



Comparative Study

on Laws and Policies in the Management of Migrant Workers in ASEAN



Enhanced Regional EU-ASEAN Dialogue Instrument
(E-READI)



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April 2021

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ASEAN: A Community of Opportunities for All

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The Study, conducted at regional level and across ten ASEAN Member States, has fulfilled its objective of offering comprehensive analysis on how ASEAN Member States have dealt with the movement of migrant workers into their labour markets, covering all skill levels and including those occupations under the 8 ASEAN Mutual Recognition Arrangements (MRAs), and providing recommendations as feedback for ASEAN policy makers and practitioners in improving policies and measures pertaining to the mobility of migrant workers.

The Regional Report and ten Country Reports were produced and endorsed following a series of extensive consultations with SLOM-WG since 2019. The Regional and Country Reports were launched at the High-Level Dialogue Forum and Launching Ceremony conducted virtually on 20 April 2021.

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LIST OF ABBREVIATIONS

ACRA	Accounting and Corporate Regulatory Authority
AEP	Alien Employment Permit
AMS	ASEAN Member States
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
BRI	Belt and Road Initiative
CPF	Central Provident Fund
DICA	Directorate of Investment and Company Administration
E-READI	Enhanced Regional EU-ASEAN Dialogue Instrument
EFMA	Employment of the Foreign Manpower Act
EP	Employment Pass
EU	European Union
FRC	Foreigner Registration Certificate
FWCMS	Foreign Workers Centralized Management System
FWRC	Foreign Worker Registration Card
HMO	Health Maintenance Organisation
ICA	Immigrant and Checkpoints Authority
ILMA	International Labour Market Access Index
IT	Information technology
MIC	Myanmar Investment Commission
MOLISA	Ministry of Labour, Invalids and Social Affairs
MOM	Ministry of Manpower
MPA	Migration Policy Analysis
MRAs	Mutual Recognition Arrangements
MYE	Man-year entitlement
NTS	Non-traditional sources
OECD	Organisation for Economic Cooperation and Development
OSOS	One Start One Stop Services
PEP	Personalised Employment Pass
PR	Permanent residency
PRC	Philippine Regulatory Commission
SLOM WG	Senior Labour Officials Meeting's Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN
SOCSSO	Social Security Organisation
SSO	Social Security Office
TKA	Tenaga Kerja Asing
WICA	Work Injury Compensation Act
WPLN	Workplace Literacy and Numeracy



Foreword by

H.E. DAO NGOC DUNG

Minister, Ministry of Labour, Invalids and Social Affairs of Viet Nam

I am very happy to note the finalization of the *Comparative Study Report on the Law and Policies in the Management of Migrant workers in the ASEAN region* which has provided a much needed comprehensive and cross-cutting view on the current handling of all migrant workers across skill levels in ASEAN Community.

In 2019, The United Nation Department of Economic and Social Affairs estimated that there are currently 10 million international migrants residing in the ASEAN region, among whom nearly 6.8 million have migrated from another ASEAN Member State, the number will only continue to grow ever larger as the countries of ASEAN move closer together and all ASEAN countries are now becoming countries of destination. Therefore, the management of foreign workers in ASEAN is paid more attention by the Governments toward ensuring the promotion and protection of the rights of migrant workers.

In this context, the *Comparative Study Report on the Law and Policies in the Management of Migrant workers in the ASEAN region* have put forward the overall snapshots of the laws and regulations of migrant workers in ASEAN Member States as well as outlined the challenges unique to each national context as well as those common in the region. With the result of these findings, we, the ASEAN labour sector, immigration, public security and other relevant sectoral bodies, can now looking forward to many areas of potential cooperation among ASEAN Member States to address the complex challenges created by the increasing immigration to ASEAN countries, but also to benefit more fully from the skills and talents of incoming migrant workers.

On this occasion, I would like to extend my appreciation for the support of the Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI), the cooperation and participation of the ASEAN Member States, the efficient coordination of the ASEAN Secretariat and the active involvement of national and international experts – all of them have been together with Ministry of Labour, Invalids and Social Affairs of Viet Nam in this initiative.

With the aspiration to promote greater mobility of workers within the ASEAN region and developing strategies to gradually overcome the challenges laid out before us, I hope to see more effective cooperation to further strengthen the management of foreign workers in individual country in particular and in the whole region as a result of this study.

With such efforts, ASEAN will likely become a Community of Opportunities for All and Leaving No One Behind.

H.E. DAO NGOC DUNG





Foreword by

H.E. DR IDA FAUZIYAH

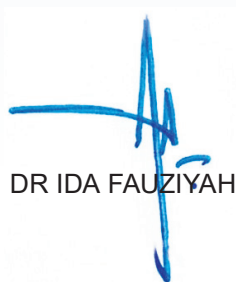
Minister, Ministry of Manpower, Republic of Indonesia,
Chair of ASEAN Labour Ministers Meeting 2020-2022

Labour Migration is a global issue which affects almost all countries in the world. It has significant impacts on economic growth and development, not only in countries of origin, but also in destination countries. Migrant workers also contribute a great deal of beneficial aspects to the labour market. Migrant workers send remittances to family members in their countries of origin, and they upgrade their skills and achieve best experiences during their time working in destination countries. Therefore, the protection of migrant workers has become an international, regional, as well as national priority.

The launch of the Comparative Study and Laws and Policies in the Management of Migrant Workers in ASEAN is one of the ASEAN Labour Minister's achievements in promoting the protection of migrant workers in the ASEAN region. The study examines how ASEAN Member States (AMS) have dealt with the increased entry of migrant workers, at various skills levels, in the ASEAN region. This affects the labour markets in countries of origin as well as destination countries. It also highlights the differences and similarities of existing immigration and worker mobility laws and policies regulating the entry and stay, incorporation and exit of inbound migrant workers, as well as terms of employments. I expect this study will be a useful reference for stakeholders and regulators when facing common issues such as inefficient administrative management related to migrant worker regulations among AMS, an increasing number of undocumented and noncompliant regulation workers and placement agencies, and of course job security for all local employees.

Therefore, as the ALMM Chair, I would like to express my gratitude to ASEAN Member States, the ASEAN Secretariat, regional and national experts, ILO, the EU and its Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI), and other partners who provided their valuable inputs, knowledge sharing, and insights for completing this study. I hope the study would be a useful reference for all readers, especially for AMS Communities including government, workers, employers, and other related partners in order to provide better protection for migrant workers.

Thank you.



DR IDA FAUZIYAH





Foreword by

H.E. DATO LIM JOCK HOI

Secretary-General of the Association of Southeast Asian Nations (ASEAN)

ASEAN Member States (AMS) have achieved significant economic progress over the past decades. For "sending" countries, labour migration has become an important source of remittances and a lifeline for countless families that rely on migrant workers as income earners. At the same time, "receiving" countries have seen increased demand for labour migrants, who are regarded as essential contributors to grow and sustain their economies. Around 20 million migrants are estimated to be from AMS, among whom almost 7 million migrated to other countries within the region.¹

The COVID-19 pandemic has adversely affected our region's economy. Since 2020, many migrant workers have lost their jobs and returned to their home country, as businesses closed or downsized their operations. However, this setback is expected to be temporary as ASEAN's economic growth is forecasted to bring about a strong recovery of 5.5% in 2021.² The demand for migrant workers is expected to rebound in parallel with the region's economic recovery.

In the long term, labour migration in ASEAN is projected to grow. Recognising the importance of coherent and cohesive national policies and measures in order to support safe and orderly migration of labour, ASEAN places the protection and promotion of the rights of migrant workers high on our policy agenda. This commitment is demonstrated through the *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration)* and the *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers*. The *ASEAN Mutual Recognition Arrangements in eight professions as well as the ASEAN Qualification Reference Framework (AQR)* are also in place to support our efforts in this endeavour.

This publication was initiated to support the promotion of coherent and optimal policy practices towards greater mobility of migrant workers in ASEAN. The report also provides an overall analysis of the main patterns and trends in the region using the International Labor Market Access Index (ILMA) to measure the relative accessibility of labour markets for migrant workers. Furthermore, this publication highlights significant progress that ASEAN has achieved, including the pursuit of regulatory and legal reforms, as well as identifies persistent challenges, such as gaps in the efficiency of operations and reduction of non-compliance.

This study, which was led by the Ministry of Labour, Invalids and Social Affairs (MOLISA) of Viet Nam with the support of the Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI) and the ASEAN Secretariat, was endorsed as an activity in the Work Plan 2016-2020 of the Senior Labour Officials Meeting's Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN.

I hope that the findings presented in this study provide useful insights and guidance to AMS in their continuous efforts to improve the governance of labour migration in our region. I encourage relevant stakeholders to consider the recommendations offered in this report, which complements our vision to build an inclusive ASEAN community that promotes equitable access to opportunities for all.


DATO LIM JOCK HOI



1 International Organization for Migration (IOM) and International Labour Organization (ILO), Risks and rewards: Outcomes of labour migration in South-East Asia, accessible online at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_630870.pdf

2 ASEAN Secretariat, ASEAN Economic Integration Brief (2020), accessible online at https://asean.org/storage/AEIB_No.08_November-2020.pdf



Foreword by

H.E. JOOST KORTE

Director-General, Directorate-General for Employment,
Social Affairs and Inclusion, European Commission

I was delighted to read this Comparative Study on Laws and Policies in the Management of Migrant Workers in ASEAN, which the European Union supported through the Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI).

Within the EU, based on the constituting Treaties, workers enjoy the same labour rights and social protection as nationals of the country where they work, regardless of their Member State or origin. This is key for the free movement of EU citizens within the 27 EU Member States' borders – they can look for a job in another EU country, work there without needing a work permit, and stay there even after employment has finished. It is essential for EU integration and economic development. Having equal access to social and labour rights has also proven to be essential during the COVID-19 crisis.

This publication is an important contribution to the protection of the rights of migrant workers in the ASEAN region. It is the first comprehensive analysis of how the ASEAN Member States cover the increasing number of incoming workers to their labour markets both in legislation and practice. It goes beyond the analysis of measures in place: the study also covers progress, including regulatory reforms, and challenges in particular in the area of non-compliance of employers, recruitment and placement agencies with regulations on the protection of migrant workers.

This publication can serve as a stepping-stone for further ASEAN-wide cooperation by sharing experiences between ASEAN countries, closing gaps with international labour standards and aiming for universal application of migration measures. These include measures on ensuring labour rights, in particular on the prevention of the payment of recruitment fees by migrant workers and the equal access to join, form and be elected as representative of a trade union, and access to healthcare, public education, reasonable accommodation and social benefits.

I thank all representatives of the ASEAN Member States, the ASEAN Secretariat, and all those involved in the process of completing this Study. I am sure that good use will be made of this publication, among stakeholders, including policy-makers, government officials, parliament members, private business actors, trade unions, civil society organisations, recruitment companies, migrant workers and their families, practitioners and the wider public.



JOOST KORTE



EXECUTIVE SUMMARY

In recent decades, migration has become a more important issue for the Association of Southeast Asian Nations (ASEAN) Member States (AMS). Whilst the ASEAN region is still predominantly a region of emigration, there has also been a remarkable upsurge in immigration, particularly since the 1990s. This surge reflects the region's rapid economic development, which has led to an increased demand for migrant labour in both lower and higher-skilled sectors in all AMS economies.

This study examines how AMS have dealt with the increased entry of non-citizens into their labour markets, covering all skill levels and including those occupations under the 8 ASEAN Mutual Recognition Arrangements (MRAs). This study highlights both the similarities and differences of existing immigration laws and policies that regulate the entry and stay, incorporation and exit of inbound migrant workers. In total, this study assessed 50 types of migration measures that together provide a complete picture of how AMS manage the mobility of inbound migrant workers. 27 employment permits used within the ASEAN region were systematically and methodically compared across these 50 migration policy measures.

Data was collected using four methods:

- (1) *a comprehensive survey* on existing migration measures in the 10 AMS, with officials that had direct and expert knowledge of the existing laws and policies governing the management of inbound migrant workers;
- (2) *105 semi-structured key-informant interviews* with AMS practitioners and experts. These included senior government officials, embassy personnel, officials of recruitment agencies, and international & nongovernmental organisations, including migrant organisations;
- (3) *10 national case-studies* completed by 12 national experts, who together collated and reviewed over 200 official documents and produced more than 500 pages of case-study material; and
- (4) *three multi-stakeholder meetings* attended by 87 participants.

■ Key Findings

Immigration policy is primarily about *selection*. Governments in the ASEAN region manage the mobility of inbound migrant workers through combination of measures targeted to specific groups of migrant workers. Currently, there are 536 entry, stay, incorporation, exit and enforcement measures in place in the ASEAN region. A close analysis of these measures signals the following key observations for each category:

Entry and Stay Measures

- The requirement of a job offer is the most common eligibility measure implemented across AMS. This reveals the central role employers play as a driver of migration in the region, although AMS generally reduces employer's leeway to singlehandedly dictate the terms of employment by introducing age related requirements and regulations on work conditions.
- Financial capacity requirements, including wage thresholds, as well as sectoral and occupational requirements, are practiced in half of AMS.
- Having a specific nationality is not a common requirement in the ASEAN region. Most countries give no specific preference to ASEAN nationals.

- Similarly, all AMS issue permits that migrants under the MRAs could use, yet no AMS give preference to ASEAN nationals within these MRA occupations.
- Gender requirements are rarely used and having a specific marital status or language skill are not conditions for immigration eligibility in the region.
- Almost all AMS require the payment of application fees as well as the fulfilment of certain health requirements, with measures being dependent on migrants' skill and income level: the higher the skill or income of the migrant, the less stringent the health requirements and the higher the fee.
- Recognition of qualifications is a common requirement in the region, not only for the highly skilled and professionals but also for low and mid-skilled workers, and entrepreneurs, in some AMS.
- The majority of AMS require a labour-market test, although the payment of levies, deposits and quota requirements are less common in the region. If used, these types of restrictions, cut across all skill levels, affecting nearly all types of migrant workers - from domestic workers to CEOs.
- Most AMS limit the initial stay of migrant workers to up to two years, and that applies across skill levels, although higher skill-levels are associated with increased opportunities to switch sectors, employers and occupations, and with lower restrictions on the number of total years of stay.
- There is also more flexibility in the region on renewal of permits, with most AMS allowing migrants to renew at the destination, while periodic health checks are practiced only on a few countries.

Incorporation Measures

- Access to healthcare, and to some extent pension funds and disability benefits, are almost universal across AMS, and the pattern holds across all skill levels.
- The majority of AMS provide either full or partial access to public-education institutions, and more than half oblige employers to ensure reasonable or adequate accommodation.
- All AMS offer equal treatment and protections in criminal courts and tribunals, as well as legal protection against the confiscation of identity documents.
- Family reunion is highly restricted in the region, along with access to citizenship and permanent residence. These rights, if available at all, are almost always reserved to the high-skilled and high-income earners. Even for those who can bring their family, their spouse would have no automatic right to work.
- In all but two AMS, the right to marry citizens is fully recognized. In 8 AMS, migrants must work under permits that give no equal access to join and form trade unions in parity with citizens.

Exit Measures

- An entry ban for deported workers is universally applied in the region.
- No AMS require that migrant workers get prior permission before they can leave the country, such as a no-objection certificate from their employer or other authorities, nor are there penalties imposed if migrant workers leave before their contract expires.

Enforcement Measures

- While nearly all AMS require migrants to get a compulsory identification document, only half operate an Alien's Register or a Population Register that include migrant workers. Even fewer AMS collect biometric information on migrant workers.
- Half of AMS impose imprisonment as a penalty for noncompliance, and four consider illegal residence as a criminal offence. There is a clear divide in the region on the imposition of penalties, with one group of countries imposing harsher penalties than the other.

Migration Measures in the ASEAN Region: An Analysis using the International Labour Market Access Index (ILMA)

Going beyond the focus on individual measures, this study also provides a comparative analysis of the main patterns and trends in ASEAN using the International Labour Market Access index (ILMA). Developed by Migration Policy Analysis (MPA), the ILMA index quantifies the relative accessibility of labour markets using employment permits for migrant workers as the unit of analysis. The IMLA index deploys the 50 migration measures analysed in this study as proxy to estimate the accessibility of any given labour market. The lower the ILMA score of the work permits, the higher the accessibility to the labour market. Use of the ILMA methodologies has yielded these key observations:

- Score variations across all permits: There are significant variations in the ease of obtaining employment permits for ASEAN countries. The ILMA accessibility scores for employment permits in the ASEAN region vary widely and this variation is higher within countries than between them. This is evidenced by the significant difference in scores within countries that operate multiple permits.
- Score variations along skill levels: Low-skilled workers face higher obstacles in accessing ASEAN labour-markets. Permits targeting low-skilled workers score structurally higher on the ILMA index than permits regulating labour-market access for high-skilled migrant workers. Differences between low and high-skilled employment permits are particularly large in terms of stay and civil rights, but relatively smaller on health and social and health rights, indicating that the latter are more equally accessible for lower and higher-skilled migrant workers.
- Absolute and relative accessibility and corresponding benefits and rights: All employment-permit systems come with a range of regulations, including several rights and benefits as well as restrictive measures. Even the most accessible and least restrictive employment permit systems still include several restrictive measures.

Progress and Challenges in Implementation

Interviews with key informants in the region identified several areas where marked progress has been made but also where persistent challenges remain.

Progress identified:

- Legal reform and regulatory overhaul, including the introduction of new regulations on recruitment and outsourcing practices as well as the expansion of Labour Law, to include migrant workers, the drafting of legal documents to guide the implementation of relevant laws and progress in simplifying employment-permit procedures.
- Coordination structures created for policy formulation and operations at inter-agency and inter-governmental levels, as well as between the public and private sectors, including civil society.
- Significant investments made to improve information technology infrastructure, where in many AMS, IT improvements have increased efficiency, including better turn-around times in work-permit applications.
- Headway made in achieving key policy objectives, from skill transfers to strict the enforcement of immigration and labour laws.

Challenges remaining:

- Improving operational efficiency and day-to-day management. Effective management is complicated in many AMS by the still daunting task of continuing to overhaul laws and regulations, improve database management, and better coordinate various government agencies.
- Reducing regulatory non-compliance, particularly by employers as well as recruitment and placement agencies. The prevalence of non-compliance can be primarily attributed to difficulties in the function of monitoring, inspection, and sanctioning.

- Addressing the presence of undocumented workers which affects nearly all AMS.
- Mitigating potentially adverse effects of increased immigration to ASEAN societies and economies, such as ensuring job opportunities and job security for local employees and minimising cultural misunderstanding.

