General Confederation of Moroccan Enterprises in Morocco have launched relevant initiatives to demonstrate that their enterprises will go the extra mile to meet the highest expectations.

Generally, there are four areas of work that ASEAN employers' organizations can build on based on their unique set-up and competencies. The four areas of work are:

1. **Assuming leadership of the business community:** Employers' organizations are well-positioned to lead the business community, including taking a firm stance against forced labour. They can initiate engagement with members in violation of key national employment laws and internationally recognized human rights. While engagement and influence are of paramount importance, employers' organizations may need to be ready to blacklist or expel members that demonstrated unwillingness to address findings of violations. For instance, the Thai Fishery Producers Coalition appointed a Labour Taskforce Committee to investigate any labour-related complaints made against its members and any constituents found in violations of key national employment laws will lose membership.
2. **Tackling information asymmetry:** Employers' organizations are well-placed to address information asymmetry gaps, such as those related to codes of conduct and multiple buyer codes. Employers' organizations can collate information and train staff to guide their members on issues related to forced labour and to provide advice on legislations and international instruments. They can launch awareness-raising campaigns on best practices and combating forced labour. For example, the Garment Manufacturers Association in Cambodia advised members on how to exercise extra vigilance to spot under-aged workers while the MEF released guidelines for employers on the Recruitment, placement, employment and repatriation of migrant workers in Malaysia in December 2014 and organized a series of workshops around Malaysia to publicize the guidelines and disseminate best practices. The Vietnamese Chamber of Commerce and Industry (VCCI) is also currently working with the ILO to develop a resource guide for employers on preventing and addressing forced labour in the garment sector in Viet Nam.
3. **Representing ASEAN business in stakeholder engagements:** Employers' organizations should represent employers to engage relevant stakeholders, such as buyers, governments, international organizations, and workers' organizations. For example, organizing or participating actively in forums to promote mutual understanding between suppliers and global buyers of their expectations and requirements. Through such forums, ways in which buyers can build the capacities of suppliers to meet their requirements can be discussed. In addition to buyers and international organizations,

employers' organizations can engage their counterparts, the workers' organizations, to collaborate on raising awareness of workers' rights and safe migration, providing communication channels between employers and workers and devising sustainable and affordable remediation mechanisms for victims of forced labour.

4. Leveraging the employers' network: Lastly, employers' organizations should tap their network of employers to discuss pertinent issues related to forced labour in order to form basic guidelines for employers that take into account national practices and realities. This could lead to consolidating and sharing good company practices, and promote capacity building. Furthermore, a network of companies could build a collective employers' voice to lobby governments to improve laws and regulations and close gaps in law enforcement.

5.5. ACE policy position paper: Forced labour in migration in ASEAN countries

Background

In preparation for the ASEAN economic integration in 2015 the ASEAN Confederation of Employers (ACE) adopted an Employers' policy framework for sustainable labour migration in the ASEAN region in 2013. This framework identifies five key areas requiring the attention of ASEAN businesses and policy-makers in order to achieve effective labour mobility in 2015 and beyond:

- better matching of employers' skills needs and increasing labour mobility across the ASEAN region;
- increasing productivity through enhancing migrant workers' safety and health at the workplace;
- effective recruitment procedures to facilitate labour migration;
- a commitment to combating Forced Labour and human trafficking, and
- enhancing competitiveness through embracing diversity.

The ACE employers' framework for sustainable labour migration in the ASEAN region signals ACE's firm opposition to any form of exploitation and abuse of migrant workers and its commitment to the goal of combating forced labour and human trafficking.

ACE and its members recognize the strong business case for employers to address and prevent forced labour:

- Forced labour is morally unacceptable.
- Forced labour is a criminal act in both international and national laws across all ASEAN countries; failing to comply with legal obligations can lead to both criminal prosecutions and sanctions.
- Forced labour practices can lead to imposition of sanctions by trade partners; increasingly more trade policies include labour provisions, including binding prohibition of forced labour which if violated can result in trade barriers.
- A workplace free from forced labour is both an attractive attribute to reputation-sensitive buyers and a fundamental requirement by global buyers in their supply chains. Compliance may lead to commercial gains, such as more businesses and awarding of licenses to use a global brand name, while systematic failure to comply may lead to reduction in orders or even termination of contracts.