Forging an ASEAN Way Forward: Recommendations and Opportunities for Cooperation

Various opportunities centred on regional cooperation and mutual learning could enable AMS not just to address the complex challenges increasing immigration brings to ASEAN countries, but also to benefit more fully from the skills and talents of incoming migrant workers. These opportunities, subjected to the varying development stages of each AMS, as well as the national policy objectives of each AMS, include:

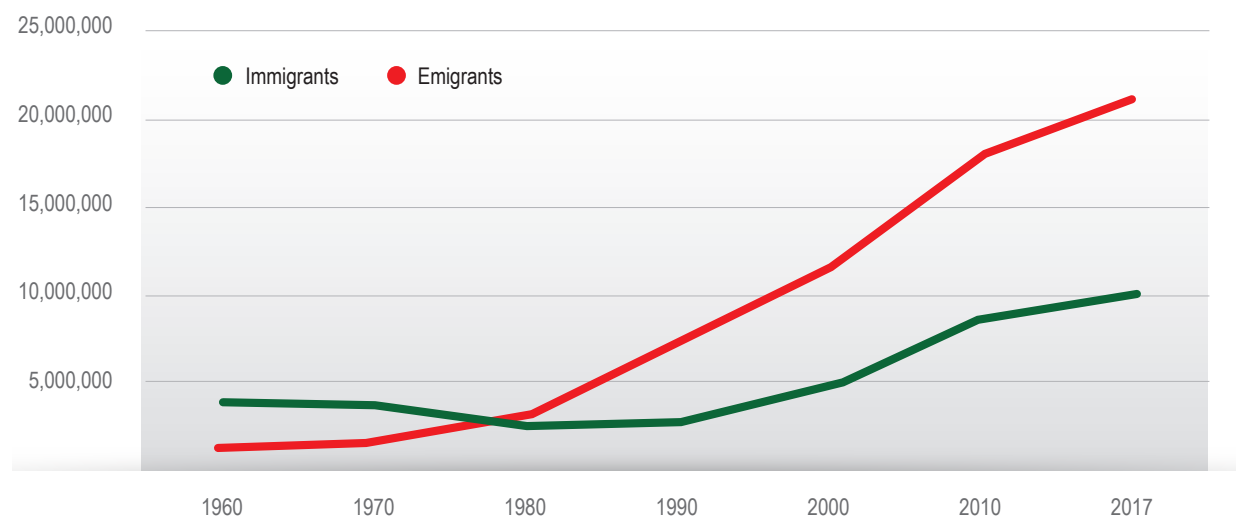
- Improve access of ASEAN migrants by providing preferential treatment to the ASEAN labour-market, particularly those under MRAs. Full utilization of the skills and qualifications of ASEAN migrants is not possible without preferential access of ASEAN workers to ASEAN labour-markets.
- Support to an ASEAN-wide, periodic, and systematic review of policy and regulatory changes on migration based on the ILMA methodology. This includes establishing an annual region-wide reporting system, adopting a systematic methodology for tracking policy trends, and periodically updating the ILMA index as a robust benchmark for analysing future labour-migration policy.
- Assess the effectiveness of regulations and sharing these results with other AMS by creating an ASEAN-wide system of information sharing based on the outcomes of monitoring & evaluation (M&E) of experiences and lessons learned.
- Strengthen regional policy coherence by embarking on an ASEAN-wide dialogue on critical migration measures, where regional gaps and differences are the greatest.
- Measures with wide differences include:
 - » Financial capacity requirements, including wage thresholds;
 - » Sectoral and occupational requirements;
 - » Penalties for noncompliance including measures designating illegal residence as a criminal offence;
 - » Recognition of qualifications;
 - » Requirements on labour-market tests, quotas, levies and deposits;
 - » Initial length of stay of migrant;
 - » Family reunion;
 - » Periodic health checks;
 - » Portability of permits, particularly the ability to switch sectors, employers and occupations; and
 - » Restrictions on the number of total years of stay.
- There are also many opportunities for AMS to close the few remaining gaps and aim for universal application of migration measures in the region where differences are small.
- Measures with narrow differences include:
 - » Gender requirements;
 - » Equal access to join and form trade unions;
 - » Right to marry citizens;
 - » Access to healthcare and disability benefits;
 - » Renewal of permits;
 - » Access to public educational institutions; and
 - » Access to adequate or reasonable accommodation.

1. INTRODUCTION

In recent decades, migration has become a more important issue for the AMS. Although ASEAN is still predominantly a region of departure, with over 20 million emigrants, according to most recent estimates, immigration levels have also been increasing. Since the 1990s, immigration has almost doubled, from an estimated 3.2 million immigrants in 1990, to over 5.8 million by 2017 (See figure 1).

The remarkable surge in immigration within the ASEAN region reflects processes of rapid economic development which has resulted in the increasing demand for migrant labour in several lower as well as high-skilled sectors of AMS economies. Rapid demographic ageing in many AMS and heightened economic development in the region are likely to further boost labour mobility within the region in the future. Economic growth, the changing structure of labour demand (partly away from industrial labour to high- and low-skilled jobs in the thriving service sectors) and globalization of trade and finance have also resulted in increasing labour mobility to lower middle-income countries in ASEAN.

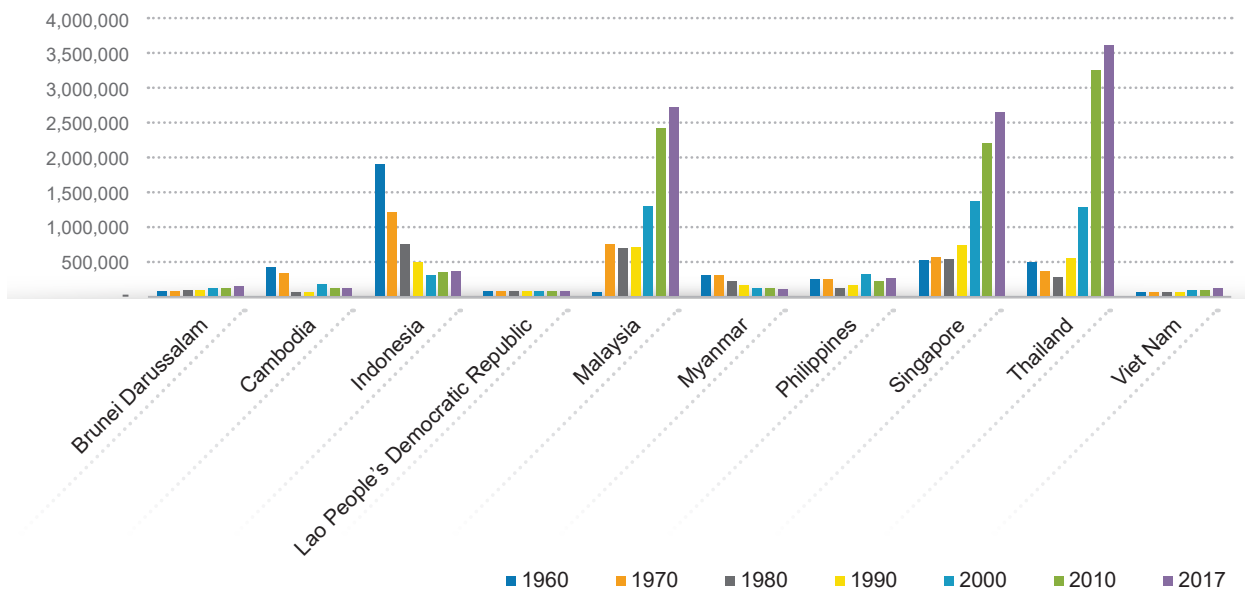
Figure 1: Number of Immigrants and Emigrants from the ASEAN Region, 1960-2017



Source: United Nations Population Division.

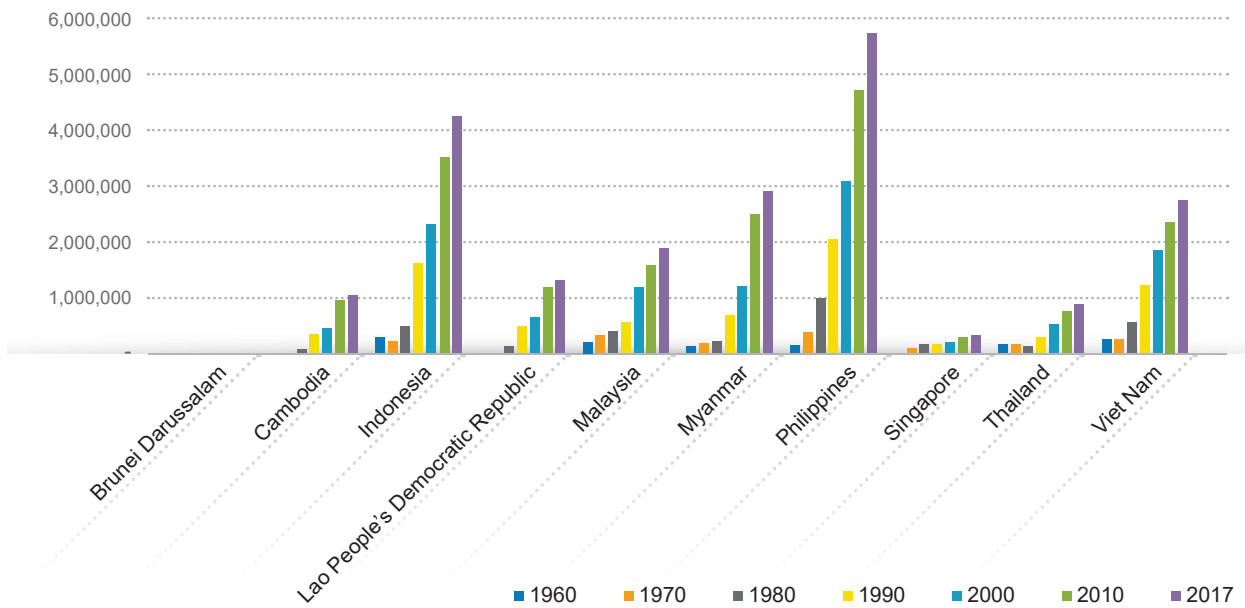
Indeed, except for the Philippines, where emigration is much more global in character, most of this migration is intra-regional: from and to other AMS, or from or to countries located in South or East Asia. This study's analysis of migration data also highlights two often overlooked facts about migration trends in the AMS. First, while Brunei Darussalam, Malaysia, Singapore, and Thailand remain the main destination countries in the region, recent years have also seen increasing levels of immigration in several other AMS. Second, although emigration from what is often considered as "sending" countries such as Cambodia, Lao PDR, the Philippines, Indonesia, Myanmar, and Viet Nam has surged, particularly since the 1990s, Malaysia and to some extent Singapore and Thailand, have also shown significant levels of emigration, thus challenging conventional distinctions between immigration and emigration countries (see figures 2 and 3).

Figure 2: Immigrant Population in ASEAN Member States, 1960-2017



Source: Author's calculations based on data from United Nations Population Division.

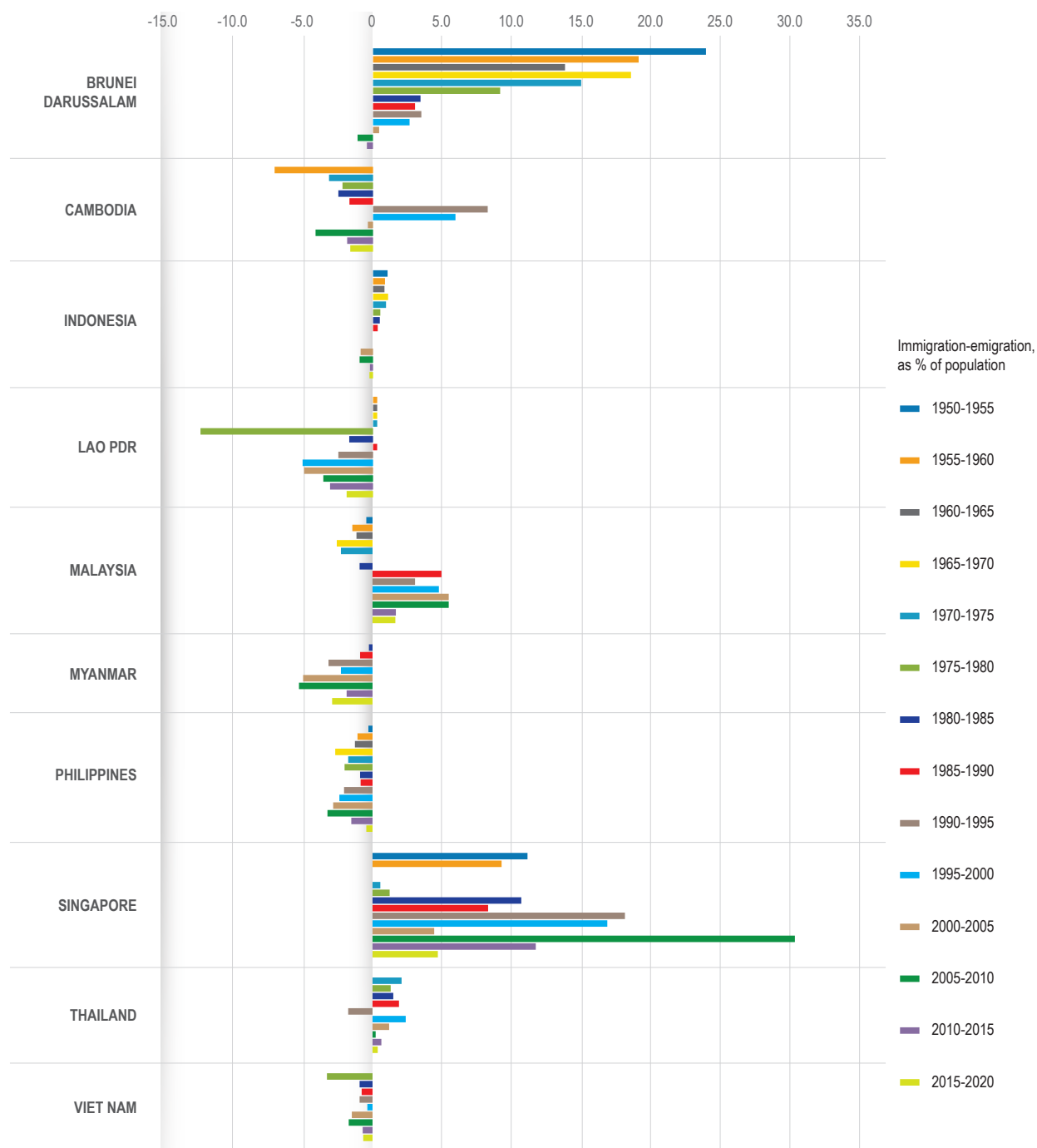
Figure 3: Emigrant Population in ASEAN Member States, 1960-2017



Source: Author's calculations based on data from United Nations Population Division.

Indeed, in recent years, migrants have also moved into other AMS including the Philippines, Viet Nam, and Indonesia. Figure 4 shows the net migration rates for ASEAN countries over the 1950-2020 period, estimated by the population division of the United Nations. While migrant population data used in figures 2 and 3 are suitable to track long-term trends in population mobility, these estimates of annual migration flows (the actual number of people moving in and out) are more suitable to track more recent trends. The net migration rates calculated for each five-year period show that, in recent years, there has been a certain convergence in net migration rates, suggesting that high net immigration to Singapore, Brunei Darussalam and Malaysia is levelling off, and that there has been a relative decrease in emigration and increase of immigration to other countries in the region.

Figure 4: Net Migration Rates in ASEAN Member States, As Percentage of Population, 1950-2020



Source: United Nations Population Division.

While more detailed comparative data on inflows and outflows is lacking, this data on net migration rates supports the idea that migration to ASEAN countries has been increasing, both from within and outside the region. For instance, the number of Chinese migrants in ASEAN countries has been growing rapidly over recent years. This increase is partly linked to the expansion of Chinese foreign direct investments, such as the Belt and Road Initiative (BRI), which has boosted the development of infrastructure projects and the associated labor mobility of officials, workers, business people and their family members.¹

1 The ASEAN Post Team, "Chinese Labour Migration to Southeast Asia," December 14, 2018, <https://theaseanpost.com/article/chinese-labour-migration-southeast-asia>

With most ASEAN countries now also becoming destination countries, societies and governments in the region are facing significant new challenges in terms of regulating and managing this labour mobility. Some of these challenges may be unique to the national context but many are likely to be shared with other AMS. With an eye on the promotion of regional coherence and the adaptation of best policy practices, there is an urgent need for generating systematic and comparative insights into trends and patterns of immigration policies in ASEAN countries. So far, such analysis has been lacking because of a lack of adequate measurement instruments and policy data. This is the gap that this report aims to fill.

Purpose and Objectives

This report examines how AMS have dealt with the entry of non-citizens into their labour markets. It assesses the various configurations of immigration policy and law in the ASEAN region and, more specifically, it analyses the differences in managing the entry and stay, incorporation and exit of migrant workers within AMS. The analysis in this study covers all skill levels, including occupations under the 8 ASEAN Mutual Recognition Arrangements (MRAs).² It does so in particular through the generation of new policy data provided by the AMS and the integration of newly collected data into the novel International Labour Market Access Index (ILMA). The ILMA methodology enables a systematic assessment and comparison of regulations within each entry permit.

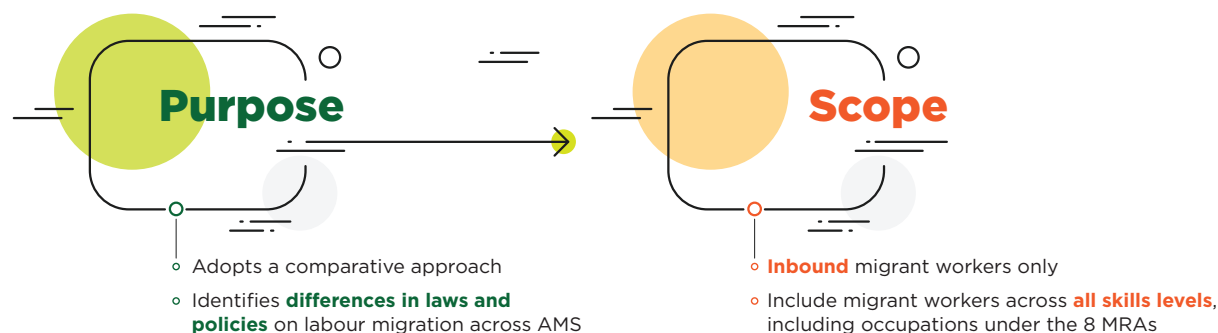
This study's findings and recommendations provide essential inputs to the promotion of dialogue and exchange between the European Union (EU) and ASEAN, with the involvement of international organisations and relevant stakeholders, on issues related to laws and policies on migrant workers.

It is part of the initiative of the Ministry of Labour, Invalids and Social Affairs (MOLISA) of Viet Nam to better understand possible ways to promote greater mobility of migrant workers within the ASEAN region and to develop strategies to gradually overcome hurdles that currently obstruct such mobility. This study addresses the need of AMS to identify gaps between regional commitments and current national legislations and regulations related to migrant workers. Through a comparative approach, it identifies differences in the AMS systems of law and policies and analyses the implications of such discrepancies.

Scope and Definition

This study focuses on analyzing measures that affect inbound migrant workers only and thus excludes measures AMS have implemented concerning their citizens leaving to work in other AMS. Measures affecting inbound workers remain an under-researched area of study in the ASEAN region as most prior studies focused on governments' policies to facilitate labour outmigration of their own citizens abroad. This study complements existing studies by turning the focus on the destination side and by specifically looking at laws and policies affecting migrant workers coming into AMS.

Figure 5: Purpose and Scope of the Study



Source: Author's illustration

² Between 2005 and 2014, AMS signed MRAs in seven occupations (accountancy, architecture, dentistry, engineering, medicine, nursing, and tourism) as well as a Framework Arrangement on Mutual Recognition in surveying, designed to facilitate professional mobility within the region.

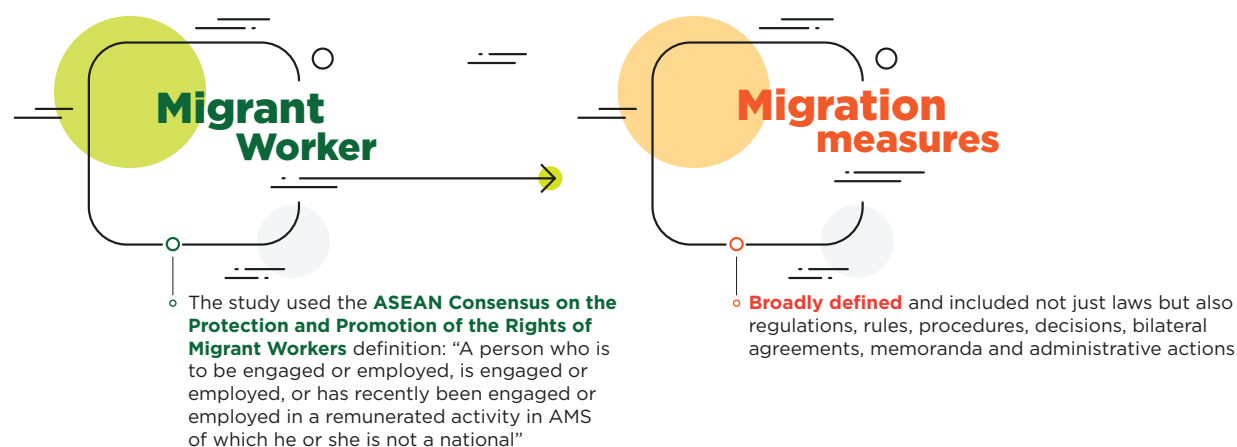
This study uses the definition of a migrant worker as described in the ‘ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers’:



A migrant worker is a person who is to be engaged or employed, is engaged or employed, or has recently been engaged or employed in a remunerated activity in AMS of which he or she is not a national.

For the purposes of this study, migrant workers include all workers across skill levels, including high-skilled migrant workers under the 8 MRAs. Migration policy measures are also defined broadly and include not just laws but also regulations, rules, procedures, decisions, bilateral agreements, memoranda and administrative actions relevant to the mobility of incoming migrant workers.

Figure 6: Definitions Used: Migrant Worker and Migration Measures



Source: Author's illustration

This report is divided into six parts. Sections 2 and 3 set out the conceptual framework and methodology, which includes the study design, data collection, and the composition of the research and review team. The report's main empirical sections follow with section 4 offering a comparison of the different policy measures AMS are currently implementing. These measures include those employed to manage the entry, stay, incorporation and exit of inbound migrant workers, as well as the various enforcement measures governments use to ensure implementation. Section 5 then provides a quantitative analysis of the main patterns and trends (set out in section 4), using the methodology behind the ILMA Index. Section 6 evaluates the implementation of these measures based on the expertise shared by AMS practitioners, with a focus on the progress and challenges key government officials as well as the private sector and civil society actors.

The report ends with policy recommendations and identifying programmatic opportunities for cooperation at both the national and ASEAN-wide levels, including ways of using the ILMA methodology to enhance future regional cooperation and mutual learning in terms of the increasingly important field of immigration policies and related vital issues around labour market access.

2. CONCEPTUAL FRAMEWORK

2.1. Immigration Measures Across Four Categories

This study adopts four categories of measures that together provide a complete picture of the different ways in which governments in the region manage the mobility of inbound migrant workers.

- **Entry and stay measures**, which include procedures and eligibility criteria to obtain and maintain entry, residence and work permits, both before and after arrival.
- **Incorporation measures**, which regulate the post-entry rights and other dimensions of migrant worker's incorporation into AMS, such as access to permanent residency, citizenship and other civic and socio-economic rights.
- **Exit measures**, which regulate both forced and voluntary exit/return of migrant workers.
- **Enforcement measures**, which include procedures and requirements to ensure that the above measures are implemented.

This study reviews and compares AMS laws and policies across these four categories covering measures migrants and other relevant actors must abide at all stages of the migration cycle: before entering the country of destination, upon the migrant worker's arrival and stay and during his or her return.

2.1.1. Entry and stay measures

It is within the entry and stay area that governments exercise the first line of control with regards to who can access employment permits in terms of processes and procedures to obtain such permits as well as requirements that must be met to keep and renew them. This study identified three sub-categories under entry and stay regulations: eligibility requirements, procedural requirements, and terms of stay.

- **Eligibility requirements** specify *who can avail themselves of an employment permit*, according to criteria such as the applicant's demographic characteristics, skills, and other capacities. Measures under this sub-category include regulations designed to ensure that labour markets are only open to migrants working in a certain sector or occupation. It also includes measures stipulating that only prospective migrants who can secure a job offer are eligible to apply for a permit, as well as measures that specify the required terms of that offer (such as wage and work conditions). Limiting access to those with job offers and corresponding restrictions on wages and other employment conditions puts a significant limitation on the legal employment of migrant workers. Eligibility requirements also include measures related to personal characteristics such as age, gender, and marital status. In some countries, admission as a migrant worker also requires at least some knowledge of the destination country's language.
- **Procedural requirements** identify the *difficulty to avail an employment permit* based on the conditions that need to be fulfilled by the employer and/or migrant worker at each step of the application procedure, as well as the financial cost and administrative requirements each step entails. Two common procedural requirements are payment of application fees for the employment permit and applying for a special visa or entry permits. Other regulations require employers to pay a levy, deposit, or bond for every migrant worker they hire, as well as a demand to meet quota requirements or pass a labour-market test. Other measures include regulations that require migrants to have their qualifications recognised by accredited institutions and mandatory health-checks at government-accredited clinics.

- **Terms of stay** focus on the *difficulty of keeping or holding on to the permit once it is granted*. Governments typically impose measures limiting the initial length of stay to a certain prescribed number of years, (usually less than two years). Others also cap the total number of years a migrant can work in the country, essentially limiting the number of times a permit can be renewed. Some regulations require that a permit can only be renewed after the migrant has first left the country. Some governments regulate the portability of work permits by barring switching between jobs or employment sectors, with the most restrictive regulations prohibiting migrant workers from switching to a new employer altogether. Other measures stipulate how long a migrant can stay after they have lost their job. Some governments provide some form of grace period that a migrant worker could use to find a new employer, while others terminate the migrant worker's right to stay immediately after losing employment. Other measures also impose periodic health testing, where migrant workers who fail the test sent are home immediately.

2.1.2. Incorporation measures

Incorporation measures pertain to regulations delineating a set of rights migrant workers can access while staying in the destination country, determining the extent to which migrant workers are incorporated in the society where they work. This study focuses on three key dimensions of incorporation: social and health rights, judicial rights, and civil rights.

- **Social and health rights** cover *migrants' access to health and social services* such as health-care services and facilities, employment injury and death benefits and pension funds. Some governments provide equal access to migrants and citizens alike, while others introduce regulations restricting migrants' access to some or all health and social services. This sub-category also includes measures regarding the eligibility of migrant workers to apply to public educational institutions and services, such as degree level courses and vocational training, as well as employers' obligations to provide adequate accommodation for migrant workers.
- **Judicial rights** refer to *measures ensuring migrant workers' access to existing state systems of justice*. This study focuses on two measures: access to protection against confiscation of identity documents, and migrants' rights to equal treatment and protection before criminal courts and tribunals. The protection against confiscation of identity document is particularly important given that confiscation of passports by employers poses a particular risk to migrant workers.
- **Civil rights** include *measures that promote opportunities for migrant workers to take part in civil processes and lead full lives in society*. For example, some governments regulate family reunion, (the right or not for families to join the migrant worker), whether migrant workers can marry citizens, and whether the spouse or partner of a migrant worker also has the right to work. This policy sub-category also includes measures regulating migrant workers' rights to join or form trade unions and other associations, as well their eventual access to permanent residency and citizenship.

2.1.3. Exit measures

The exit category comprises measures stipulating the *procedural requirements migrant workers and/or their employers must fulfil before returning to their country of origin*. This study focuses on three exit measures: whether prior approval is required before the migrant worker can return home (such as in the form of exit visa or permits); whether employer and/or migrant worker are subjected to penalties if a migrant worker returns before the expiration of his or her contract; and whether deported workers are subjected to a re-entry ban.

2.1.4. Enforcement measures

The fourth and final category focuses on enforcement measures and include regulations ensuring compliance to the rules for all actors involved in the migration process, including not only migrants and their employers, but also other individuals. This category includes measures that regulate the nature and extent of penalties imposed on migrant workers and other actors in the case of non-compliance. Some governments, for example, would consider illegal residence as a criminal offence while others treat it as an administrative offence, with the former are subjected to more severe penalties than the latter. This policy category also concerns penalties associated with document forgery, the unauthorised hiring of migrant workers, as well as penalties for individuals found aiding and abetting irregular migrants and for airlines or

other carriers for bringing passengers lacking required documentation. Enforcement-related measures also include regulations on the registration of migrant workers. These include requirements for migrant workers to obtain and carry compulsory identification, the collection of biometric information from migrant workers and the operation of local and/or national population registers that include migrant workers.

In total, this study looked at 50 types of migration measures which are outlined in Table 1 below. More than half fall under the entry and stay category while the incorporation category has 13 measures and the exit and enforcement categories have 3 and 8 measures, respectively.

Table 1: Migration Measures Across Four Categories

Entry and Stay Measures	Incorporation Measures	Exit Measures
<p>Eligibility requirements to enter</p> <p>Migrant worker:</p> <ul style="list-style-type: none"> • Must have a job offer • Must be offered work condition at par with citizens • Can only work in specific occupations • Can only work on a certain sector • Must meet financial capacity requirements, including wage thresholds • Must meet age requirements beyond meeting the minimum age of 18 • Must meet nationality requirements • Must meet gender requirements • Must meet marital requirements • Must meet language requirements <p>Procedural requirements to enter</p> <ul style="list-style-type: none"> • Migrant worker must meet health requirements • Employer or migrant worker must pay an application fee • Migrant worker must have his/her qualifications recognized • Migrant worker must acquire a special visa or entry permit to enter the country. • The position offered to the migrant worker must pass a labor market test • Employer must pay a levy • Employer must meet quota requirements • Employer must pay a deposit or bond <p>Length of stay</p> <ul style="list-style-type: none"> • The initial length of stay is less than 2 years • There is a cap on the total number of years of stay • Migrant worker must undergo a health check periodically to keep the permit <p>Renewability of stay</p> <ul style="list-style-type: none"> • The permit can only be renewed by leaving the country • Migrant worker's right to stay is terminated within two weeks after losing employment <p>Portability of stay</p> <ul style="list-style-type: none"> • Migrant worker cannot switch employer • Migrant worker cannot switch sectors • Migrant worker cannot switch occupation 	<p>Social and Health Rights</p> <ul style="list-style-type: none"> • Employer is not obliged to provide adequate or reasonable accommodation for migrant worker • Migrant worker has no access to an employment injury and or death benefit • Migrant worker has no access to pension or provident fund • Migrant worker has no access to healthcare • Migrant worker is not eligible to apply to access public educational institutions and services (degree level courses and vocational training) <p>Judicial Rights</p> <ul style="list-style-type: none"> • Migrant worker has no protection against confiscation of identity documents • Migrant worker has no right to equal treatment and protections before criminal courts and tribunals <p>Political and Civil Rights</p> <ul style="list-style-type: none"> • The spouse or partner of the migrant worker is not eligible to work without asking for permission • Migrant worker is not eligible to apply for family reunion • Migrant worker has no equal right to join and form trade unions as citizens • Migrant worker is not eligible to apply for citizenship • Migrant worker is not eligible to apply for permanent residence • Migrant worker cannot marry a citizen 	<p>Procedural requirements to exit</p> <ul style="list-style-type: none"> • Prior approval is required before the migrant worker could return to the country of origin • Penalty/ies is /are given to employer and/or migrant worker if a migrant worker returns to the country of origin before the expiration of the contract • A deported migrant worker is subjected to an entry ban <p>Enforcement Measures</p> <p>Nature and extent of penalties to migrant workers for non-compliance</p> <ul style="list-style-type: none"> • Illegal residence is considered a criminal offense • Penalties for forging documents includes imprisonment <p>Nature and extent of penalties to other actors for non-compliance</p> <ul style="list-style-type: none"> • Penalties for employers hiring migrant workers included imprisonment • Penalties for people aiding and abetting irregular immigrants includes imprisonment • Penalties for airlines or other carriers for bringing passengers lacking relevant documentation exists <p>Registration controls</p> <ul style="list-style-type: none"> • Migrants required to get a compulsory identification documents and carry it but not citizens • Local and/or national population register which include migrant workers exists • The government collects biometric information from a migrant worker but not from citizens

It is useful to pause and note that governments implement these measures for various reasons: from protecting their own labour market, to supporting certain industries or protecting occupations that are considered vulnerable. Immigration measures often reflect national priorities. For example, governments that are concerned about unemployment in certain sectors may be less inclined to accept those categories of migrant workers who are seen as competing for jobs with native workers, in those sectors. While governments in need of migrant workers with specific skills are perhaps more inclined to make it easier for these to come and ideally stay. They might offer equal access to social security and other rights, even permanent residency. It is beyond the scope of this study to understand why governments chose certain measures; rather, the focus is on identifying the actual measures in place at the time of the review and providing a comprehensive comparison of policies at the regional level.

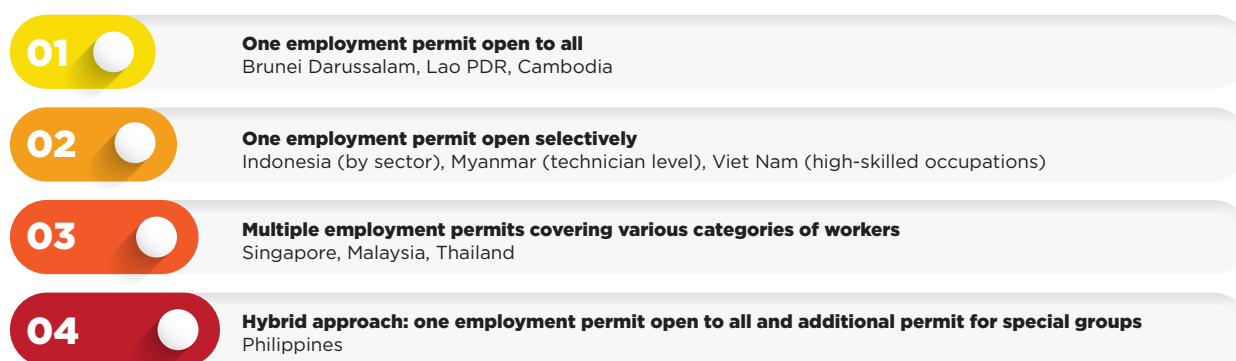
2.2. Level of Analysis: Employment Permits

AMS operate multiple types of employment permits for various categories of migrant workers. Each of these permits carry with it a unique set of combination of measures, with some permits exhibiting more restrictive measures than others. For example, even in the same country, and depending on the immigrant category, one can find a permit that allows for a migrant to switch employer and another permit that does not. Indeed, immigration measures are not homogenous at the country level but are often strongly differentiated depending on the type of immigrant.

Some governments have chosen to issue more than one employment permit reflecting more closely their varied national interest and priorities. It therefore makes little sense to ‘summarise’ the immigration and associated labour market policies on the national level using one single measure. To fully capture the diverse nature of immigration policymaking in AMS, this study therefore uses the various employment permits issued by each country as the appropriate level and unit of analysis. It systematically and methodically identifies and compares the different entry, stay, incorporation, exit and enforcement measures associated with each type of employment permit.³

A preliminary review of available employment permits in the ASEAN region was conducted to inform the design of this study revealing 27 different types of employment permit available for migrant workers. Six of the 10 countries in ASEAN operate with a single employment permit (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Myanmar, and Viet Nam) while Singapore, Thailand, Malaysia, and the Philippines operate multiple permits. There are essentially four approaches in AMS’ issuance of employment permits in terms of coverage, as illustrated in figure 7 below.

Figure 7: Four Approaches in Migration Management in the ASEAN Region



Source: Author’s illustration

3 For instance, Malaysia offers three permits, one of which, the Pas Lawatan Kerja Sementara is catered to low- and mid-skilled migrant workers and carries with it a specific combination of the various measures. For every approved permit under the Pas Lawatan Kerja Sementara, the employer will be personally required to sign an agreement in front of the Labour Department Official to the effect that he will pay the mandatory levy; prepare and sign a contract of employment with the employee which complies with the Employment Act; pay the wages and other benefits as provided for in the Act; comply with the minimum wage; provide accommodation which complies with the relevant Act; will not employ any foreigner who is undocumented or does not have the appropriate permit; will not hold the employees’ passport; and will pay for the medical care of the workers.

Brunei Darussalam, Lao PDR, and Cambodia operate one permit which is technically open to all categories of migrant workers. Indonesia, Myanmar, and Viet Nam also operate one employment permit, but these permits are only accessible to selected groups of migrant workers. Indonesia's employment permit is limited to specific sectors, while Myanmar and Viet Nam limit their permits to high-skilled migrants, including those at a technician level. Singapore, Malaysia, and Thailand offer multiple employment permits covering nearly all categories of workers. Thailand is unique among AMS for issuing targeted work-permits to migrants who are already in Thailand, including those facing deportation as well as workers born and living in Thailand without Thai nationality. The Philippines adopts a hybrid approach. It is the only AMS issuing one permit open to all migrants as well as an additional permit catering specifically to professionals in regulated occupations. Table 2, below, lists the number of employment permits issued per AMS, and their corresponding target groups.

Table 2: Number, Name and Target Group of Employment Permit/s Issued in AMS

Country	No. of Employment Permit/s	Name of Permit	Target Group
Brunei Darussalam	1	Foreign Workers License	All workers
Cambodia	1	Foreigner Work Permit	All workers
Indonesia	1	Foreign Workers Employment Permit	Those who work on specific sectors only
Lao PDR	1	Work Permit	All workers
Malaysia	3	Pas Lawatan Kerja Sementara	Those who work on specific sectors only, low, and mid-skilled workers
		Employment Pass	Only for high-skilled workers
		Foreign Domestic Helper	Only for domestic workers
Myanmar	1	Foreign Worker Registration Card	Only for technicians
Philippines	2	Alien Employment Permit	All workers
		Alien Employment Permit plus Special Temporary Permit	Applies only to certain regulated occupations

Country	No. of Employment Permit/s	Name of Permit	Target Group
Singapore	8	Employment Pass	Professionals, managers, and executives
		EntrePass	Entrepreneurs
		Personalised Employment Pass	High-earning existing Employment Pass holders or professionals
		S Pass	Mid-skilled workers
		Work Permit for Confinement Nanny	Malaysians working as confinement nanny
		Work Permit for Foreign Worker	Semi-skilled workers in the construction, manufacturing, marine shipyard, process, and services sectors
		Work Permit for Performing Artist	Performers working in public entertainment outlets such as bars, hotels, and nightclubs.
		Work Permit for Foreign Domestic Workers	Domestic workers
Thailand	8	Section 59: General	All workers; generally semi-high skilled
		Section 59: Memorandum of Understanding	Low-skilled workers under Memorandum of Understandings with neighboring countries.
		Section 62	Generally semi-high skilled workers linked to investments, petroleum or other laws.
		Section 63	Migrants who are (1) being deported under the law on deportation and granted with the exemption to conduct a profession at any place instead of deportation or during the time of deportation or (2) in Thailand without being permitted under the law on immigration but is permitted to stay in Thailand while waiting for repatriation under the law on immigration. The result of deportation or repatriation is announced by the end of January of each year.
		Section 63/1 group 1	Migrants (1) whose nationalities have been withdrawn under the Announcement of the Revolutionary Council No. 337 dated the 13th of December B.E. 2515 (1972) or other laws; or (2) born in Thailand but has not been granted with the nationality under the Announcement of the Revolutionary Council No. 337 dated the 13th of December B.E. 2515 (1972) or the law on nationality.
		Section 63/1 group 2	Migrants who (1) has been granted with the status of legal migrant under the notification of the Ministry of Interior issued under the law on immigration; or 2) has no status under registration and has been given an identification card under the Rule of Central Registration Bureau issued under the law on people's registration.

Country	No. of Employment Permit/s	Name of Permit	Target Group
Thailand continued		Section 63/2	Work permits in cases where the Minister (1) permits a foreigner or type of foreigner to enter Thailand under the law on immigration or (2) exempt a foreigner or type of foreigner from complying with the law on immigration. The Council of Ministers may prescribe that such foreigner or type of foreigner may be able to work for the benefit of economic and social development. This section is applied to migrant workers during the COVID-19 pandemic to extend their work permits duration.
		Section 64	For low-skilled workers from neighboring countries: Cambodia, Myanmar, and Lao PDR. As of writing, the Thai-Lao agreement PDR is yet to be implemented.
Viet Nam	1	Work Permit	Only to high-skilled workers.

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Using the employment permit as the level of analysis has many advantages. Aside from capturing the complexity and nuance of regulations at the national level, it also allows for a fuller understanding of how AMS interpret law and legislation and how they enforce these in practice. Taking employment permits as a primary vantage point to study immigration policies also brings the analysis closest to the lived realities of immigrants, employers, and other actors, including government officials, in terms of how they experience migration processes. This study's focus on the actual procedures and requirements in place makes it useful for practitioners, policymakers and administrators who are directly engaged in the day-to-day management of migration flows.

3. METHODOLOGY

3.1. Data Collection Methods

This study collected data through four methods: (1) qualitative survey on migration measures at the employment-permit level; (2) structured key-informant interviews; (3) national case-studies; and (4) expert meetings.

3.1.1. Qualitative survey

Given the under-researched nature of the focus of this study, collecting primary data is important. This study conducted a comprehensive qualitative survey among national focal points to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG). These focal points are key AMS officials with direct and expert knowledge on the existing laws and policies governing the management of migrant workers at the national level. The survey covered the four categories as noted above and aimed to provide detailed information including:

- The different types of entry, residence and work permits currently in operation in each AMS;
- The existing procedures and eligibility criteria migrants must meet to qualify for these various permits;
- The types of civic and socio-economic rights migrant workers are entitled to in the region;
- Exit permits and other regulations managing return to the country of origin;
- Enforcement measures to ensure that migrant workers and other actors comply to the existing laws and migration policies; and
- Insights on the progress and challenges faced in implementation, along with identifying opportunities for cooperation among AMS.

To guarantee validity in the ASEAN context and to ensure correct and unequivocal phrasing, the survey was discussed and refined during the inception meeting in November 2019. The survey questions were also aligned more closely with the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers where possible.