- The financial case for ensuring operations are free from forced labour is compelling given investors and financial institutions – with the objective of promoting responsible investment – are including social criteria such as labour standards in their assessments. Forced labour practices deter potential investors as well as cause existing investors to divest from the company, sector, or country.
- The reputational cost of associating with forced labour allegations or findings is high, reflected through fall in sales and share prices, and because forced labour practices by one player can tarnish the whole industry and/or country.
- Forced labour tilts the playing field in favour of unscrupulous employers who benefitted from large illicit profits and artificially low labour costs to gain price competitiveness and win more businesses.
- Elimination of forced labour is one of the core labour standards, and appropriate application of core labour standards is found to enhance labour productivity, when sound and timely government regulatory and support policies are in place (ILO, 2014d). Furthermore, business in compliance may receive beyond-compliance trainings from buyers to improve their efficiencies and hence productivity.
- Forced labour practices may lead to new cost items for business which were previously unaccounted for, such as increase in audit fees and/or penalties for violation imposed by buyers and governments.

This policy statement consolidates ACE’s perspectives on the roles of ASEAN governments in supporting employers’ efforts to address and prevent forced labour in labour migration. It can be taken forward by ACE members when engaging in policy discussions.

ACE policy proposals to governments

Governments must ensure that the recruitment of foreign workers is carried out through proper legal channels and that workers are afforded all the legal protections they are entitled to.

It is the primary duty of governments to uphold human rights, consistent with international standards, including those of migrant workers, and to create an enabling legal and policy environment (including clear and consistent guidelines) for eradicating forced or compulsory labour and trafficking of people.

Governments must initiate and lead efforts for effective and sustainable policy, regulatory and behavioural changes needed to more effectively and efficiently address and prevent forced labour and human trafficking. When doing so, governments should engage and consult stakeholders on the ground, including employers’ and workers’ organizations, in a timely manner to ensure employers’ perspectives are heard and to find ways to support employers in fulfilling expectations on them to prevent and address forced labour.

This policy statement proposes that ASEAN governments adopt a four-pronged approach in addressing and preventing forced labour and human trafficking:

1. addressing root causes;

2. ensuring comprehensive and conducive policies and regulations;
3. strengthening enforcements and where applicable, monitoring and reporting; and
4. establishing partnerships, which include all the relevant stakeholders, to engage in consultations.

ACE believes that combating root causes of forced labour is necessary to bring about long-term change. ASEAN governments should:

- promote economic development in their countries and the ASEAN subregion, given continued economic development is needed to create decent and productive employment opportunities;
- strengthen social protection to promote individual resilience to sudden income shocks which may lead individuals to accept jobs even under exploitative conditions. Here, it must be noted that social protection programmes should be fiscally sustainable, targeted and accessible;
- promote access to quality education for all, especially on ensuring literacy; and
- disseminate information widely, as information asymmetry may subject individuals to deceptions and manipulations, and generate fear. This can be done through seminars to educate potential migrant workers and their employers on rights and responsibilities, and through establishing one-stop centres.

Policies and regulations need to be comprehensive and cohesive to be impactful and efficient. ASEAN governments should:

- when regulating private recruitment agencies, simultaneously raise entry barriers into the industry to prevent forced labour resulting from intense competition;
- go beyond stick-only approach to embed incentives to encourage best practices of employers and recruitment agencies;
- support due diligence by the private sector to prevent and respond to risks of forced labour; and
- ensure labour mobility is not compromised and the environment for cross-border recruitment remains conducive for employers to fill manpower needs.

To strengthen enforcements, ASEAN governments should:

- treat all workers fairly in the enforcement, regardless of their legal statuses, to send a strong message that exploitation of undocumented workers is not tolerated;
- simplify policies, regulations and administrative procedures and make them predictable and accessible, given uncertainty and cumbersome or incomprehensive requirements may generate malpractices;

- take into consideration capacities to enforce regulations to ensure regulations are credible, realistic and impactful;
- facilitate business registration as it enables law enforcement, since it is difficult to reach out to firms that are not known to exist; and
- besides punishing those exploiting workers and making illegal profits from forced labour, also apply heavy penalties to tackle bribes and corruption by government personnel involved in recruitment and migration process.

Finally, partnerships are crucial; partnerships can increase outreach and help create synergies. This includes partnerships and dialogues with national actors as well as between governments.

At the national level, each ASEAN government should:

- establish national action plans to address and prevent forced labour in labour migration in consultation with employers' and workers' organizations to obtain their perspectives and their buy-in, and to identify existing work by the social partners that can be built on to enhance impacts; and
- work with trade partners, especially on capacity building, to eliminate forced labour.

At the regional level, governments should:

- align stance, policy and legislations regarding forced labour across the ASEAN sub-region to prevent arbitrage between jurisdictions;
- cooperate to educate and raise awareness of workers and employers on their rights and responsibilities;
- standardize and exchange data collection method across ASEAN to enable more reliable regional figures to measure trends, better understand risk factors and identify areas for cooperations;
- collaborate on rehabilitation plans for victims of forced labour and human trafficking;
- expand the 1998 Hanoi Plan for a more cohesive ASEAN region and extend to less skilled workers (ASEAN Secretariat, 1998). Technical assistance from the International Labour Office and other relevant agencies, involving consultations with workers' and employers' organizations in this region, could be useful;
- shift mind-sets to see each other as collaborators rather than competitors. Win-win situations can be created with collaborations, without having to compromise national competitiveness, which in the global economy today goes beyond cost competitions; and
- keep communication channels open between governments to update each other of any discoveries of wrongdoings and illegal recruiters and employers.

Next steps for ACE and national employers' organizations

ACE's member organizations, which are national employers' organizations, have supported the adoption of the ILO Conventions against forced labour.⁹ As constituents of the ILO, employers will be part of the development of the ILO framework for action for the implementation of the new Protocol to the Forced Labour Convention, 1930 (No. 29) and its accompanying Recommendation.

ACE will continue to support and engage with other stakeholders to address and prevent forced labour. ACE will focus on the following three areas of work, particularly for the main sectors at risk of forced labour.

- 1. Provide information and guidance to support its member organizations' efforts, through:**
 - awareness-raising campaigns to improve knowledge of the forced labour issue and to strengthen the business case for action;
 - clear guidance to enterprise and association members on different forms of forced labour, different national labour practices, ways it can be identified and the remedial actions that can be taken by businesses;
 - advice on relevant legislations; and
 - capacity building on core labour standards, key international instruments and buyers' code of conduct related to the elimination of forced labour and explaining to firms how these instruments impact on their operations.

- 2. Represent ASEAN employers to engage relevant stakeholders.** For example:
 - organize or participate in forums to promote mutual understanding of the expectations and requirements of global buyers, and through the forums, discuss ways in which buyers can build capacities of the suppliers to meet their requirements;
 - represent ASEAN employers, including both large and small enterprises, in dialogues with buyers, governments and international organizations to ensure suppliers' voices are heard and their concerns are taken into consideration;
 - develop joint strategies for effective prevention and abolition of forced labour and human trafficking. The decision on whether and who to involve will be based on the need to gain assistance or recognition and driven by the priorities and the means of engagement of employers; and
 - engage workers' organizations to raise awareness of workers' rights and safe migration, provide channels to voice workers' grievances and implement remediation mechanism to victims of forced labour.

⁹ Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105).

3. Leverage on the ACE networks to:

- discuss pertinent issues with implications on forced labour, such as recruitment service fees, to form basic guidelines for ASEAN employers, taking into account national practices and realities;
- consolidate and share examples of good company practices regarding forced labour, treatment of foreign workers and cross-border recruitment;
- promote capacity building to ensure transparent hiring and labour practices;
- incentivize and reward exemplary company practices; and
- lobby governments to improve laws and regulations and close the gaps in law enforcement.