The survey was conducted between February and May 2020. AMS officials answered one questionnaire for each employment permit currently in effect in his or her country. To facilitate the completion of this survey, national experts, who formed part of the study's research team, conducted preliminary research via interview and desk review and, on that basis, completed the questionnaire/s to the best of their knowledge. AMS officials then confirmed, edited, revised and further elaborated on the questions as needed. The surveys in Lao PDR, Cambodia, Indonesia, Myanmar and Thailand were also translated into the local language.

Overall, the survey identified *536 entry, stay, incorporation, exit and enforcement measures* currently in place in the ASEAN region.

3.1.2. Structured key informant interviews

Findings from the survey were complemented by 105 semi-structured interviews with key informants in the AMS including: key government officials; embassy personnel (including labour attachés); heads of recruitment agencies and their associations; and officials of international and nongovernmental organisations, (including migrant organisations). The interviews, mostly conducted in the local language, focused on identifying the current regulatory and policy challenges and opportunities in managing labour mobility within each AMS. More specifically, the interviews covered the following topics:

- Key challenges in managing the mobility of migrant workers in the region;
- Potentially viable measures that can promote labour mobility in the region (particularly in the CLMV countries) as well as enhancing the management of migrant workers, especially in occupations under 8 MRAs in ASEAN;
- Possible opportunities for AMS to learn from each other's experiences on labour mobility (peer learning); and
- Possible opportunities for AMS to collaborate on measures to reduce irregular labour migration and abusive labour and migration practices in the ASEAN region.

All the interviews covered these topics to ensure that each discussion addressed the same set of themes while still allowing for some degree of natural conversation and free association.

3.1.3. National case study reports

This study also commissioned 12 national experts to conduct a case study of each AMS. The case studies reviewed in total over 200 official documents and data collated at the national level. Where possible, the national experts also examined data on AMS' success at meeting government set-objectives. In addition, the experts used data collated from the qualitative survey and the interviews with key informants in their findings and analysis. The national experts together produced nearly 500 pages of case study material.

3.1.4. Inception, expert and validation meetings

Finally, this study also convened three multi-stakeholder meetings in November 2019, February 2020 and October 2020 to discuss issues relevant to this study as well its preliminary findings and recommendations. Discussions during these meetings fed into the analysis and final iteration of this study.

Table 3: Methodology

<p>01 Comprehensive qualitative survey on migration measures at the employment permit level</p> <ul style="list-style-type: none">◦ Validated during the inception meeting to ensure its validity in the ASEAN context and to ensure correct and unequivocal phrasing.◦ Conducted between February and May 2020 in the ten AMS.◦ 47 key AMS officials with direct and expert knowledge on the existing laws and policies governing the management of inbound migrant workers at the national level as respondents.◦ Database with 1406 data points on the presence or absence of specific migration measures:<ul style="list-style-type: none">◦ Entry and stay, incorporation and exit measures: 48 questions on the 25 employment permits generating 1296 data points◦ Enforcement measures: 11 questions on ten AMS generating 110 data points◦ Survey identified 536 entry, stay, incorporation, exit and enforcement measures currently in place in the ASEAN region.	<p>02 Structured key informant interviews</p> <ul style="list-style-type: none">◦ 105 key informants interviewed in-depth including key government officials, embassy personnel including labor attachés, heads of recruitment agencies and their associations, officials of international and non-governmental organizations, migrant organizations.◦ Conducted in the local language and focused on identifying the current regulatory and policy challenges and opportunities in managing labour mobility of inbound migrant workers within each AMS.
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03 | National case studies

- **12 national experts** commissioned to conduct a case study in each AMS.
- **210 official documents** in the AMS reviewed, mostly in local language, and including laws, regulations, rules, procedures, decisions, bilateral agreements, memoranda and administrative actions.
- Nearly **500 pages** of case study materials.

04 | Expert meetings

- **Three multi-stakeholder meetings** in November 2019, February 2020 and October 2020 to discuss issues relevant to the study as well the study's preliminary findings and recommendations.
- **87 total** participants.

Source: Author's illustration.

3.2. Management, Research and Review Team

The design and implementation of this study involved multiple actors and organisations. MOLISA, representing the body in charge of the labour sector under the ASCC pillar, is this study's main proponent. With support from the ASEAN Secretariat (ASEC), MOLISA coordinated the implementation of this study among AMS through their representative line ministries. E-READI, in coordination with the ASEAN Secretariat and MOLISA, provided technical backstopping and funding. The national focal points to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG) attended the inception and validation meetings, answered the qualitative survey, granted interviews, provided additional data and other information, and reviewed and endorsed the methodology, report draft and the accuracy of the data collected.

The author led this study by designing the methodology and the tools and frameworks used for data collection, including the survey and interview protocols. She also led and designed the data analysis using her ILMA methodology and its underlying set of 50 policy indicators. She created the work plan and division of labour among the management, research, and review team members. She also drafted and finalised the report based on her analysis of the qualitative survey and key informant interview transcripts as well as inputs from the national experts via the national case studies and feedback from SLOM WG Focal points and ASEAN MRA (Mutual Recognition Arrangements) Working Group representatives during the regional meetings and workshops.

Table 4: Research Team

<p>Principal Investigator/ Regional Expert</p> <p>Dovelyn Rannveig Mendoza</p> 	<p>National Experts</p> <p>Brunei Darussalam: Paryono Cambodia: Khoun Bunny Indonesia: Rina Shahriyani Shahrullah Lao PDR: Tingthong Phetsavong Malaysia: Maimunah Aminuddin Myanmar: Khin Mar Yee Philippines: Fernando Tiongson Aldaba Thailand: Ruttiya Bhula-or and Ratchada Jayagupta Singapore: Brenda S.A. Yeoh and Theodora Lam Viet Nam: Le Kim Dzung</p>
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4. MIGRATION MEASURES IN THE ASEAN REGION: A COMPARATIVE ANALYSIS ACROSS FOUR CATEGORIES

Immigration policy is primarily about *selection*. Governments in the ASEAN region, and elsewhere, manage the mobility of inbound migrant workers through an array of measures targeted toward selected migrants and covering all stages of the migration cycle: before departure, upon the migrant worker's arrival, during his or her stay and eventual return.

This section discusses and compares the various measures across the four categories as outlined earlier: entry and stay, incorporation, exit and enforcement. A close analysis of these measures revealed these key observations for each category:

ENTRY AND STAY MEASURES

- The requirement of a job offer is the most common eligibility-measure implemented across AMS. This reveals the central role employers play as a driver of migration in the region, although AMS generally reduce an employer's leeway to singlehandedly dictate the terms of employment by adding age-related requirements and regulations on work conditions.
- Financial capacity requirements, including wage thresholds, as well as sectoral and occupational requirements, are practiced in half of AMS.
- Nationality is not a common requirement in the ASEAN region. No preference is given to ASEAN nationals although a few countries provided some preference to specific ASEAN countries. Likewise, all AMS have permits that migrants under the MRAs could use but no AMS gives preference to ASEAN nationals within these MRA occupations.
- Gender requirements are rarely used, and marital status and language are never conditions for eligibility in the region.
- Almost all AMS require the payment of application fees and the need to meet health requirements, combined with measures dependent on migrants' skill and income level: the higher the skill or income of the migrant, the less stringent the health requirements and the higher the fee tends to be.
- Recognition of qualifications is a common requirement in the region, not just for professionals and the high- skilled but also for low and mid-skilled workers, as well as entrepreneurs, in some AMS.
- The majority of AMS require a labour-market test while the payment of levy and deposits as well as quota requirements are less popular in the region. These types of restrictions, if used, cut across all skills levels affecting nearly all type of migrant workers from domestic workers to CEOs.
- Most AMS limit the initial stay of migrant workers to up to two years, and that applies across skill levels, although the higher the skill, the more opportunity to switch sectors, employers, and occupations and the lower the number of restrictions on the number of total years migrant workers are permitted to stay.

- There is also more flexibility in the region on renewal of permits, with most AMS allowing migrants to renew at the destination, whilst a periodic health-check is only practiced in a few countries.

INCORPORATION MEASURES

- Access to healthcare, and to some extent pension funds and disability benefits, is almost universal, and the pattern holds across all skill levels.
- The majority of AMS either provide full or partial access to public-education institutions and services, including degree-level courses and vocational training. More than half oblige employers to ensure adequate or reasonable accommodation.
- All AMS offer legal protection against confiscation of identity documents and equal treatment and protections before criminal courts and tribunals.
- Family reunion is highly restricted in the region, along with access to citizenship and permanence residence. These rights, if available at all, are almost always reserved to high-skilled and high-income earners. Even for those who can bring their family along, their spouse would have no automatic right to work.
- While the right to marry citizens is fully recognized in all AMS except for two, migrant workers in 8 AMS work under permits that do not give them equal access to join and form trade unions in parity with citizens.

EXIT MEASURES

- An entry ban for deported workers is universally applied in the region.
- No AMS requires that migrant workers get prior permission, such as a no-objection certificate from employers or any other authorities, before they can leave the country nor are there penalties imposed if the migrant worker leaves before the contract expires.

ENFORCEMENT MEASURES

- While nearly all AMS require migrants to get a compulsory identification document, only half operate an Alien's Register or a Population Register that include migrant workers and even fewer AMS collect biometric information on migrant workers.
- Half of AMS institute penalties for noncompliance involving imprisonment and a few consider illegal residence as criminal offence. There is a clear division in the region in the imposition of penalties: with one group imposing harsher penalties than the other.

The rest of this section offers more detail on these key conclusions on the level of employment permits.

4.1. Entry and Stay Measures

26 of the 50 measures used in this study as policy indicators are on entry and stay measures. The focus is on three critical areas: (1) who can avail of the permits to enter the labour market (eligibility requirements); (2) the difficulty in obtaining these permits in terms of the steps that need to be fulfilled by the employer and/or migrant worker (procedural requirements); and (3) the difficulty in keeping or holding on to the permit once it is granted (stay measures).

4.1.1. Eligibility requirements

This study specifically examined the presence of ten eligibility requirements in AMS as manifested by prospective migrant workers' personal characteristic (age, nationality, gender, marital status, financial self-sufficiency) and skills and capacities (the ability to get a job offer, including work conditions on par with locals, financial capacity, and sector and occupational requirements).

The most common eligibility requirement is the possession of a job offer which is required in nine of the ten AMS and in 25 of the 27 permits assessed for this study. Requirements to ensure that work conditions offered are on par with citizens are also very common, along with financial capacity requirements including wage thresholds. Sectoral and occupation requirements are practiced in half of AMS while nationality and gender requirements are least common. No AMS considers marital status and language skills as conditions for eligibility.

Table 5: Frequency of Eligibility Measures, by Number of Permits and Countries

Types of Eligibility Measures	No. of permits with the measure	No. of AMS with the measure
Migrant worker must have a job offer	25	10
Migrant worker must be offered work condition on a par with citizens	24	8
Migrant worker can only work in specific occupations	15	6
Migrant worker can only work on a certain sector	12	6
Migrant worker must meet financial capacity requirements, including wage thresholds	8	5
Migrant worker must meet age requirements beyond meeting the minimum age of 18	7	5
Migrant worker must meet nationality requirements	6	3
Migrant worker must meet gender requirements	3	2
Migrant worker must meet marital requirements	0	0
Migrant worker must meet language requirements	0	0

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 8: Eligibility Measures in ASEAN, Most Common to Least Common



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Job offer requirement

Of the 27 permits under study, 25 are closed to migrant workers without an employer at the destination. Indeed, the requirement of a job offer is the most common eligibility measure implemented across AMS. All countries in the ASEAN region have at least one permit requiring a job offer to be eligible to apply for an employment permit. This reveals the central role of employers as gatekeepers in driving migration in the region. The employer, or in some cases the appointed employment agent, applies for the work permit on behalf of the worker, not the worker themselves. The job-offer requirement cuts across all skill levels.

Job offers are required in all the permits offered in nine AMS: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, and Viet Nam. Migrant workers cannot enter these countries without a job offer. In the Philippines, migrants applying for the **Alien Employment Permit** must provide a copy of their employment contract with Philippine-based employer. An employer contract

signed in advance is also required in Indonesia, Thailand, Myanmar, Malaysia,⁴ and Cambodia. In Brunei Darussalam, migrants taking up professional or specialist occupations must show a supporting document from the employer as part of the application for the **Foreign Worker License**. In Viet Nam, however, the application for a permit does not necessarily require an employment contract.⁵ The dossier, though, requires a written request for a work permit from the employer. This means that there must be an employer guarantee and employer consent in the process.

Job offers are also important in Singapore. Only 2 of the 8 employment permits in Singapore do not require a job offer: the **Personalised Employment Pass**, which exclusively caters to migrants with very high income; and the **Entrepass**, used by innovators and entrepreneurs. Migrants under these two permit categories apply directly to the Ministry of Manpower.⁶

■ Work conditions on par with citizens

Eight of the ten AMS employ additional regulations that ensure migrant workers enjoy work conditions (e.g., wage, working hours, and benefits) equal to or higher than native workers, thus reducing employers' leeway to singlehandedly dictate the terms of employment. For example, in the Philippines, employers must provide food and accommodation to their foreign employees and in no case can the wages of migrant workers fall below the existing minimum wage.⁷ Brunei Darussalam and Indonesia are the only AMS where there is no stipulation on any work permit it issues explicitly requiring that migrant workers must receive work conditions equal to or higher than local workers.

In Cambodia and Lao PDR, the Labour Law does not discriminate between migrant workers and native workers and thus requires that employers must give migrant workers equal treatment in work conditions. Similarly, in Myanmar, the employment contract between the employer and the migrant worker must follow labour laws and rules, including meeting minimum wages and salary, and other benefits and entitlements such as leave, holiday, overtime fee, damages, workman compensation, social welfare, and other insurance relating to work. The rights and duties of employers and employees and occupational terms and conditions must also be stipulated in the employment contract as explained in Box 1 below.⁸

Box 1: At par with the locals: Working in Myanmar as a migrant worker

In Myanmar, the Ministry of Labour, Immigration and Population has issued a mandatory contract serving as a reference for all employers and which contains all the terms and conditions that the Government required to be included in an employment agreement.⁹ Although the employer and worker or workers may, by mutual consent, change the rules, the rights of workers must still be in line with existing laws. Within 30 days of executing the Employment Contract, it must be submitted to the Township or District Labour Office to ensure that it is consistent with the governing laws. If any provision in the employment agreement proves to be inconsistent with the law, the contract will be returned to the parties for renegotiation, and the parties must resubmit their amended agreement to the relevant labour office.¹⁰

4 For domestic workers, the employer must sign a standard contract of employment between himself and the domestic helper. A copy must be submitted to the Department of Labour.

5 The employment contract is signed after the employee has a work permit.

6 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

7 Official input provided to author by the national focal point of the Government of the Philippines to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

8 Khin Mar Yee, Migration Laws and Policies in Myanmar, National Study Report, August 2020; Section 51 (d) (e) of the Employment Skill and Development Law (2013).

9 Ibid, see Notification No. 140/2017 of the MOLIP.

10 Khin Mar Yee, Migration Laws and Policies in Myanmar, National Study Report, August 2020.

One salient point in the Minimum Wage Law in Myanmar is that the salary-paid employee has the right to enjoy one free-day per week. If they are employed on such holiday, they shall have the right to obtain over-time fees in accordance with the existing law.¹¹ The worker is also entitled to obtain wage and other benefits and if they do not obtain all wages or other benefits entitled to be obtained, or obtain less than the stipulated minimum wage, the worker may submit to the relevant Union Committee, Region or State Committee and Department within one year from the day of entitlement to obtain such injured wages and other benefits. The employee may sue for all the entitled wages in a civil proceeding.¹²

Other entitlements include:

- Maximum working hours set eight hours per day set 44 hours per week.
- Weekly day off with salary/wages.¹³ If the weekly day-off of the employee is coincidence with a gazette holiday, it must be considered as a gazette holiday.
- Entitlement to public holidays amounting to between 20-26 days in a calendar year. If the employee works in a holiday with his consent, it can be paid twice wages upon his/her work.¹⁴
- Different types of paid leaves: Earned Annual Leave (10 days), Casual Leave (6 days), Medical Leave (30 days), Maternity leave (14 weeks) and Paternity Leave (15 days). If there are holidays just before or right after one's leave commences, these days cannot be counted as part of the leave period.
- Payment for such leave under the Leave and Holidays Act is the responsibility of the Employer unless the worker contributes to the social security board scheme.

Thailand also offers similar entitlements. Employment contracts must specify the employment or working conditions including working days and hours, wages, welfare benefits as well as the provisions concerning the termination of employment, submission of complaints by employees, and amendment or renewal of an agreement of employment conditions.¹⁵ In Thailand, the government does not check on work conditions per se for migrants applying under the work permit **Section 62: Investment Promotion, petroleum and other laws**. However, since applicants under **Section 62** must be a skilled worker or an expert, the wage rate received is normally higher than the minimum wage rate. For the other permits, Thai authorities require that migrants receive at least the minimum wage of 313-336 Baht (€8.54 – €9.17) per day and it must be clearly specified in the employment contract.¹⁶

The Employment Act in Singapore, which provides for the basic terms and conditions at work, also covers both local and migrant workers. By law, there is a basic employment standard that employers must provide to both locals and migrant workers.¹⁷

Malaysia offers a more selected approach in terms of work condition requirements, requiring it on only 2 of its 3 permits. Prospective migrants applying under the **Pas Lawatan**, which targets low and mid-skilled workers in certain sectors have protection under the 1955 Employment Act. The Act has a section specifically on migrant workers which disallows an employer from paying wages or benefits which are discriminatory between locals and migrant workers in the same category of employment. Further, since 2011, Malaysia has had a legally mandated minimum-wage in place which makes no differentiation between local and migrant workers. However, the Wage Orders do not apply to domestic workers, thus this provision is limited to migrants under the **Pas Lawatan** as well as those entering via the **Employment Pass**, which caters to high-skilled and high-income workers only.

11 Ibid, see Section 13 of the Minimum Wage Law

12 Ibid, see Section 15 of the Minimum Wage Law

13 Ibid, see Section 3 (4) of the Leave and Holidays Act 1951.

14 Ibid, see Section 3 of the Leave and Holidays Act 1951.

15 Ruttiya Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020.

16 Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

17 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), December 2020.

Table 6: Requirement on Job Offer and Work Conditions

Country	Name of Permit/s	Job offer is required before admission	Migrant workers must be offered work conditions (e.g. minimum wage, maximum working hours, and benefits) equal to or higher than native workers
Brunei Darussalam	Foreign Workers License	•	
Cambodia	Foreigner Work Permit	•	•
Indonesia	Foreign Workers Employment Permit	•	
Lao PDR	Work Permit	•	•
Malaysia	Pas Lawatan Kerja Sementara	•	•
	Employment Pass	•	•
	Foreign Domestic Helper	•	
Myanmar	Foreign Worker Registration Card	•	•
Philippines	Alien Employment Permit	•	•
	Alien Employment Permit plus Special Temporary Permit	•	•
Singapore	Employment Pass	•	•
	EntrePass		•
	Personalised Employment Pass		•
	S Pass	•	•
	Work Permit for Confinement Nanny	•	•
	Work Permit for Foreign Worker	•	•
	Work Permit for Performing Artist	•	•
	Work Permit for Foreign Domestic Workers	•	•
Thailand	Section 59: General	•	•
	Section 59: Memorandum of Understanding	•	•
	Section 62	•	•
	Section 63	•	•
	Section 63/1 group 1	•	•
	Section 63/1 group 2	•	•

Country	Name of Permit/s	Job offer is required before admission	Migrant workers must be offered work conditions (e.g. minimum wage, maximum working hours, and benefits) equal to or higher than native workers
Thailand continued	Section 63/2	•	•
	Section 64	•	•
Viet Nam	Work Permit	•	•

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

■ Sectoral and occupational requirements

Only seven of the 27 permits in the AMS do not have restrictions on the sector or occupation of migrant workers. This includes the only permit issued by Brunei Darussalam, Cambodia and Lao PDR. The Philippines, Malaysia, Singapore and Thailand also exempt from sectoral or occupational requirements at least one of the permits they issue.

Of the remaining 20 permits with sectoral or occupational restrictions we can determine three different approaches: (1) restrictions on specific sectors only; (2) restrictions on occupations only, and (3) restrictions on the specific sectors and occupations, which is the most restrictive approach of the three. Permits with these restrictions cut across the skill or income level of migrants.