6. Conclusions

As the representative of ASEAN business and employers, ASEAN employers' organizations have an important role to play in labour mobility and migration. Assessment of the impact of the AEC on business and addressing business readiness for integration should be key areas of focus in 2015 and beyond. Some key crosscutting interventions include:

- **Legislative reform:** Policy can facilitate or impede labour mobility. Engaging with governments at a regional and national level, and advocating for policy improvements that support the upgrading of national laws to align with international labour standards in order to ensure level playing fields across the ASEAN economies are core components spanning the four focus areas discussed above.
- **Providing business and employers' with guidance and support** on issues such as international labour standards, recruitment policies and practices, and skills mobility as the region moves towards integration becomes increasingly important.
- **Acting as aggregators of information and disseminating this information.** For example, in connection with legislative shifts, trade policy, or global buyer practices and requirements, information collected and disseminated by employer organizations can empower businesses and promote mutual understanding within countries and across the region.
- **Collecting good practices** is a key role for employers' organizations. Highlighting good practices serves to provide examples for business on how to approach certain issues and practices and raises awareness.
- **Leveraging ACE's role as the representative employer voice in ASEAN** to achieve the above.

As ASEAN moves towards greater economic integration and demographic factors and skills shortages impact the countries' economies, labour mobility will become increasingly important to address in practice and policy. Undertaking work at regional and national level, supporting businesses in creating an environment conducive to hiring, skills mobility, safe working environments and prevention of forced labour will be significant to the economic future of the

region. Through this publication and related workshops, the employers' component of the ATP aimed to strengthen the capacity of ACE and its members to engage in effective policy dialogue; convene members on labour migration-related issues to raise awareness and share good practices; and to develop regional guidelines and tools to assist enterprises. Taking the deepened understanding of the key issues, the good practices and challenges highlighted in this report, ASEAN employers' with the help of their representative bodies should look at better addressing labour migration both at an enterprise and a policy level.

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Annex 1:

Recruitment case studies

With Malaysia and Singapore hosting 80 per cent of intra-ASEAN migrants across skill levels, case studies of companies and recruitment agencies based in Singapore and Malaysia were conducted to compile best practice approaches. The case studies include examples of enterprise recruitment practices from diverse sectors and sizes recruiting foreign employees of diverse skill levels. Some of findings from the case studies are summarized here.

A1.1. Renesas Semiconductor KL Sdn Bhd, Malaysia

A1.1.1 Foreign employee profile

Renesas is in the semiconductor industry and employs around 2,400 people, of which 25 per cent are foreigners. They hire migrant workers to maintain a stable workforce and productivity. Foreign employees across all skill levels come from Indonesia, Myanmar, the Philippines, and Japan with the best practices highlighted here focusing on the migrant workers on the production floor. Indonesians are hired due to their proficiency in Bahasa Malaysia. Myanmar workers are hired due to their proficiency in English. Filipinos are hired due to their proficiency in English and their experience in electronics industry. There are approximately 74 per cent women among the migrant workers on the production floor. Migrant workers on the production floor have high school qualifications, with those on the production floor are typically hired as manufacturing assistants and on two-year employment contracts.

A1.1.2. Best practices

Recruitment

- The company chooses to recruit from recruitment agencies registered and/or accredited by the government human resource agency. From the registered recruitment agencies in the source countries, the company selects those recommended by peers in the industry. This is done to mitigate the risk of malpractice.
- In order to ensure the right matching of candidates to jobs, all candidates go through tests and interviews. These tests include simple arithmetic, IQ, and a simple writing test; there are six to seven sets of questions to prevent candidates from memorizing answers.
- In Indonesia, campus recruitment in technical and vocational schools in cities such as Medan and Lombok started a few years back, and proved to be particularly useful, as it brings the company directly to candidates trained for the sector.

Managing expectations

- To limit the incidence of foreign employees refusing the job after arrival in Malaysia, the company makes a detailed presentation to applicants to ensure the candidates have realistic expectations. The presentation includes detailed company information and information on the working environment and employment conditions. The presentation is done using the local language of the candidate where possible. In addition, the company visits the communities in the source countries to get to know the community before starting the interviews. This enables the company to better relate to the candidates and encourage them to be serious about their employment with the company.