1. SPECIFIC SECTORS ONLY

In three AMS – Indonesia, Malaysia, and Singapore – there are 3 permits that impose sectoral requirements only, of which two are catering to low-skilled workers. In Indonesia, migrant workers can only work in 18 sectors while in Malaysia, migrant workers under the **Pas Lawatan** are permitted in six (manufacturing, construction, agriculture, plantation, mining and quarrying, and service¹⁸). In Singapore, semi-skilled workers who hold the **Work Permit for Foreign Worker** can work in five sectors: construction, manufacturing, marine shipyard, process.¹⁹

2. SPECIFIC OCCUPATIONS ONLY

Some AMS only limit permits to specific occupations. Such policies either explicitly identify the occupations covered by the permit or employ a 'negative' list that excludes certain occupations. Permits in this category cover both high and low-skilled workers.

Included occupations

Malaysia and Singapore have specific permits catering exclusively to domestic workers. Singapore also has permits specific for confinement nannies and entertainers, as well as those taking managerial, executive or specialised jobs (**Employment Pass**). Similarly, the one permit issued in Viet Nam only covers managers,

18 Migrant workers in the services sectors are limited to restaurant cooks, sanitation/cleaning services, hotels, resorts on islands, golf caddies and cargo handlers in sea and airports.

19 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020; Companies can be considered to be under the services sector if it has registered any of the following as its principal business activity: Financial, insurance, real estate, infocomm and business services. Transport, storage and communications services. Commerce (retail and wholesale trade). Community, social and personal services (excluding domestic workers) Hotels. Restaurants, coffee shops, food courts and other approved food establishments (excluding food stalls or hawker stalls).

managing directors, experts and technical workers. In the Philippines, the **Alien Employment Permit plus Special Temporary Permit** only apply to specific regulated occupations.²⁰ Likewise, 6 of the 8 permits in Thailand – **Section 59 General**, **Section 59 under MOU**, **Section 63**, **Section 63-1 group 1**, **Section 63/2** and **Section 64** – each have a list of allowed occupations. For example, migrants working under **Section 59 General** can engage in various kinds of craft or semi-craftwork if the work is done under an employer. **Section 64** covers cross-border migrant who can only work as labourers and domestic workers.²¹

Excluded occupations

Singapore's **S-pass** permit applies to mid-skilled workers, and here the government did not identify eligible occupations but rather excluded occupations it considered “objectionable”, such as masseurs and bar and lounge hostesses. Food stall owners with a Singapore Food Agency or National Environment Agency license (i.e. a food stall in a hawker centre, coffee shop or food court) are also not eligible to apply for the **S Pass**. Likewise, Singapore's **Personalised Employment Pass**, which is targeting very high-income individuals, also excludes certain occupations, such as journalists, editors, sub-editors and producers.²² Thailand also maintains an extensive list of excluded occupations for 3 permits: **Section 59 General**, **Section 59 under MOU** and **Section 63**. Excluded occupations under these permits include among many others, wood carving, driving of motor vehicles and cutting/polishing diamonds or gemstones.²³

3. SPECIFIC SECTORS AND OCCUPATIONS

In Myanmar and Singapore, 2 permits identify specific occupations and sectors, thus offering a more targeted approach. Myanmar's **Foreign Worker Registration Card (FWRC)** is issued for economic sectors permitted by the Myanmar Investment Commission (MIC). This is a government entity comprised of representatives and experts from government ministries, departments, and governmental and non-governmental bodies.²⁴ Other foreign national employees of businesses or companies in sectors not identified by the MIC can apply for permits via the Directorate of Investment and Company Administration (DICA). This route, however, is only open for specific positions, including Board Directors of a foreign company incorporated in Myanmar as well as technicians.²⁵

Similarly, Singapore's **EntrePass** is only open to inventors, innovators, and entrepreneurs, yet excludes those working under specific types of businesses in the services sector. These include coffee shops, hawker centres, food courts, bars, night clubs, karaoke lounges, massage parlours and employment agencies, as well as businesses engaged in geomancy, foot reflexology, acupuncture, traditional Chinese medicine and herbal dispensing.

20 The list of related occupations includes: Aeronautical Engineering, Agricultural and Biosystems Engineering, Chemical Engineering, Civil Engineering, Electrical Engineering, Electronics Engineering, Geodetic Engineering, Mechanical Engineering, Metallurgical Engineering, Mining Engineering, Naval Architecture, Sanitary Engineering, Dentistry, Medical Technology, Medicine, Midwifery, Nursing, Nutrition and Dietetics, Occupational Therapy, Optometry, Pharmacy, Physical Therapy, Radiologic Technology, Respiratory Therapy, Speech Language Pathology, Veterinary Medicine, Accountancy, Criminology, Customs Brokers, Guidance and Counseling, Librarians, Professional Teachers, Psychology, Real Estate Service, Social Workers, Agriculture, Architecture, Chemistry, Environmental Planning, Fisheries, Foresters, Geology, Interior Design, Landscape Architecture, Master Plumbers and Food Technology.

21 Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

22 Other excluded positions include those who intends to work on a freelance-basis, sole proprietor, partner or where a director is also a shareholder in an ACRA-registered company; and a The PEP is also not allowed to start a business or conduct any form of entrepreneurial activity while on a PEP

23 Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

24 Khin Mar Yee, Migration Laws and Policies in Myanmar, National Study Report, August 2020.

25 A primary interface between businesses and the government, the DICA is mandated to promote private sector development and boost domestic and foreign investment by creating an investment climate. DICA is a key agency within the Government of the Republic of the Union of Myanmar's Ministry of Investment and Foreign Economic Relations (MIFER). DICA has several functions; as a regulator on investment and companies, as a company registrar, as an investment promotion agency and as the secretariat of the Myanmar Investment Commission https://www.dica.gov.mm/sites/dica.gov.mm/files/uploads/visa_form.pdf

Table 7: Restrictions Based on Sector or Occupation

Country	Name of Permit/s	No Restrictions on Sector and Occupation	With Restrictions on Sector and/or Occupation				
			Specific sectors only	Specific occupations only		Specific sectors and occupations	
				Included occupation/s explicitly identified	Excluded occupation/s explicitly identified	Included sectors and occupations	Excluded sector/s and included occupation/s explicitly identified
Brunei Darussalam	Foreign Workers License	●					
Cambodia	Foreigner Work Permit	●					
Indonesia	Foreign Workers Employment Permit		18 sectors: Construction; Real Estate; Education; Processing Industry; Water Management, Waste Water Management, Waste Management and Recycling; Transportation and Warehousing; Entertainment and Recreation Arts; Provision of Accommodation and provision of food and drink; Agriculture, forestry, fisheries; Employment rental and leasing activities, travel agencies and other business support; Insurance financial activities; Human health activities; Information and telecommunication; Mining and quarrying; Supply of electricity, gas, steam / hot water and cold air; Wholesale and retail trade, repair and repair of automobile and motorcycle equipment; Other service activities; Professional, scientific and technical activities				
Lao PDR	Work Permit	●					
Malaysia	Pas Lawatan Kerja Sementara		Six sectors: construction, manufacturing, agriculture, plantation, mining, and services.				
	Employment Pass	●					
	Foreign Domestic Helper			For domestic workers only			
Myanmar	Foreign Worker Registration Card					Economic sectors permitted by MIC and specific occupations under DICA	

Country	Name of Permit/s	No Restrictions on Sector and Occupation	With Restrictions on Sector and/or Occupation				
			Specific sectors only	Specific occupations only		Specific sectors and occupations	
				Included occupation/s explicitly identified	Excluded occupation/s explicitly identified	Included sectors and occupations	Excluded sector/s and included occupation/s explicitly identified
Philippines	Alien Employment Permit	•					
	Alien Employment Permit plus Special Temporary Permit			Applies only to Aeronautical Engineering, Agricultural and Biosystems Engineering, Chemical Engineering, Civil Engineering, Electrical Engineering, Electronics Engineering, Geodetic Engineering, Mechanical Engineering, Metallurgical Engineering, Mining Engineering, Naval Architecture, Sanitary Engineering, Dentistry, Medical Technology, Medicine, Midwifery, Nursing, Nutrition and Dietetics, Occupational Therapy, Optometry, Pharmacy, Physical Therapy, Radiologic Technology, Respiratory Therapy, Speech Language Pathology, Veterinary Medicine, Accountancy, Criminology, Customs Brokers, Guidance and Counseling, Librarians, Professional Teachers, Psychology, Real Estate Service, Social Workers, Agriculture, Architecture, Chemistry, Environmental Planning, Fisheries, Foresters, Geology, Interior Design, Landscape Architecture, Master Plumbers and Food Technology			
Singapore	Employment Pass			Only managerial, executive or specialized jobs.			
	EntrePass						Only open to inventors, innovators, entrepreneur excluding those working under the specific types of businesses in the services sectors
	Personalised Employment Pass				Excludes freelancers, a sole proprietors, partners or shareholders in an ACRA-registered company; journalists, editors, sub-editors or producers.		
	S Pass	•					
	Work Permit for Confinement Nanny			Only for confinement nanny			
	Work Permit for Foreign Worker		Five sectors: construction, manufacturing, marine shipyard, process and services sector.				
	Work Permit for Performing Artist			Only for performing artists			
Work Permit for Foreign Domestic Workers			Only for domestic workers				

Country	Name of Permit/s	No Restrictions on Sector and Occupation	With Restrictions on Sector and/or Occupation				
			Specific sectors only	Specific occupations only		Specific sectors and occupations	
				Included occupation/s explicitly identified	Excluded occupation/s explicitly identified	Included sectors and occupations	Excluded sector/s and included occupation/s explicitly identified
Thailand	Section 59: General			Accounting services, work in engineering, and work in architectural profession in accordance with international agreements or obligations to which Thailand is bound under the provisions of law: Craftwork or semi-craftwork when working for an employer in agriculture, animal husbandry, forestry or fishery; masonry, carpentry, or construction work; and in making mattress or quilt, knives; shoes; hats; costumes; and pottery. Labour and shop front sellers: Allowed to do the work only when working for an employer and is permitted to enter the Kingdom in accordance with the law on immigration under the memorandum of agreement or memorandum of understanding made by the Thai government with foreign governments.	Excludes wood carving; driving of motor vehicles or driving of vehicles that do not use machines or engines in the country, except for international aircraft piloting or forklift driving; auction; cutting or polishing diamonds or gemstones; hair cutting, hair perming or beautifying; handweaving of cloth; mat weaving or making wares using reeds, rattan, jute, straw, bamboo, bamboo pulp, grass, chicken feather, coconut leaf stalk, fiber, wire or other materials; making saa paper by hand; Making of the following objects: lacquerware; Thai musical instruments; nielloware ;goldware, silverware or copper-alloy ware; copper-tin alloy ware polished with stone powder; Thai dolls; alms bowl; silk products by hand; Buddha images; and paper or cloth umbrellas; Brokerage or agency work, except for brokerage or agency work in international trade or investment; Thai massage; cigarette rolling by hand; tour guides or tour operations; peddling; manual typesetting of Thai characters; pulling or twisting silk yarn by hand; clerical or secretarial work; legal services or services in legal proceedings.		
	Section 59: Memorandum of Understanding			Same as Section 59: Work permits, general	Same as Section 59: Work permits, general		
	Section 62	• (Upon the law on investment promotion, petroleum or other laws)					
	Section 63			Same as Section 59: Work permits, general	Same as Section 59: Work permits, general		

Country	Name of Permit/s	No Restrictions on Sector and Occupation	With Restrictions on Sector and/or Occupation				
			Specific sectors only	Specific occupations only		Specific sectors and occupations	
				Included occupation/s explicitly identified	Excluded occupation/s explicitly identified	Included sectors and occupations	Excluded sector/s and included occupation/s explicitly identified
Thailand continued	Section 63/1 group 1			27 occupations upon the Ministerial Regulation announced in 1978: Bicycle repairing; Car seat assembly and repairing; Car body assembly and repair work; Assembly and repairing automobile exhaust systems; Hand soldering ironing; Woodworking and furniture making; Building construction carpentry; Sawing work in a wood processing plant; Tiler work; Painting; Assembling and repairing doors and windows; Installation of mosquito nets; Fabric dyeing work; Tailor's work except for making women's clothing; Laundry; Gardening of fruits and vegetables; Husbandry except for silk; Retail work of non-pharmaceutical products, chemicals, radio receivers, TV receiver, camera, film, camera, firearms or explosives, and related equipment including spare parts; Food or beverage sales work; Production of food or beverages; Shoe assembly and repairing; Repairing watch/clock, pen and glasses; Knife sharpening and other belongings; Picture frame maker; Mechanic work of gold, silver or other precious metal items; Weaving, knitting and weaving work by hand, except silk weaving and silk products; and labourer*			
	Section 63/1 group 2	•					
	Section 63/2			Allowed to work as per the Council of Ministers' s resolution.			
	Section 64			Allowed to work as labourers and domestic workers.			
Viet Nam	Work Permit	•		Only for managers, managing directors, experts, and technical workers			

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * Provisional data provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Financial and earning capacity requirements, including wage thresholds

Five AMS – Cambodia, Indonesia, Malaysia, Singapore, and Thailand – have adopted measures requiring migrant workers to demonstrate their capacity to financially support themselves in the country of destination. In Indonesia, for example, migrant workers must show proof of living expenses of at least US\$1,500 (€1,277) per month.²⁶ Cambodia requires migrant workers to state their monthly wage in their employment-permit application, although a specific monthly income is not required.²⁷ For 2 of the 8 permits in Thailand – **Section 59: General Type** and **Section 62: Investment Promotion** – financial capacity is a requirement to obtain an entry visa. Migrants under these two permits need to apply for a Non-B Visa, requiring evidence of adequate finances of 20,000 Baht (€548) per person and 40,000 Baht per family (€1,095). Migrants under **Section 59: General Type** must also reach an income above the minimum wage, and this varies by nationality. The threshold ranges from 25,000 baht per month (€689) for African nationals and up to 50,000 Baht per month (€1,379) for citizens of European countries, Australia, Canada, Japan, and the United States.²⁸

Singapore and Malaysia also impose wage thresholds for their employment permits catering to the high-skilled. Singapore has a three-tier wage-threshold system that depends on which employment permit is applied for, with the **Personalised Employment Pass (PEP)** demanding the highest threshold. Migrant workers applying for the PEP must show a fixed monthly salary overseas of at least S \$18,000 (€11,880). The most recently drawn salary must have been within six months prior to the application. Existing **Employment Pass** holders earning a fixed monthly salary of at least S \$12,000 (€7,920) can also apply for the PEP. The thresholds for the **Employment Pass** and **S-pass** are much lower at S \$4,500 (€2,574) and S \$2,500 (€1,584) per month, respectively.²⁹ Similarly, Malaysia requires a minimum monthly wage of RM10,000 (€2,029) for migrants applying for the **Employment Pass**.

Table 8: Financial Capacity Requirements, including Wage Threshold

Country	Name of Permit	No requirements	With Requirements	
			Proven ability to support themselves financially	Wage Thresholds
Brunei Darussalam	Foreign Workers License	•		
Cambodia	Foreigner Work Permit		Must state monthly wage in the application process	
Indonesia	Foreign Workers Employment Permit		Proof of living expenses of at least US\$1,500 (€1,276)	
Lao PDR	Work Permit	•		
Malaysia	Pas Lawatan Kerja Sementara	•		
	Employment Pass			RM10,000 (€2,029)
	Foreign Domestic Helper	•		

26 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Indonesia; see Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 24 of 2016 concerning Technical Procedures for Application and Granting of Visit Visas and Limited Stay Visas, Article 27 letter (c).

27 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Cambodia.

28 Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

29 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Singapore. More experienced candidates under the EP need higher salaries. It is also important to note the thresholds in Singapore are constantly revised and as of this writing new thresholds are being drafted.

Country	Name of Permit	No requirements	With Requirements	
			Proven ability to support themselves financially	Wage Thresholds
Myanmar	Foreign Worker Registration Card	•		
Philippines	Alien Employment Permit	•		
	Alien Employment Permit plus Special Temporary Permit	•		
Singapore	Work Permit for Confinement Nanny	•		
	Work Permit for Performing Artist	•		
	Employment Pass			S\$4,500***
	EntrePass	•		
	Personalised Employment Pass			S\$12,000 (€7,920) for Employment Pass holder or S \$18,000 (€11,880) for last monthly salary overseas in the past 6 months
	S Pass			S\$2,500 ****
	Work Permit for Foreign Worker	•		
Thailand	Section 59: General		Evidence of adequate finance upon entry 20,000 Baht (€547) per person and 40,000 Baht per family (€1095).	Minimum income dependent on nationality: *
				1. European countries (except Russia) and Australia, Canada, Japan, and the United States 50,000 Baht (€1.379)/ month.
				2. South Korea, Singapore, Taiwan, and Hong Kong 45,000 Baht/ €1241 / month.

Country	Name of Permit	No requirements	With Requirements	
			Proven ability to support themselves financially	Wage Thresholds
Thailand continued				3. Asian countries (Except Japan, South Korea, Singapore, Taiwan, Hong Kong, Cambodia, Myanmar, Laos and Vietnam) and South America, Eastern European countries, Central America countries, Mexico, Turkey, Russia and South Africa 35,000 Baht / month. (€965)
				4. African countries (Except South Africa), Cambodia, Myanmar, Laos and Vietnam 25,000 Baht / month (€689)
	Section 59: Memorandum of Understanding	●		
	Section 62		Evidence of adequate finance upon entry (20,000 Baht (€547,67 per person and 40,000 Baht per family (€1095).	
	Section 63	●		
	Section 63/1 group 1	●		
	Section 63/1 group 2	●		
	Section 63/2	●		
	Section 64	●		
Viet Nam	Work Permit	●		

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: *According to the Order of The Royal Thai Police No. 777/2551 dated 25 November 2008. ** Wage threshold refers to income requirement above the minimum wage requirements, if any. *** The salary threshold for Employment Pass was increased to S \$4,500 from 1 Sep 2020 onwards. **** The salary threshold for S Pass was increased to S \$2,500 from 1 Oct 2020 onwards.

Age requirements

In five of AMS – Brunei Darussalam, Lao PDR, Malaysia, Singapore, and Thailand – migrant workers must meet additional age requirements beyond just reaching the age of 18. A review of these age requirements suggests a clear trend: the higher the migrants' skill level and income, the less stringent the associated age requirements. Malaysia and Singapore for example, have no additional age-related requirement for its permits catering to the high-skilled and those related to investments and commercial enterprises.

AMS that regulate on age have adopted the following three levels of age restrictions, each level more stringent than the other.

1. MINIMUM AGE REQUIREMENT

Sixteen permits have minimum-age requirements with 18-years-old and above being the most common. This includes Cambodia's **Foreigner Work Permit** and Singapore's **Work Permit for Performing Artist**. The Philippines also requires the minimum age of 18 for migrants using the **Alien Employment Permit** with one exception, those working for Philippine Offshore Gaming Operators (POGO) should be at least 21.³⁰ Likewise, Thailand may give special permission to migrant workers aged 15 to 18-years-old working on specific occupations with a certified letter from the Department of Labour Protection and Welfare. These include those entering the modelling industry. Lao PDR is the only country in AMS with 20 as minimum-age requirement.

2. MAXIMUM-AGE REQUIREMENT

Four countries in the region – Brunei Darussalam, Malaysia, Singapore, and Thailand – have a maximum age requirement, in addition to the minimum threshold. These permits cater primarily to low-skilled workers. For example, Brunei Darussalam's **Foreign Workers License** establishes the age-range requirement at 18 to 55 for non-skilled occupations and 18 to 65 for skilled occupations. This means skilled workers in Brunei Darussalam can work up to around retirement age, a privilege not granted to workers in non-skilled occupations. Similarly, in Thailand via **Section 59: General Type MOU** low-skilled workers should also be aged between 18 and 55-years-old to perform labourer work.³¹ Malaysia imposes a much lower maximum age for the 2 permits it issues for low and mid-skilled workers. The requirement for the **Pas Lawatan Kerja Sementara** is 18 to 45, while the 'Foreign Domestic Helper' permit requires holders to 21 to 45-years-old. This age range is ten years less than what is imposed in Brunei Darussalam and Thailand. In Singapore the **Work Permit for Confinement Nanny** has both a higher minimum and maximum age at 23 to 70-years-old.

3. MAXIMUM AGE AT TIME OF APPLICATION IN COMBINATION WITH OTHER AGE RESTRICTIONS

Singapore has added an additional refinement to the age requirements for two of its permits, this is a maximum age at the time of application for the permit. The **Work Permit for Foreign Worker** and the **Work Permit for Foreign Domestic Workers** set this maximum age at 49 for non-Malaysians and 57 for Malaysians.