Arrival and induction

- On arrival, appointed officers meet and greet meet workers at the Kuala Lumpur International Airport, and SIM cards are provided to the workers for a fee so that they are able to contact their families and friends.
- A three-day induction is conducted. Topics covered during induction include human resource policies and practices, workers' rights to file complaints, safety issues, various statutory acts governing the employer and the workers, product orientations, and clean room orientations (i.e., how to maintain cleanliness in the factory).

Promotion and retention

- The company encourages commitment by making promotions available that include salary increases. Bonuses of 500 Malaysian Ringgit (MYR) (an amount that is regularly reviewed to remain in line with market rates) after certain durations of service encourage workers to remain with the company. Employee engagement through brainstorming on process improvements and recognition of ideas also encourages retention.

A1.2 Company A¹⁰

A1.2.1 Foreign employee profile

Company A is a Malaysian company in the metal industry with approximately 400 employees in its manufacturing business. More than 50 per cent of workers on the factory floor are foreigners. The foreigners are hired to fill gaps, since menial work is unpopular among the local workforce. The foreign employees are from a diverse range of countries, such as Myanmar and China, and are largely in their early twenties. Education qualifications are low among the migrant workers (given that these are menial jobs, education attainment is not a criteria for employment). Standard employment contracts are used for all foreign employees, though for some source countries, the company is obliged to sign attestations in different formats as mandated by the source countries.

A1.2.1. Best practices

Recruitment

- The company does not engage recruitment agencies in Malaysia to hire from Myanmar, but does engage the help of local recruitment agents in the source countries to identify a pool of suitable candidates. Agents are selected based on previous positive experiences (the company started hiring foreigners in 1992), such as agents being able to correctly identify suitable candidates and having no history of malpractice.
- The company usually conducts one round of in-person interviews. The company finishes the interviews within one to two days to ensure candidates traveling to the area for the interviews do not have to incur costs for accommodation, and candidates are informed of the hiring decisions at the end of each day of interviews.
- Interviews with potential candidates include explanations of job expectations and the terms of employment (including any benefits and wage deductions for levies where applicable). The company also makes use of the face-to-face meeting to brief potential candidates on the company profile, hostel facilities, etc., and provides pictures and videos depicting the working and living environment. During the interviews the company is forthright about the dangerous, dirty, and potentially demeaning nature of the metal industry to manage expectations.
- Several tests are conducted during the interview, such as on eye sight, colour distinctions, simple arithmetic, and physical abilities, the outcomes of which the company uses in assessing the suitability of the candidates.

Arrival and induction

- On arrival at Kuala Lumpur International Airport, foreign employees are welcomed by a management representative. The source country agents are informed that the workers are in safe hands.

¹⁰ This company chose to remain anonymous

- On the way to the hostel, the foreign employees are provided with a meal. If the foreign employees arrive late at night, they will also be provided breakfast the next morning.
- A cash advance is given to the foreign employees to enable them to buy items like rice and groceries.
- A team of similar composition to that of the newly arrived foreign employees is set up to welcome the foreign employees in the hostels and show them around. Orientation is provided on house rules, facilities, safety and security, housekeeping, and nearby shopping areas. Pillows, blankets, kitchen equipment, and utensils provided to the migrant workers are all brand new.
- The next day, an orientation is conducted on company rules, safe operation procedures (interpretation provided by current employees of similar nationalities), production, warehouse processes, and assigned job responsibilities. Before the new foreign employees proceed to the production floor, the company ensures that all of them are equipped with the appropriate personal protective equipment and clothing, such as safety shoes, ear plugs, and gloves.
- The company also translates its documents into Bengali, Nepalese, and Burmese to ensure new foreign employees really understand the documents given to them during the orientation.

Promotion and retention

- The company pays salaries promptly. It has a good reputation among foreign employees, which is reflected by the fact that many former workers who returned to their source countries recommend that their friends and relatives work for the company.
- Promotion opportunities are available in recognition of good productive performance, skills and job knowledge improvement, and also exemplary attitude at work. Migrant workers can become supervisors on the factory floor. Migrant workers are also motivated by the prospect of a higher basic salary and better gross earnings if they perform well.
- Every effort is made to retain them whenever migrant workers wish to return to their home countries, such as by giving migrant workers long holidays with return trip tickets so that they can overcome homesickness and continue working for the company.