30 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, administered to respondents in the Philippines; Philippine Offshore Gaming Operators are online gambling firms that operate in the Philippines but cater to customers outside the country. Please refer to Executive Order No. 13, series of 2017.

31 Refers to guidelines existing at the local levels. However, there is no regulation from the central government.

Table 9: Age Requirements

Country	Name of Permit/s	No restrictions	With restrictions				
			Minimum age requirement			Specific Age Range Requirement	Maximum age at time of application
			18+	20+	21+		
Brunei Darussalam	Foreign Workers License					18-55 for non-skilled occupations; 18-65 for skilled occupations	
Cambodia	Foreigner Work Permit		•				
Indonesia	Foreign Workers Employment Permit	•					
Lao PDR	Work Permit			•			
Malaysia	Pas Lawatan Kerja Sementara					18-45	
	Employment Pass	•					
	Foreign Domestic Helper					21-45	
Myanmar	Foreign Worker Registration Card	•					
Philippines	Alien Employment Permit		•		•*		
	Alien Employment Permit plus Special Temporary Permit		•				
Singapore	Employment Pass		•				
	EntrePass		•				
	Personalised Employment Pass		•				
	S Pass		•				
	Work Permit for Confinement Nanny				•	23-70	70
	Work Permit for Foreign Worker					18-60	Malaysians: 57; Non-Malaysians: 49
	Work Permit for Performing Artiste		•				
	Work Permit for Foreign Domestic Workers				•	23-60	Malaysians: 58 Non-Malaysians: 49;

Country	Name of Permit/s	No restrictions	With restrictions				
			Minimum age requirement			Specific Age Range Requirement	Maximum age at time of application
			18+	20+	21+		
Thailand	Section 59: General		•				
	Section 59: Memorandum of Understanding					18-55**	
	Section 62		•				
	Section 63		•				
	Section 63/1 group 1		•				
	Section 63/1 group 2		•				
	Section 63/2		•				
	Section 64		•				
Viet Nam	Work Permit		•				

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: * Only for migrants working for Philippine Offshore Gaming Operators (POGO) **Refers to guidelines existing at the local levels. However, there is no regulation from the central government.

Nationality requirements

Perhaps surprisingly, holding a specific nationality is not a common requirement for obtaining an employment permit in the ASEAN region. Rather, it is the sectoral labour-demand that drives the process. Of the 27 permits in this study, only 6 have nationality requirements. And these 6 permits can be found in just three AMS – Malaysia, Singapore and Thailand – and only apply to low and mid-skilled workers. There is also no preference given to ASEAN nationals, although a few countries do provide some preference to citizens of specific ASEAN countries. Likewise, all AMS have permits that migrant workers under the MRA (Mutual Recognition Arrangements) could use but no AMS gives preference to ASEAN nationals in these MRA occupations.

Thailand is the only AMS with nationality requirements limited to certain other AMS. **Section 59: General Type MOU** is accessible to nationals from Cambodia, Lao PDR, Viet Nam, and Myanmar, whilst another permit, **Section 64: Border Type**, applies only to Cambodia and Myanmar nationals. As of writing, there is now a similar agreement with Lao PDR but has yet to be implemented.³²

In Malaysia and Singapore, regulations include nationalities from outside ASEAN, particularly from East and South Asia. For example, Malaysia's **Foreign Domestic Helper** permit only accepts migrants from eight countries, of which six are ASEAN Member States: Indonesia, Thailand, Cambodia, Philippines, Viet Nam,

³² Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

and Lao PDR. The two countries outside of ASEAN are Sri Lanka and India.³³ Similarly, Singapore's **Work Permit for Foreign Domestic Workers** is accessible to nationals in ten countries and three territories. Of these countries, six of the ten are AMS: Cambodia, Indonesia, Malaysia, Myanmar, Philippines, and Thailand. These country lists are similar, but they differ in that Singapore accepts migrants from Myanmar and not from Lao PDR, yet the reverse is true for Malaysia.³⁴

Singapore has 2 other permits that only cover specific nationalities. The **Work Permit for Confinement Nanny** is only accessible to Malaysian nationals while the **Work Permit for Foreign Worker** allows various nationalities depending on the sector. The construction, marine, shipyard and process sectors accept migrants from four AMS: Malaysia, Thailand, Myanmar, and the Philippines. And five non-AMS: People's Republic of China (PRC), India, Sri Lanka, Bangladesh, and South Korea. As well as three territories: Hong Kong (HKSAR passport), Macau, and Taiwan. The manufacturing and service sectors, on the other hand, are accessible to an even smaller number of countries. In the ASEAN region, only Malaysian nationals can work in these sectors. Other eligible nationalities include migrants from two non-AMS: PRC and South Korea. And three territories: Hong Kong (HKSAR passport), Macau, and Taiwan.

In Malaysia, the equivalent to Singapore's **Work Permit for Foreign Worker** is the **Pas Lawatan** permit. This permit also has nationality requirements covering all AMS as well as Bangladesh, Nepal, Pakistan, Sri Lanka, India, Uzbekistan, Kazakhstan, and Turkmenistan.³⁵ Indeed, in Singapore and Malaysia most nationalities allowed under these two permits are either from ASEAN or other countries in the Asia-Pacific region. This reflects a clear regional preference for Asian migrants, particularly in low and mid-skilled categories.

Table 10: Eligibility Requirements by Nationality

Country	Name of Permit/s	No requirements	With Requirements	
			ASEAN Member States	Non-ASEAN MS and Territories
Brunei Darussalam	Foreign Workers License	•		
Cambodia	Foreigner Work Permit	•		
Indonesia	Foreign Workers Employment Permit	•		
Lao PDR	Work Permit	•		
Malaysia	Pas Lawatan Kerja Sementara	•		
	Employment Pass	•		
	Foreign Domestic Helper		Indonesia, Thailand, Cambodia, Philippines, Viet Nam, Lao PDR	Sri Lanka, India

33 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia; Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020; Domestic workers from other countries are only permitted entry in special circumstances, such as a foreign professional or skilled employee wishing to bring domestic help he or she hired before migrating to Malaysia. As with other types of employment pass, applications may be submitted by the employer himself, or by an agency registered with the Immigration Department.

34 Just like in Malaysia, Sri Lanka and India are also allowed to enter via this permit. Singapore, however, also allow two other Non-AMS, Bangladesh, and South Korea, as well as three territories: Taiwan, Hong Kong, and Macau.

35 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020; According to statistics published by the Ministry of Human Resources, the top five source countries are Indonesia, Bangladesh, Nepal, India and Myanmar.

Country	Name of Permit/s	No requirements	With Requirements	
			ASEAN Member States	Non-ASEAN MS and Territories
Myanmar	Foreign Worker Registration Card	•		
Philippines	Alien Employment Permit	•		
	Alien Employment Permit plus Special Temporary Permit	•		
Singapore	Employment Pass	•		
	EntrePass	•		
	Personalised Employment Pass	•		
	S Pass	•		
	Work Permit for Confinement Nanny		Malaysia	
	Work Permit for Foreign Worker		Construction, Marine, Shipyard and Process sectors: Malaysia, Thailand, Myanmar, and the Philippines; Manufacturing and Service Sectors: Malaysia	Construction, Marine, Shipyard and Process sectors: People's Republic of China; India, Sri Lanka, Bangladesh, Hong Kong (HKSAR passport), Macau, South Korea; and Taiwan; Manufacturing and Service Sectors: People's Republic of China; Hong Kong (HKSAR passport), Macau, South Korea, and Taiwan
	Work Permit for Performing Artist	•		
	Work Permit for Foreign Domestic Workers		Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand.;	Bangladesh, Hong Kong, India, Macau, South Korea, Sri Lanka, Taiwan,

Country	Name of Permit/s	No requirements	With Requirements	
			ASEAN Member States	Non-ASEAN MS and Territories
Thailand	Section 59: General	•		
	Section 59: Memorandum of Understanding		Cambodia, Lao PDR, Viet Nam and Myanmar	
	Section 62	•		
	Section 63	•		
	Section 63/1 group 1	•		
	Section 63/1 group 2	•		
	Section 63/2	•		
	Section 64		Cambodia and Myanmar	
Viet Nam	Work Permit	•		

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

ASEAN MRA preference

Although all AMS have permits that migrants under the MRA could use, no AMS gives preference to ASEAN nationals within these MRA occupations. This means that MRA migrant workers enter via the general permit system. Of the 27 permits in the review, 22 are accessible to MRA related occupations.

Five AMS – Brunei Darussalam, Cambodia, Lao PDR, Malaysia, and Indonesia – each have one permit that MRA migrant workers could use while the other half offer more than one channel. Migrants under the MRA could technically access seven of the eight permits in Thailand, the 2 permits in the Philippines and 6 of the 8 permits in Singapore.

However, these permits have additional restrictions that limit access to some professionals. These restrictions mean that not all occupations across the MRA can use the work permit. Table 11 below identifies these restrictions. For example, only MRA migrant workers in specific sectors can work in Indonesia. Low-skilled occupations under the MRA in tourism would be excluded.

Similarly, such work permits in Myanmar and Viet Nam can only be obtained by technicians, which essentially excludes many occupations under the tourism MRA. Likewise, in the Philippines, the **Alien Employment Permit plus Special Temporary Permit** only allows specific occupations regulated by the Philippine Regulatory Commission (PRC) to practice their professions.³⁶ Other occupations can work under the **Alien Employment Permit**, including tourism professionals.

³⁶ The list includes: Accountancy, Architecture, Surveying/Geodetic Engineering, Nursing, Medicine, Dentistry and Engineering such as: Aeronautical, Agricultural and Biosystems, Chemical, Civil, Electrical, Electronics, Geodetic, Mechanical, Mining, Metallurgical, Naval Architecture and Sanitary;

Singapore's Pass permits (**Employment Pass, Personalised Employment Pass, S Pass**) catering to the high-skilled are technically open to many MRA occupations, including those in the regulated professions, but the pass' requirements on income and recognition of qualifications limit who can actually utilize the permits. For instance, the **PEP** holder can generally hold a job in any sector but he or she must comply with registration requirements to practice in Singapore for professions such as medicine, dentistry, pharmacy, architecture, and law. Further, although there are no restrictions, it is unlikely that migrant workers of certain professions such as nursing practitioners – according to industry averages – would be able to command a fixed monthly salary of at least S\$12,000 (€7,920).³⁷

It is important to note a recent policy change in Thailand, which specifically allows ASEAN MRA professionals in accountancy, engineering, and architecture to apply and register for work permits.³⁸

Table 11: MRA Related Restrictions in ASEAN

Country	Name of Permit/s	Accessible to MRA occupations	No priority to ASEAN applicants	No additional restrictions	With Additional Restrictions			
					Only for specific sectors	Only for specific occupations	Only for investment related or entrepreneurial activity	Only for those with specific salary
Brunei Darussalam	Foreign Workers License	•	•	•				
Cambodia	Foreigner Work Permit	•	•	•				
Indonesia	Foreign Workers Employment Permit	•	•		•			
Lao PDR	Work Permit	•	•	•				
Malaysia	Employment Pass	•	•	•				
	Pas Lawatan Kerja Sementara	•						
	Foreign Domestic Helper							
Myanmar	Foreign Worker Registration Card	•	•	•				
Philippines	Alien Employment Permit	•	•					
	Alien Employment Permit plus Special Temporary Permit	•	•			•		

37 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Singapore.

38 Ruttiya Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020.

Country	Name of Permit/s	Accessible to MRA occupations	No priority to ASEAN applicants	No additional restrictions	With Additional Restrictions			
					Only for specific sectors	Only for specific occupations	Only for investment related or entrepreneurial activity	Only for those with specific salary
Singapore	Employment Pass	•	•					•
	EntrePass	•	•				•	
	Personalised Employment Pass	•	•					•
	S Pass	•	•					•
	Work Permit for Foreign Worker	•	•		•			
	Work Permit for Confinement Nanny				•			
	Work Permit for Performing Artist	•	•		•			
	Work Permit for Foreign Domestic Workers		•		•			
Thailand	Section 59: General	•	•			•		
	Section 59: Memorandum of Understanding	•	•			•		•
	Section 62	•	•				•	
	Section 63	•	•			•		
	Section 63/1 group 1							
	Section 63/1 group 2	•	•			•		
	Section 63/2	•	•			•		
	Section 64	•			•			
Viet Nam	Work Permit		•			•		

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Gender, marital and language requirements

Gender requirements are only used in Malaysia and Singapore, and both relate to low-skilled occupations. In these countries, only women can apply as domestic workers. Malaysia also imposes gender restrictions on the **Pas Lawatan Kerja Sementara**, barring female workers from the Philippines and Indonesian male workers in manufacturing.

Marital and language-related exclusions are not used in the region at all, although it can affect the process. In Brunei Darussalam, Indonesia, and Thailand, speaking the national language can positively influence the admission decision, even though it is not a formal requirement. Migrants applying under Thailand's permit **Section 64** border type may be interviewed in Thai by the provincial officer or DOE staff at the DOE, even though language proficiency is not required by law. Similarly, in Singapore, understanding Malay, the national language, is not a requirement or an eligibility criterion. In Indonesia, it is required that employers "facilitate Indonesian language education and training" and recommend the use of Indonesian language with foreign workers, although proficiency is not a requirement.³⁹

Table 12: Gender, Marital and Language Requirements

Country	Name of Permit/s	No Requirements	With Requirements		
			Gender	Marital	Language
Brunei Darussalam	Foreign Workers License	•			
Cambodia	Foreigner Work Permit	•			
Indonesia	Foreign Workers Employment Permit	•			
Lao PDR	Work Permit	•			
Malaysia	Pas Lawatan Kerja Sementara		No female workers from the Philippines; No male workers from Indonesia in manufacturing		
	Employment Pass	•			
	Foreign Domestic Helper		Must be female		
Myanmar	Foreign Worker Registration Card	•			
Philippines	Alien Employment Permit	•			
	Alien Employment Permit plus Special Temporary Permit	•			

39 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020; See Presidential Regulation Number 20 of 2018 concerning Foreign Workers, Article 26 paragraph (1) letter c states: Every TKA Employer is obliged to facilitate Indonesian Language Education and training to TKA.

Country	Name of Permit/s	No Requirements	With Requirements		
			Gender	Marital	Language
Singapore	Employment Pass	•			
	EntrePass	•			
	Personalised Employment Pass	•			
	S Pass	•			
	Work Permit for Confinement Nanny	•			
	Work Permit for Foreign Worker	•			
	Work Permit for Performing Artist	•			
	Work Permit for Foreign Domestic Workers		Must be female		
Thailand	Section 59: General	•			
	Section 59: Memorandum of Understanding	•			
	Section 62	•			
	Section 63	•			
	Section 63/1 group 1	•			
	Section 63/1 group 2	•			
	Section 63/2	•			
	Section 64	•			
Viet Nam	Work Permit	•			

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

4.1.2. Procedural requirements

Procedural requirements refer to the steps that need to be fulfilled by the employer and/or migrant worker. This includes the financial cost entailed and the administrative burden for meeting each step of the process. The more complicated and more expensive the procedure, the more restrictive the permit system is likely to be. This study mapped 8 types of procedural requirements across the 27 permits.

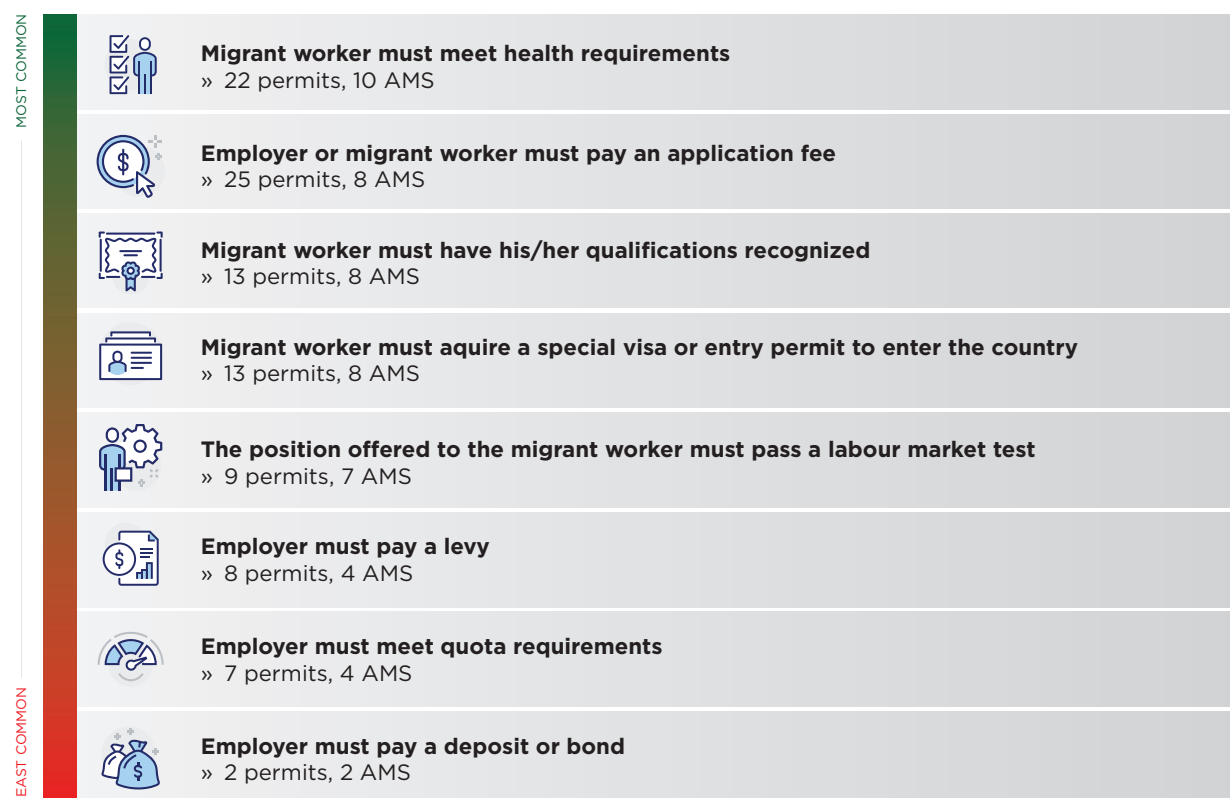
The most common procedural requirements include the need to meet health requirements, found in all AMS, and the payment of application fees, found in all AMS except two. The majority of AMS have requirements to acquire a special visa or entry permit to enter the country, a labour-market test, and to have qualifications recognized. However, the payment of levy and deposits as well as quota requirements are less common in the region and are practiced only by a few AMS.

Table 13: Frequency of Measures under Procedural Requirements

Types of Measures	No. of Permits with the measure	No. of AMS countries with the measure
Migrant worker must meet health requirements	22	10
Employer or migrant worker must pay an application fee	25	8
Migrant worker must have his/her qualifications recognized	13	8
Migrant worker must acquire a special visa or entry permit to enter the country	13	8
The position offered to the migrant worker must pass a labour-market test	9	7
Employer must pay a levy	8	4
Employer must meet quota requirements	7	4
Employer must pay a deposit or bond	2	2

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 9: Procedural Measures in ASEAN, Most Common to Least Common



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Health requirements

Health related requirements are the most common procedural requirement in the region. Health requirements are present in 22 permits in all ten AMS. Only 5 permits in three AMS – Malaysia, Thailand, and Singapore – have no health requirements.⁴⁰ Interestingly, these are permits cater mostly to the high-skilled (Malaysia's **Employment Pass**) and migrants connected to investment promotion (Thailand's **Section 62**).

Of those 22 permits with health requirements, AMS adopt three different approaches with varying stringency: (1) personal attestation of good health, (2) a medical certificate from any medical institution and (3) a medical certificate from a government accredited institution. A pattern is also visible: the higher the skill or income of the migrant, the less stringent the health requirements.

1. PERSONAL ATTESTATION OF GOOD HEALTH

Selected permits in the Philippines and Singapore only require a personal attestation of good health of the migrant worker. A medical report is not required in Singapore's work permit for the very high income and well financed. **Entrepass** and **Personalised Employment Pass** applicants only need to declare that s/he has not suffered and is not suffering from AIDS or infected with HIV or tuberculosis. If during the period of validity of the **EntrePass** and **Personalised Employment Pass**, the holder is found to be suffering from AIDS or infected with HIV or Tuberculosis, the permit issued will be cancelled and the holder will have to leave Singapore by the date specified. Likewise, in the Philippines, a foreign professional applying via the **Alien Employment Permit** plus **Special Temporary Permit** is required to answer the following:



Do you have any medical condition or impairment (including history of alcohol or substance abuse) that currently interferes, or if left untreated may interfere, with your ability to practice in a competent and professional manner?

As in Singapore, no medical check or certificate is required.

2. MEDICAL CERTIFICATE FROM ANY MEDICAL INSTITUTION

However, most other permits do require more than just a personal attestation of good health. In Singapore, for example, high-skilled migrants with lower wages than those required under the **Personalised Employment Pass** can apply via the **Employment Pass**, but they must submit a medical report. This should be a completed medical examination or health declaration form, to certify that they are medically fit for the work involved. The medical report must be submitted as part of the documentation required for issuance of the pass.

Similar rules apply in Cambodia, Lao PDR, Myanmar, and Viet Nam. Migrants heading to Cambodia must obtain a health certificate from their country of origin. This must be still valid or procured within the last six months. Another option is to request a health certificate from the Department of Occupational Safety and Health of the MLVT. In Viet Nam, health certificates issued by competent foreign or Vietnamese health agencies or organisations are valid for twelve months from the date of signing the health conclusion to the date of submission.

⁴⁰ For instance, Malaysia's Employment Pass applicants are not required to undergo a medical check before or on arrival in Malaysia, although their respective employers may have such a condition for employment especially if the employer is purchasing medical insurance to protect the employee – a common benefit in expatriates' employment contracts. Although discussion are currently under way to make it mandatory. Likewise, both the Philippines and Thailand waive health requirements for applicants in the two permits related to business or investments (the G-Visa Commercial and Section 62: Investment Promotion) while Singapore reserved that privilege to only one of the eight permits it operates: the Work Permit for Confinement Nanny.

3. MEDICAL CERTIFICATE FROM ACCREDITED INSTITUTIONS

An even more stringent requirement is to only accept medical reports issued by accredited or recognised institutions. Eleven permits in four AMS impose such requirements. In Brunei Darussalam, a prospective migrant worker must undergo a medical examination in their country of origin, and it must be at medical centre accredited by the Brunei Darussalam Ministry of Health.⁴¹ In Malaysia a similar measure applies to 2 permits for low-skilled and domestic workers, the 'Foreign Domestic Helper' permit and **Pas Lawatan Kerja Sementara**. Likewise, in Thailand, seven out of eight permits require a medical certificate from a recognised hospital or clinic in Thailand.⁴² These permits are: **Section 59: General Type; Section 59: General Type MOU; Section 63: Born in the Kingdom without Acquiring Thai Nationality; Section 63/1 group 1, Section 63/1 group 2, Section 63/2 and Section 64: Border Type**. The certificate must state that the applicant is of good mental and physical health (e.g. not suffering from leprosy, tuberculosis, elephantiasis, narcotic addiction or alcoholism).

In Singapore, 4 permits require workers to undergo a medical examination by a Singapore-registered doctor within two weeks of their arrival in Singapore. These permits relate to mid-skilled workers (**S Pass**), semi-skilled workers (**Work Permit for Foreign Worker**), entertainers (**Work Permit for Performing Artist**) and domestic workers (**Work Permit for Foreign Domestic Workers**). The worker must pass the examination, and the employer must supply the completed medical form to obtain the Work Permit. Those who fail these examinations are sent home. The medical examination screens workers for four types of infectious diseases (tuberculosis, HIV, syphilis, and malaria) and checks if they are fit to work. The employer can send workers for more tests if they have specific concerns about their health.

Singapore is more stringent in health requirements, when compared to how similar workers are treated in other ASEAN countries. As noted, Thailand has completely waived health requirements for investors and Malaysia has done the same for its high-skilled visa. Although there is ongoing discussion in Malaysia as to whether to impose more health requirements in the future. Aside from Thailand, Singapore is the only other country in ASEAN that requires a high-skilled worker to have a medical certificate (with the **Employment Pass**). The **S-pass**, which is at the technician level, must meet similar health requirements to those with low-skilled occupations seeking other permits in Singapore, or the **Pas Lawatan Kerja Sementara** in Malaysia.

Table 14: Eligibility Requirements by Health

Country	Name of Permit/s	With No Health Requirements	With Health Requirements		
			Attestation of Good Health	Medical certificate required	Medical certificate from accredited or recognised institution required
Brunei Darussalam	Foreign Workers License				•
Cambodia	Foreigner Work Permit			•	•
Indonesia	Foreign Workers Employment Permit	•			
Lao PDR	Work Permit			•	

41 Within 01 week of arrival in Brunei Darussalam, migrant workers are required to undergo medical examination at health screening centers to ensure that each individual worker is fit to work. Medical examination shall also be applied during the employment renewal process. Accredited medical centers can be found at Ministry of Health website: [1http://www.moh.gov.bn/Shared Documents/Foreign Worker Health Screening/Accredited Healthcare Facilities \(FWHS\) updated Aug 2019.pdf](http://www.moh.gov.bn/Shared Documents/Foreign Worker Health Screening/Accredited Healthcare Facilities (FWHS) updated Aug 2019.pdf)

42 Provisional data provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Country	Name of Permit/s	With No Health Requirements	With Health Requirements		
			Attestation of Good Health	Medical certificate required	Medical certificate from accredited or recognised institution required
Malaysia	Pas Lawatan Kerja Sementara				•
	Employment Pass	•			
	Foreign Domestic Helper				•
Myanmar	Foreign Worker Registration Card			•	
Philippines	Alien Employment Permit plus Special Temporary Permit		•		
	Alien Employment Permit	•*			
Singapore	Employment Pass			•	
	EntrePass		•		
	Personalised Employment Pass		•		
	S Pass				•
	Work Permit for Confinement Nanny	•			
	Work Permit for Foreign Worker				•
Thailand	Section 59: General				•
	Section 59: Memorandum of Understanding				•
	Section 62	•			
	Section 63				•
	Section 63/1 group 1				•
	Section 63/1 group 2				•
	Section 63/2				•
	Section 64				•
	Section 59: General				•
	Section 59: Memorandum of Understanding				•
Viet Nam	Work Permit			•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * Provisional data provided to author by the national focal point of the Government of the Philippines to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020. In the Philippines, employers typically require a mandatory medical and fit to work certificate from migrant workers. Further, under the current situation, returning migrant workers who left the Philippines before and during the implementation of community Quarantines, but issued with AEP are already required to apply for travel ban exemption and undergo strict health and safety protocols.

Types of medical checks

AMS conduct medical checks on a wide range of diseases. In four AMS migrant workers are required to have a check for pregnancy. The 14 permits requiring a medical screening cover these three areas:

1. SCREENING FOR COMMUNICABLE DISEASES

Four AMS currently check for communicable diseases including Leprosy, Hepatitis B, HIV-AIDS, Tuberculosis and STD. Brunei Darussalam administers the most extensive screening with six communicable diseases covered (Leprosy, Hepatitis B and C, HIV-AIDS, Tuberculosis and STD); Malaysia checks for five (Leprosy, Hepatitis B, HIV-AIDS, STD, and Malaria) while Singapore screens for four (HIV-AIDS, Tuberculosis, STD, and Malaria). Thailand, however, limits checks to four diseases: Leprosy, Tuberculosis, Elephantiasis and Syphilis level 3.

2. SCREENING FOR NON-COMMUNICABLE DISEASES

Three AMS – Thailand, Malaysia, and Brunei Darussalam – also screen for other types of medical problems that are not communicable per se but are considered chronic or expensive to treat. Thailand, for example, checks for any indication of alcoholism and/or narcotic addiction. Malaysia screens for cancer, mental illness, epilepsy, heart disease, hypertension, diabetes mellitus, kidney disease, bronchial asthma, and peptic ulcer. Brunei Darussalam administers the most extensive checks here, covering 12 diseases, including all those covered in the Malaysia checks but also narcotic addiction. Thailand also screens for narcotic addiction, as well as hearing and vision problems.

3. PREGNANCY TEST

Whilst certainly not a disease, pregnancy is part of medical screening in four AMS: Brunei Darussalam, Malaysia, Myanmar, and Singapore. In Malaysia and Singapore, a pregnancy test is required but only for domestic workers and low-skilled workers. In Brunei Darussalam, a pregnancy test is performed pre-departure, but in Singapore and Malaysia, the migrant worker must undergo the pre-employment medical examination upon arrival. The work permit will only be issued if she passes the medical examination, otherwise, she will be sent home. In some AMS, the practice of pregnancy testing is explicitly prohibited. In Lao PDR, for example, employers are prohibited to check for pregnancy before offering a position so as not to discriminate, stigmatise or create any barriers to potential female employees who are or could be pregnant.⁴³

43 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020; See Labor Law 2013 (Article 100), Lao PDR.

Table 15: Types of Medical Checks Conducted

Country		Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia		Myanmar	Singapore					Thailand						Viet Nam			
Name of Permit/s		Foreign Workers License	Foreigner Work Permit	Foreign Workers Employment Permit	Work Permit	Pas Lawatan	Foreign Domestic Helper	Foreign Worker Registration Card	Employment Pass	S Pass	Work Permit for Foreign Worker	Work Permit for Performing Artist	Work Permit for Foreign Domestic Workers	Section 59: Work permits	Section 59:	Section 62	Section 63	Section 63/1 group 1	Section 63/1 group 2	Section 63/2	Section 64:	Work Permit	
Pregnancy test		•				•	•	•			•		•										
Screening for Communicable Diseases	Leprosy	•	•			•	•							•	•		•	•	•	•	•		
	Hepatitis B	•	•			•	•																
	Hepatitis C	•	•																				
	HIV-AIDS	•				•	•		•	•	•	•	•										
	Tuberculosis	•	•						•	•	•	•	•	•	•		•	•	•	•	•	•	
	Sexually transmitted disease	•	•			•	•			•	•	•	•										
	Syphilis level 3													•	•		•	•	•	•	•		
	Malaria		•			•	•			•	•	•	•	•	•		•	•	•	•	•	•	
	Elephantiasis		•											•	•		•	•	•	•	•		

Country		Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Singapore					Thailand					Viet Nam				
Name of Permit/s		Foreign Workers License	Foreigner Work Permit	Foreign Workers Employment Permit	Work Permit	Pas Lawatan	Foreign Domestic Helper	Foreign Worker Registration Card	Employment Pass	S Pass	Work Permit for Foreign Worker	Work Permit for Performing Artist	Work Permit for Foreign Domestic Workers	Section 59: Work permits	Section 59:	Section 62	Section 63	Section 63/1 group 1	Section 63/1 group 2	Section 63/2	Section 64:	Work Permit
Screening for Non-Communicable diseases	Alcoholism													•	•		•	•	•	•	•	
	Narcotic Addiction	•												•	•		•	•	•	•	•	
	Cancer	•				•	•															
	Psychiatric Illness	•				•	•															
	Epilepsy	•				•	•															
	Heart disease	•				•	•				•		•									
	Hypertension	•				•	•															
	Diabetes Mellitus	•				•	•															
	Kidney disease	•				•	•															
	Bronchial asthma	•				•	•															
	Hearing problems	•									•	•										
	Vision problems	•									•	•										
	Peptic ulcer	•				•	•															

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Payment of application fees

The second most common procedural requirement is the payment of an application fee, which is required in all AMS except for Viet Nam and Brunei Darussalam. However, the amount varies widely within the region, from less than 10 Euros for some permits to over 200 Euros for others. There is also variation even within countries where multiple permits are available. An analysis of the cost structures discerned a clear pattern. Those permits that are targeted toward the high-skilled and persons related to investments and business development tend to incur a higher cost when compared to permits targeting low-skilled workers.

1. HIGHEST FEES

The highest fees in the region, costing around 200 Euros, can be found in Singapore and the Philippines. Singapore offers a uniform fee rate of S \$330 (€218) for three of its permits that cater to the high-skilled and investors,⁴⁴ whilst migrants to the Philippines pay a little less under the **Alien Employment Permit (AEP)** and **Alien Employment Permit plus Special Temporary Permit**.⁴⁵

2. MEDIUM FEES

In the middle range are permits issued in Cambodia, Thailand and four other permits from Singapore. In Cambodia, the fees depend upon the type of entry visa that the migrant worker will use and ranges from 360,000 (€74) to 520,000 riels or (€112).⁴⁶ In Thailand, migrants under **Section 59: General Type** and **Section 62** permits pay 3,000 THB (€84), whilst those under the **Section 59: General Type MOU** pay a lesser fee of 1,900 THB (€53) for a 2-year work permit.⁴⁷

3. LOWEST FEES

Cross border migrants in Thailand using the **Section 64** permit would have to pay an application fee of 100 THB (€3) and a three-month work permit fee 225 THB (€6), whilst those using **Section 63** must pay 900 THB (€25). A cost that is three times higher. Singapore's '**Work Permit for Confinement Nanny**' commands the lowest fee among the 8 permits in Singapore at S \$35 (€23). Lao PDR and Myanmar charge the lowest with application fees at less than 7 euros. Lao PDR charges 50,000 KIP (€5) while Myanmar charges 11,000 Kyats (€7) for a one-year permit and 5,500 Kyats (€3) for a six-month permit.⁴⁸

44 Employment Pass; Entre-Pass and Personalized Employment Pass. Employers hiring migrants under these permits pay S \$105 (€69.30) for each pass when they submit the application and S \$225 (€148.50) for each pass when the pass is issued.

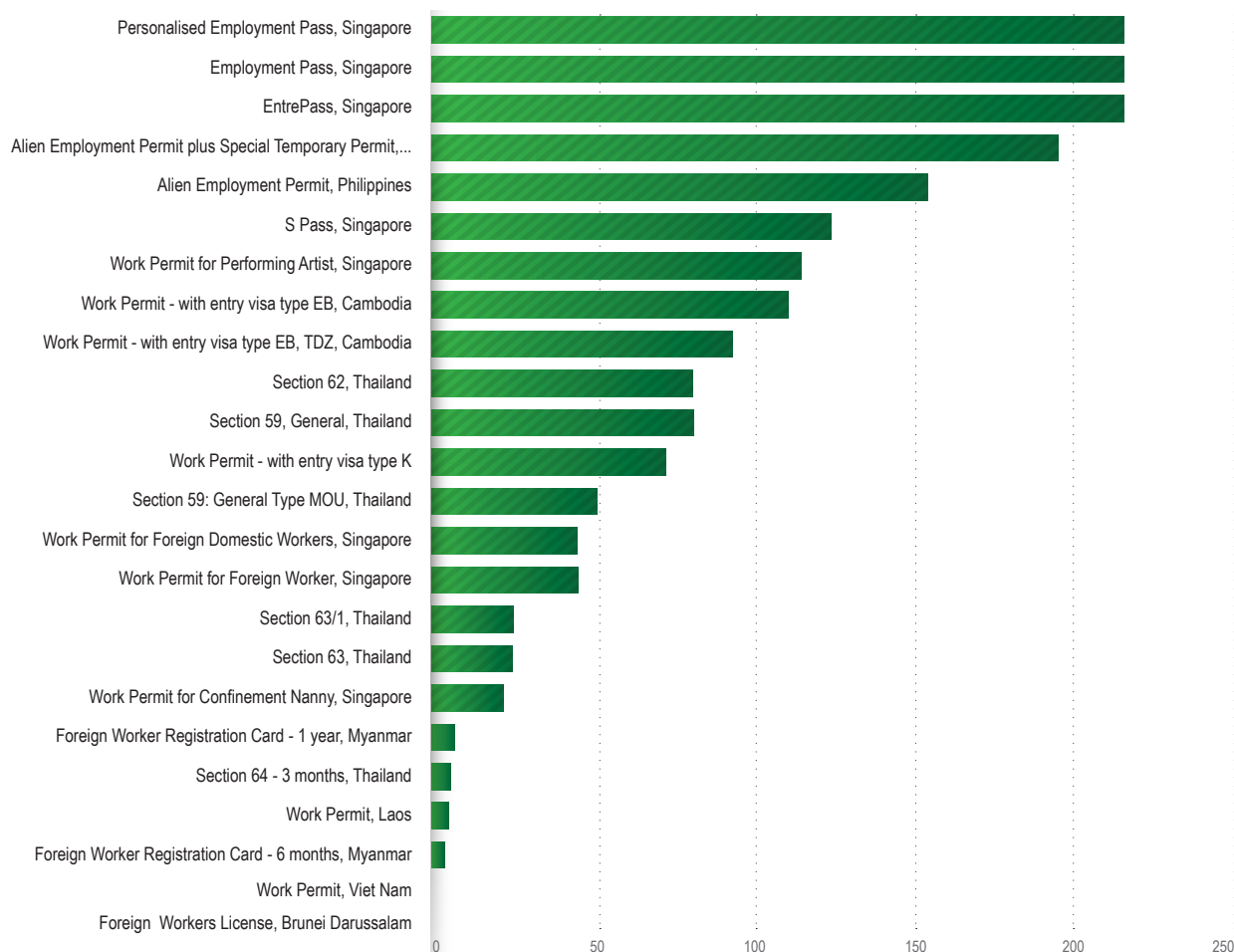
45 AEP applicants must pay Php 9,000 (€153) for an AEP with a validity of one year, while those entering via the Alien Employment Permit plus Special Temporary Permit must pay a processing fee of P3,000/applicant (€ 53.68) and a Permit fee of P8,000/applicant (€143.14).

46 Foreign workers with visa type K pay 440,000 riels (€ 94.46) foreign workers with visa type EB in the Triangular Development Zone.

47 In Singapore, the Work Permit for Performing Artist permit requires employers to pay S \$75 (€49.50) for each pass when they submit the application and S \$100 (€66) for each pass when the pass is issued while the fees for two other permits: the Work Permit for Foreign Worker and Work Permit for Domestic Worker is much lower. The application costs is S \$35 (€23.10) for each pass and S \$35 (€23.10) for each pass issued, for the total cost of €46.

48 Khin Mar Yee, Migration Laws and Policies in Myanmar, National Study Report, August 2020

Figure 10: Application Fees per AMS, Converted to Euros



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Recognition of qualification

Another common procedural requirement is the recognition of qualifications. This measure is present in 13 permits in eight AMS. Perhaps surprisingly, qualification recognition in the ASEAN region is not only a requirement for the highly skilled and professionals, in some AMS it also applies to low and mid-skilled workers, as well as entrepreneurs.

Cambodia and Lao PDR are the only two AMS where there are not any measures pertaining to recognition of qualifications. Malaysia, Philippines, and Singapore also waive this requirement for some of their permits. Malaysia does not require recognition for low-skilled migrant workers and domestic workers while Singapore has a waiver for entertainers and confinement nannies. In the Philippines, too, applicants for the **Alien Employment Permit** are not required to show proof that their qualifications are recognised.

When permits do require recognition of qualifications, there is significant variation in the approach. This is usually dependent on the specific occupation of the migrant worker and their level of skill. A clear pattern can be discerned at the high-skill end: migrants in regulated occupations, particularly in the health profession, are almost always obliged to have their qualifications recognised before they can practice and work in many AMS. Moreover, these requirements for recognition may not be easy to fulfil, which can significantly limit labour-market access for otherwise eligible applicants.

RECOGNITION OF QUALIFICATION FOR HIGH-SKILLED WORKERS AND PROFESSIONALS

In Indonesia, medical practitioners require evaluation, and language proficiency, so even if the work permit itself does not require language proficiency, the evaluation process may still do so. For accountants, only citizens of countries with a Mutual Recognition Agreement with Indonesia can practice. In Brunei Darussalam, it is under the discretion of the Department of Labour whether a migrant must undergo a recognition process and it could be both at the country of origin and upon arrival in Brunei Darussalam. For example, an employer intending to recruit a certified accountant will be required to produce copies of the relevant qualifications of the person in question for consideration by the Department of Labour (pre-departure) as well as obtain supporting approval (or register) with the Ministry of Finance and Economy, Brunei Darussalam (considering the nature of business).

In Singapore, employers under the 3 permits that cater exclusively to high-skilled workers – **Personal Employment Pass, Employment Pass** and **S Pass** – must first verify with global verification agencies whether qualifications of the candidate are acceptable or accredited. These include ‘Dataflow’ or ‘Risk Management Intelligence’ (RMI), other international accreditation bodies and/or the awarding country’s educational authorities.

In the Philippines, migrants in regulated occupations must meet varying measures, depending on length of practice, when entering under the **Alien Employment Permit plus Special Temporary Permit**. These processes are mostly completed when the migrant is still in their country of origin. An applicant must submit an official document showing that the foreign professional is legally qualified to practice this profession in his or her own country. An official English translation must be included where necessary. This document must then be authenticated by the Philippine embassy or consulate, or with an Apostille certificate.