A1.3. Malayan Agricultural Producers Association (MAPA)

A1.3.1 Foreign employee profile

MAPA is a Malaysian association in the plantation industry with 111 company members (353 estates/plantations) with about 107,090 workers in total. About 70–90 per cent of workers in the harvesting and loading of fresh fruit bunches operations are foreigners. Migrant workers are hired because local workers shy away from plantations in view of improved education attainment and greater employment opportunities elsewhere. About 90 per cent of foreigners working in the plantation sector come from Indonesia; the rest come from Bangladesh, India, Myanmar, and Nepal. There are two ways in which migrant workers are recruited into the plantation sector in Malaysia. One is through a government-to-government programme whereby the companies fill the numbers they need with workers supplied by the government of the source country. This is used for recruitment from Bangladesh since the Malaysian Government does not allow recruitment from Bangladesh with the exception of the palm oil sector. The other method of recruitment for the sector is through direct hiring using recruitment agents in the source countries. Migrant workers hired to work in the plantation sector have low educational attainment, such as primary school completion. Migrant workers are hired on 2 years +1 employment contracts that may be extended up to ten years.

A1.3.2. Best practices

Recruitment

- Most recruitment agents in Indonesia engaged by the Malaysian plantation companies are experienced and responsible agents. They are chosen based on trust and confidence, recommendations from peers, years of experience of working together, and contacts. Most of them are established agents who have been doing recruitment for the Malaysian plantation sector for 15–20 years.
- Clear specifications are given to the source country recruitment agents: the candidates must be 18–45 years old, physically fit and willing to work, have height of at least 1.50 metres, and a background in performing agricultural work.
- Companies usually hire their new migrant workers from the same communities, meaning candidates are more familiar with the employer given the experience of their peers.
- If workers are found unsuitable for their assigned task, they will undergo alternative training to become general workers. Companies try as far as possible not to deport such migrant workers to their source countries.
- Before the migrant workers travel to Malaysia, some companies provide advance payment to giving the workers the resources needed to set themselves up and purchase an air ticket. The recruitment agents in Indonesia normally make this payment. Beyond advance payments to the workers, some companies also give a one-off lump sum to the families of the workers as an assistance/ex-gratia payment. On arrival, some companies also provide the workers with some supplies.

Managing expectations

- Most companies take the opportunity to participate and/or conduct induction courses in the source countries, during which they show the potential candidates pictures of their plantations, detail the work that they will be expected to do in the estates, and give details about the salary packages and the facilities available for them in the estates and in their housing area. Since collective agreements have been concluded and signed between MAPA and the National Union of Plantation Workers (NUPW), there is a standard employment contract for all plantation workers (both locals and foreigners).
- Equal protection is guaranteed for migrant workers by labour legislation and the collective agreements with the NUPW, which in turn increases the sense of security among workers who accept employment offers from MAPA companies.
Promotion and retention
- Promotion is less relevant as Indonesian workers tend to prefer to leave after a certain period. Some companies give workers monthly out-turn bonuses for full attendance, taking into account rainy days when it is impossible to offer work to these migrant workers.
- In order to secure commitment and continuity in employment, certain member companies provide ex-gratia payment for each completed year of service which is payable towards the end of the contract.

A1.4. SRT-EON Security Services Sdn Bhd

A1.4.1 Foreign employee profile

This is a Malaysian company in the security sector, employing approximately 1,650 employees. Foreigners make up about 5 per cent of employees. All of their foreign employees are from Nepal. They are hired as security guards due to the reputation they have (brave, disciplined, and loyal) and because of the Government's policy that Nepalese ex-servicemen are the only foreigners allowed to work as security guards in Malaysia. The foreign employees are under 35 years old and are employed on one-year contracts subject to yearly renewal of work permits.

A1.4.2. Best practices

Recruitment

- The company engages a recruitment agency in Malaysia to assist in the hiring. The agency was chosen based on recommendations by other companies.

- When the company first started hiring from Nepal three years ago, the Director of Operations and a management-level representative went to Nepal to meet with the local agencies there to learn the entire recruitment process. Local agencies in Nepal were selected and connected with the Malaysia-based agency. This is done to mitigate the chance of malpractice.
- The company conducts a round of interviews with the candidates in Nepal. Decisions are made immediately by informing the local agency. For newly hired foreigners, the whole process takes 4–5 months until the migrant worker finally starts work with the company.
- The company personally interviews the candidates to ensure the right fit. The company requires certificates proving that each candidate is an ex-serviceman.

Managing expectations

- The in-depth interview process and a good salary package offered to the migrant workers helps to ensure that the workers take up their job upon arriving in Malaysia.

Arrival and induction

- On arrival at Kuala Lumpur International Airport, company staff members bring the workers to the company and their hostel.
- Orientation is conducted to introduce the workers to Malaysia and the company. A foreign worker who speaks English fluently is assigned as the leader of the group.

Promotion and retention

- The company tries to renew its migrant workers' contracts, but this is subject to work permit renewal.
- At the end of the employment service, the company informs the Malaysian recruitment agency to do the administrative work and purchase an air ticket for the workers to return to Nepal. Certificates are given as a form of appreciation at the end of the employment service so that the workers have proof of their employability.
- Through compensating the workers at competitive rates, workers stay committed to the company.

A1.5. Café Galilee Pte Ltd

A1.5.1 Foreign employee profile

Café Galilee is a Singaporean company in the food and beverage industry, employing approximately 60 workers of which 40 per cent are foreigners. Migrant workers are hired due to the manpower crunch in Singapore and the lack of interest in hospitality among the local workforce. Around 70 per cent of migrant worker employees are females from Myanmar or China. The employees are largely in their twenties and have obtained at least a GCE Ordinary level equivalent qualification from their home country. Foreign employees have two-year employment contracts subject to renewals and typically hold mid-management roles such as café managers and production managers.

A1.5.2. Best practices

Recruitment

- Café Galilee uses a Singapore-based employment agency that has local networks in countries from which Café Galilee recruits. Café Galilee selected the current recruitment agency it works with based on experience and recommendations. According to Café Galilee, the recruitment agency has a good understanding of what Café Galilee looks for and provides ongoing English lessons and counselling services to foreign employees during their employment.
- Café Galilee's Human Resource department has an internal system to forecast its labour needs according to its business development plans.
- Café Galilee then conducts interviews directly with shortlisted candidates, either in person or through Skype (potential candidates may Skype from a recruitment agency office if they do not have Skype facilities at their own disposal). For in-person interviews, the recruitment agency pays for Café Galilee's trip to the home countries of the candidates to conduct interviews. Hiring decisions are made entirely and solely by Café Galilee.
- During the interviews, Café Galilee also verifies with the candidates whether the recruitment agency provided a proper representation of the company and the terms and conditions of employment. Probing questions are asked, such as the amount the candidates paid to the agency and whether the fee is worth the costs they incurred, taking into account the probability of getting hired, the salary level, and benefits when they are employed.
- The Singapore Government also has an Employment Agency Regulatory Framework that it enforces strictly. Hence, by using the service of licensed recruitment agencies, Café Galilee is assured that the recruitment is conducted in compliance with national laws and regulations.

Managing expectations

- Café Galilee adopts a forthright approach with candidates during the interviews to make sure they are aware of the potential challenges of working in Singapore, such as the culture differences, high living cost, etc.
- Despite allowing foreign employees to terminate employment with one month's notice, there have been very few occasions where employees terminated employment before the end of the two-year contract. In the past ten years, only around one or two foreign employees left before end of their contract.

Arrival and induction

- The company provides post-arrival orientation briefing to newly arrived foreign employees. Topics covered during the briefing are issues like who to call in case of emergencies, Singapore's laws and regulations and cultures, information on the areas where the foreign employees work and stay, safety issues and tips, leisure activities, etc.

Promotion and retention

- Café Galilee posts a security bond for its migrant workers as required by regulations, but it strongly objects to withholding the passports of foreign employees in order to reduce its potential liabilities. It believes that foreign employees will be loyal to the company if the company treats them fairly.
- The company understands the business case for retaining employees, especially with regard to foreign employees, since getting new ones will require another orientation and readjustment. Café Galilee makes a point to ensure foreign employees are happy working there and organizes activities such as company lunches, birthday celebrations, and overseas retreats to bring management and workers, both foreign and local, together so that they get to know each other well.
- Promotions are typical, so foreign employees could see long-term prospects.

A1.6. Sprint-Cass Pte Ltd

A1.6.1 Foreign employee profile

Sprint-Cass is a Singaporean company in the electronics industry. It has approximately 150 employees of which 26 per cent are foreigners. Fifty per cent of the foreign employees are female. The main countries of origin are China, Malaysia, and the Philippines, with most employees between 20 to 40 years of age. The foreign employees have a diploma or degree-equivalent qualifications from their countries of origin. They are hired on permanent contracts mostly as

sales associates at the Singapore Changi Airport, except for five of them who work in the headquarters office in support functions.

A1.6.2 Best practices

Recruitment

- Recruitment agencies are chosen based on reviews by other employers and past experience. Recruitment agencies used thus far have been effective in identifying the right profile of candidates for the company. This reduces the chance of malpractice.
- Malpractices reported by employees after hiring will be referred back to the agencies, and the company will assist its employees to the best of its ability.
- The Singapore Government has a strict set of regulations on recruitment agencies and applies heavy penalties on licensed recruitment agencies found to be in violation of laws. Hence, by using the services of licensed, non-blacklisted recruitment agencies, Sprint-Cass is assured that the recruitment is conducted in compliance with national laws and regulations.
- A checklist is given by the company to the recruitment agencies to ensure key criteria, such as the ability to converse in simple English, are met. Job descriptions for each role are also provided to the recruitment agencies.
- The company's human resource staff conduct one round of interviews over Skype. During the interviews the company explains the salary packages to the candidates.
- Hiring decisions are made completely by the company, who then inform the agencies within a week after the interviews.

Arrival and induction

- Employees pay for their own travel arrangements to Singapore. The operations manager personally meets up with the recruitment agency representatives at the start of the foreign employees' employment with the company.
- Employees need to be issued with airport passes, which can take up to a week. In the interim the employees work at the headquarters. Once the airport passes are issued, the company conducts orientation in the airport on topics such as the company's history, products, distribution process, information about airport retailing, and expectations.
- The orientation takes around half a day, after which the Operations Manager has an informal lunch with the new employees (both local and foreign) to answer more personal questions.
- The manager brings the employees around the airport to familiarize them with their working environment. As rosters would have been planned by then, the manager also brings the employees to the shops where they will be placed to introduce them to their supervisors and give them a chance to exchange contacts. While walking around the airport, the manager also introduces the employees to their fellow countrymen.

Promotion and retention

- Career progression for sales associates in the company is admittedly difficult since there can only be one supervisor at each shop. Nevertheless, the company finds that migrant workers are generally committed to their jobs and are keen to stay on since their pay is higher than what they would have received in their home countries. This is reflected by the fact that foreign employees have stayed with the company for more than ten years.

Managing labour mobility: Opportunities and challenges for employers in the ASEAN region

The Tripartite Action to Protect and Promote the Rights of Migrant Workers Project (ATP) aims to increase labour rights protection and decent work opportunities for women and men migrant workers in the ASEAN region. The ATP promotes close engagement with social partners on all aspects of migration management. One of its three specific objectives is to enhance the capacity of the social partners to influence labour migration policy and protect the rights of women and men migrant workers.

Under this project, in order to fully engage employers' organizations in the ASEAN processes on labour migration, an Action Plan was developed. Initially five priority areas were decided as part of the Action Plan. These include skills matching and mobility, hiring of migrant workers, occupational safety and health, forced labour and human trafficking, and non-discrimination. This publication consolidates the background papers and policy position papers drafted for and agreed upon through related workshops aimed at strengthening the voice of employers through the ASEAN Confederation of Employers (ACE) for four of the five priority areas; with the fifth workshop on non-discrimination to be held in early 2016.

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ISBN: 9789221302209 (print)
9789221302216 (web pdf)