RECOGNITION OF QUALIFICATION FOR LOW AND MID-SKILLED WORKERS AND ENTREPRENEURS

Singapore stands unique in the region as the only AMS with measures to assess the competency and qualifications of low and mid-skilled workers as well as that of entrepreneurs. For example, prospective domestic workers in Singapore must provide proof that they have a minimum of 8 years of formal education by acquiring a recognised certificate from a list prescribed by Ministry of Manpower. Likewise, prospective migrants entering via **Work Permit for Foreign Worker**, which caters primarily to low-skilled workers, must also have their qualifications recognised. Generally, the system in Singapore provides incentives to employers if their workers are highly skilled because, as will be discussed in depth later, they pay less levy for workers with recognised qualifications. Selected workers need to obtain the required qualifications before arriving in Singapore, and the majority need to undergo other qualifying tests in Singapore upon arrival.⁴⁹ A similar system also exists for manufacturing and the service sector, with corresponding qualification requirements and certificates. For example, to qualify as a high-skilled worker, non-Malaysian Work Permit holders working in the hotel, retail and F&B industries must obtain level 4 of the Workplace Literacy and Numeracy (WPLN) listening and speaking assessments offered by the British Council. Singapore also assesses the qualifications of investors and other eligible individuals entering via the **EntrePass** permit if they are not intending to start a private limited company registered with Accounting and Corporate Regulatory Authority (ACRA) in Singapore.⁵⁰

49 Foreign workers in the construction sector need to attain Basic-Skilled status to work in Singapore. All non-Malaysian workers, that is workers from NTS, NAS and PRC, must have the Skills Evaluation Certificate (SEC) or Skills Evaluation Certificate (Knowledge) (SEC(K)) – initiatives by the Building and Construction Authority (BCA) to raise skills, productivity and safety of workers in the sector – to qualify as Basic-Skilled construction workers. Workers from the NTS or PRC must register for the SEC(K) at their respective overseas BCA test centres before they can commence work in Singapore. Workers from Malaysia must have either a SPM or equivalent, SEC or SEC(K) to work in Singapore.

50 Migrants in this category have to fulfil any of the following innovative criteria to qualify as entrepreneur, innovator or investor: Entrepreneur: have raised funding of at least S \$100,000 (€66,000) from a government investment vehicle, venture capitalist (VC) or business angel that is recognised by a Singapore Government agency; has an existing incubator or accelerator in Singapore that is recognised the Government and has significant business experience or network and promising entrepreneurial track record of starting highly scalable businesses and want to establish, develop and manage a new or existing business in Singapore.; Innovator: Holds an intellectual property (IP), registered with an approved national IP institution, which delivers a significant competitive advantage to your proposed business that cannot be easily replicated; has an ongoing research collaboration with a research institution under the Agency for Science, Technology and Research (A*STAR), an Institute of Higher Learning (IHL) in Singapore; has exceptional technical or domain expertise in an area related to the proposed business.; Investor: Has a good track record of investing in businesses and want to grow new or existing businesses in Singapore.

Table 16: Recognition of Qualification Requirements

Country	Name of Permit/s	With No Recognition of Qualification Requirements	With Recognition of Qualification Requirements	On Selected Occupations only
Brunei Darussalam	Foreign Workers License		•	•
Cambodia	Foreigner Work Permit	•		
Indonesia	Foreign Workers Employment Permit		•	
Lao PDR	Work Permit	•		
Malaysia	Pas Lawatan Kerja Sementara	•		
	Employment Pass		•	
	Foreign Domestic Helper	•		
Myanmar	Foreign Worker Registration Card		•	
Philippines	Alien Employment Permit	•		
	Alien Employment Permit plus Special Temporary Permit		•	•
Singapore	Employment Pass		•	•
	EntrePass		•	•
	Personalised Employment Pass		•	•
	S Pass		•	•
	Work Permit for Confinement Nanny	•		
	Work Permit for Foreign Worker		•	•
	Work Permit for Performing Artist	•		
	Work Permit for Foreign Domestic Workers		•	N/A

Country	Name of Permit/s	With No Recognition of Qualification Requirements	With Recognition of Qualification Requirements	On Selected Occupations only
Thailand	Section 59: General			•
	Section 59: Memorandum of Understanding	•		
	Section 62	•		
	Section 63	•		
	Section 63/1 group 1	•		
	Section 63/1 group 2	•		
	Section 63/2	•		
	Section 64	•		
Viet Nam	Work Permit		•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Procuring a special visa or entry permit

Another widespread procedural measure is the requirement to acquire a special entry visa or entry permit. This visa or entry permit is different from the employment permit and is typically issued only upon arrival. Only three AMS issue the employment permit while the migrant is still in their origin country. The rest of AMS provide some sort of a document showing tentative approval of the employment permit, which can then be used by the migrant to apply for permission to enter. As Table 17 shows this measure is present in nine AMS and in 13 of the 27 permits in this study.

Table 17: Issuance of Employment Permit and Special Visa/Permit for Entry

Country	Name of Permit/s	Issuance of the Employment Permits		Special entry visa /permit required
		Before departure, at the country of origin	Upon arrival at the country of destination	
Brunei Darussalam	Foreign Workers License	•		•
Cambodia	Foreigner Work Permit		•	•
Indonesia	Foreign Workers Employment Permit		•	•
Lao PDR	Work Permit		•	

Country	Name of Permit/s	Issuance of the Employment Permits		Special entry visa /permit required
		Before departure, at the country of origin	Upon arrival at the country of destination	
Malaysia	Pas Lawatan Kerja Sementara		•	•
	Employment Pass		•	•
	Foreign Domestic Helper		•	•
Myanmar	Foreign Worker Registration Card		•	•
Philippines	Alien Employment Permit	•	•	
	Alien Employment Permit plus Special Temporary Permit	•	•	
Singapore	Employment Pass		•	
	EntrePass		•	
	Personalised Employment Pass		•	
	S Pass		•	
	Work Permit for Confinement Nanny		•	•
	Work Permit for Foreign Worker		•	
	Work Permit for Performing Artist		•	
	Work Permit for Foreign Domestic Workers		•	
Thailand	Section 59: General		•	•
	Section 59: Memorandum of Understanding		•	•
	Section 62		•	•
	Section 63			N/A*
	Section 63/1 group 1			N/A*
	Section 63/1 group 2			N/A*
	Section 63/2			N/A*
	Section 64		•	•
Viet Nam	Work Permit	•		•

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * Not applicable: this permit is given to migrants who are already in Thailand.

In Brunei Darussalam, for example, a permit to enter will be issued to a migrant worker in the form of a work pass /employment pass. The Department of Immigration & National Registration issues this pass and requires an approved '**Foreign Worker License**' as a pre-requisite before being issued. This employment pass is issued to the migrant worker by Brunei Darussalam's diplomatic mission in their country of origin prior to departure. Whereas in Lao PDR, migrant workers are not required to acquire an entry visa or entry permit to enter the country, but they should present a document to the immigration authorities showing that the labour quota was approved by the Ministry of Labour and Social Welfare.⁵¹

■ Labour-market test, quota, levy and deposit

Most governments in the ASEAN region also impose additional procedural requirements that seek to directly or indirectly limit the number of migrant workers employers eventually choose to hire.

- **Direct limit** includes specific measures that either place a quota, or numerical limits, on the number of migrant workers that can be admitted each year. Or there is a requirement to pass a labour-market test, wherein job applications are tested against the available pool of eligible workers for the job opening to make sure no native worker could do that job.
- **Indirect limit** includes measures that make it more expensive for employers to hire migrant workers. This includes the payment of a levy or a deposit per every migrant worker hired. The worker levy is essentially a pricing mechanism to regulate the number of migrant workers.

With these measures in place, employers cannot hire beyond the number that the government determines or what the labour market dictates. It also serves to make the hiring of migrant workers more expensive.

Of the 27 permits under study, only 11 permits are not restricted in such ways and they cover all skill levels. These include 7 of the 8 permits administered in Thailand, (covering all skill levels), 3 of the 8 permits in Singapore (focused on the highly skilled and investors), and the one permit offered in Myanmar.

The 16 permits *with* restrictions either require a labour-market test or a levy. Indeed, these two measures are the most used in the ASEAN region. 8 of the 16 permits have only one type of restriction, whilst other permits adopt a more targeted approach combining two measures and, in a few cases, even three. Three patterns seem to be emerging. Firstly, while remaining popular in the region, labour-market tests are rarely used on their own but often in combination with a quota or levy. Singapore is unique in the region for being the only AMS that uses both levy and quota but not a labour-market test. Secondly, quota is rarely used but almost always in combination with a levy. Thirdly, these types of restrictions cut across all skills levels affecting nearly all type of migrant workers, from domestic workers to CEOs.

51 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020.

Figure 11: Labour Market Test, Quota, Levy and Security Deposit

Country	Name of Permit/s	No restrictions	With restrictions- Single				With restrictions-Two or more combinations					
			Deposit Only	Quota Only	Labour market test only	Levy only	Quota and Labour Market	Quota and Levy	Levy and Labour Market	Quota, Labour Market and Levy	Labour market test and deposit	
Brunei Darussalam	Foreign Workers License											•
Cambodia	Foreigner Work Permit			•								
Indonesia	Foreign Workers Employment Permit								•			
Lao PDR	Work Permit									•		
Malaysia	Pas Lawatan Kerja Sementara								•			
	Employment Pass				•							
	Foreign Domestic Helper		•									
Myanmar	Foreign Worker Registration Card	•										
Philippines	Alien Employment Permit					•						
	Alien Employment Permit plus Special Temporary Permit				•							
Singapore	Employment Pass	•										
	EntrePass	•										
	Personalised Employment Pass	•										
	S Pass							•				

Country	Name of Permit/s	No restrictions	With restrictions- Single				With restrictions-Two or more combinations				
			Deposit Only	Quota Only	Labour market test only	Levy only	Quota and Labour Market	Quota and Levy	Levy and Labour Market	Quota, Labour Market and Levy	Labour market test and deposit
Singapore continued	Work Permit for Confinement Nanny					•					
	Work Permit for Foreign Worker							•			
	Work Permit for Performing Artist							•			
	Work Permit for Foreign Domestic Workers					•					
Thailand	Section 59: General	•									
	Section 59: Memorandum of Understanding				•						
	Section 62	•									
	Section 63	•									
	Section 63/1 group 1	•									
	Section 63/1 group 2	•									
	Section 63/2	•									
	Section 64	•									
Viet Nam	Work Permit				•						

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

1. SINGLE RESTRICTIONS

Labour market test only

In Malaysia, before migrants can take up posts under the **Employment Pass**, their employers must first advertise in local newspapers and 'Jobs Malaysia', (a recruitment portal under the Department of Labour). The Philippines and Thailand use similar labour-market-test requirements for migrants entering via the '**Alien Employment Permit plus Special Temporary Permit**' and **Section 59: Memorandum of Understanding**, respectively. In Viet Nam, policies are decentralised to provincial and city levels. Regulations require that employers identify their demand for migrant workers for such posts that native workers cannot fill. They must then report their demand to the chairman of the provincial-level People's Committee (hereafter referred to as the provincial People's Committee) where the foreign worker is expected to work. The People's Committee of the city or province then directs local agencies and organisations to introduce and send Vietnamese workers to employers. It is only in the case of failure to find Vietnamese workers that the President of the provincial People's Committee would allow employers to recruit migrant workers.⁵²

Levy only

Singapore is the only AMS that has a levy-only restriction specifically on two occupations: confinement nannies and domestic workers. The levy for both depends on the nationality and caregiving needs of a household. Employers who live with a Singapore citizen needing care (aged below 16 years old, or at least 67 years old, or with a disability)⁵³ pay a concessionary levy of S \$60 per month (€37). Employers who do not qualify for the concessionary levy pay S \$300 per month (€185) for the first domestic worker employed and S \$450 per month (€278) for the subsequent domestic worker employed.⁵⁴

Quota only

In Cambodia, migrant workers cannot exceed 10% of the total Cambodian workforce, of which no more than 1% can be non-technical workers. The maximum limit for office and technical workers is much higher, at 3% and 6% respectively.

Posting of bond or security deposit only

Malaysia also imposes additional financial requirements for employers of domestic workers, obliging the payment of a bond or security deposit, which is redeemable when the migrant worker returns to their country of origin.⁵⁵ This rate also varies and is dependent on the nationality of the domestic worker.⁵⁶ Table 18 below outlines these different bond rates. This pricing system incentivises the hiring of workers from Indonesia, Cambodia and Thailand, whilst discouraging the hiring from Viet Nam and Lao PDR. The highest bond is imposed on hiring domestic workers from Viet Nam and Lao PDR at RM 1,500 (€302), whilst the lowest rate applies to migrants from Cambodia, Indonesia, and Thailand at RM 250 (€50), a five hundred percent difference from the highest rate. The bond rate for domestic workers from the Philippines, Sri Lanka and India is set at the middle range RM 750 (€151) although employers hiring from these countries must show proof of a net income of at least RM 5,000 (€1008) while the corresponding income requirement for employers hiring from the other countries is nearly 70% lower at RM 3,000 (€605).

52 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020; See Article 5 of Circular 40/2016/TT.

53 Person with disabilities (PWD) – Must be certified by Singapore-registered doctor to require help with at least 1 activity of daily living (ADL), such as showering, feeding, dressing or toileting.

54 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

55 There are also regulations in Malaysia penalizing employers who have not or cannot prove that the migrant worker has returned to the country of origin after the end of the contract. Every employer must complete a "Check out memo", failing which they will lose the security bond payable when the worker first entered the country. Information required for the check-out memo includes a copy of the return ticket to the country of origin.

56 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

Table 18: Bond Rates for Domestic Workers in Malaysia

Country of Origin	Employer's Net Income Per Month	Personal Bond
Vietnam	RM 3,000 (€605,00)	RM 1,500 (€302,50)
Lao PDR	RM 3,000 (€605,00)	RM 1,500 (€302,50)
Philippines	RM 5,000 (€1008,34)	RM 750 (€151,25)
Sri Lanka	RM 5,000 (€1008,34)	RM 750 (€151,25)
India	RM 5,000 (€1008,34)	RM 750 (€151,25)
Indonesia	RM 3,000 (€605,00)	RM 250 (€50,42)
Cambodia	RM 3,000 (€605,00)	RM 250 (€50,42)
Thailand	RM 3,000 (€605,00)	RM 250 (€50,42)

Source: Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020

2. TWO RESTRICTIONS

Six of the 16 permits in Brunei Darussalam, Philippines, and Singapore combine two restrictions.

Labour market and deposit

Brunei Darussalam requires employers to pass a labour-market deposit as well as pay a deposit to hire migrant workers. The employer must advertise all vacancies with 'JobCentre Brunei' to prioritise all local jobseekers for all positions. Should the employer be unsuccessful, following the assistance and facilitation provided by JobCentre Brunei, the employer may proceed with a **Foreign Worker License** application. Employers of migrant workers must also pay a security deposit at the Department of Labour. This payment is utilised primarily for the wages or repatriation of a migrant worker in the event of a labour dispute between the employer and that worker.

Quota and labour-market test

In the Philippines, migrant workers applying under the **Alien Employment Permit** must meet a labour-market test and quota requirement. The employer is required to first publicise the vacancy, including annual salary in a newspaper of general circulation, to determine whether a competent, able and willing person is available in the country at the time of application. A quota is also selectively imposed on migrant workers in Special Economic Zones. Under the Philippine Economic Zone Authority Law, migrant workers for each company must account for not more than 5% of the total workforce. However, a Certificate of No Objection may be secured from the Department of Labour & Employment through PEZA, if the number of migrant workers required to run the company is beyond this threshold.⁵⁷

⁵⁷ PEZA – attached to the Department of Trade and Industry – is the Philippine government agency tasked to promote investments, extend assistance, register, grant incentives to and facilitate the business operations of investors in export-oriented manufacturing and service facilities inside selected areas throughout the country proclaimed by the President of the Philippines as PEZA Special Economic Zones. please see Article 41 of RA 7916.

Quota and Levy

Singapore, however, imposes a combination of quota and levy for 2 of its permits catering to mid-skilled workers and entertainers: the **S-Pass** and **Work Permit for Performing Artist**, respectively. The number of **S Pass**-holders an employer can hire is dependent on the industry as well as their number of local employees. This quota also changes annually. Based on the most recent update (01/01/2020), the number of **S Pass** holders is capped at 13% of a company's total workforce in the services⁵⁸ sector and 20% in all other sectors (construction, manufacturing, marine shipyard, and process). Due to the above, there is no single numerical limit for an employer in Singapore. Employers can use the guidelines, or an online calculator published by the Ministry of Manpower to assess their own quota.⁵⁹ As for the levy, the rate is dependent on the proportion of migrant workers a company hires: the higher the proportion, the higher the levy rate. Employers with more than 10% of its workforce pay S \$650 (€401) per month per worker, almost double the rate for employers with 10% or less, set at S \$330 (€203).

In Singapore, an employer must purchase a S \$5,000 (€3,084) security bond for non-Malaysian workers. This security bond, in the form of a banker's or insurer's guarantee, is a binding pledge to pay the government if either the company or the worker breaks the law or Work Permit conditions. Companies cannot ask the worker to pay for the bond. Employers are also limited by a quota, which in Singapore is known as the 'dependency ratio ceiling' or DRC. The DRC varies by sector as well as the number of native workers hired and, in some sectors, also their pay and nationality. Indeed, Singapore is the only AMS that assesses not only the number of local workers hired but also their salary, nationality, and skill level. See Box 2 below: Singapore's Dependency Ratio Ceiling.

Box 2: Singapore's Dependency Ratio Ceiling

In the construction and process sectors, employers can hire up to 7 migrant workers for every local employee earning at least S \$1,400 (€863,66) per month.⁶⁰ In Marine Shipyard, the quota is set at 3.5 workers per local employee with the same wage threshold. The Quota for manufacturing is set 60% of the local workforce earning the same wage threshold, whilst the quota for the services sector is much lower at 38%.⁶¹

Nationality also plays a role in the number of workers an employer can hire in the construction and process sectors. Here, employers cannot hire beyond their 'man-year entitlement' or MYE. The MYE refers to the total number of migrant workers an employer can hire from countries Singapore designates as non-traditional sources (NTS) of migrant labour. Countries in this list include three AMS (Thailand, Myanmar, and the Philippines), and five non-AMS (People's Republic of China, India, Sri Lanka, and Bangladesh). The higher the value of the projects and contracts an employer has, the higher the allocated MYE. Migrant workers from Malaysia, Hong Kong (HKSAR passport), Macau, South Korea and Taiwan are exempted from this requirement as well as migrant workers from NTS countries with at least three years of construction experience in Singapore.

58 Companies can be considered to be under the services sector if it has registered any of the following as its principal business activity: Financial, insurance, real estate, infocomm and business services- Transport, storage and communications services; Commerce (retail and wholesale trade); Community, social and personal services (excluding domestic workers); Hotels; Restaurants, coffee shops, food courts and other approved food establishments (excluding food stalls or hawker stalls).

59 See (https://www.mom.gov.sg/-/media/mom/documents/services-forms/passes/guide_on_comp_of_company_quota_balance.pdf) or online calculator (<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/foreign-worker-levy/calculate-foreign-worker-quota>) to assess their own eligibility.

60 The Local Qualifying Salary (LQS) determines the number of local employees who can be used to calculate your Work Permit and S Pass quota entitlement. The LQS was previously known as the Full-Time Equivalent salary. The LQS ensures that local workers are employed meaningfully, rather than being employed on token salaries to allow the employer access to foreign workers. This also ensures that our quota controls remain effective and keep pace with income levels. A Singaporean or Permanent Resident employee employed under a contract of service, including the company's director, is counted as: 1 local employee if they earn the LQS of at least \$1,400 per month and 0.5 local employee if they earn half the LQS of at least \$700 to below \$1,400 per month.

61 The LQS applies to quota calculated in all sectors.

Skill level is also an important factor in determining the appropriate allocation of migrant worker per employer. As noted earlier, on recognition qualifications, Singapore also requires low-skilled workers to have their qualifications recognised. A system of assessment determines whether each worker should be considered “basic-skilled” or “higher-skilled”. Regulations dictate that in any given company, at least 10% of the total number of migrant workers must be “higher skilled” before the employer is eligible to hire or re-hire a “basic-skilled” worker.

The MYE and skill-level of migrant workers also figure in the calculations of the levy rate for each employer. In construction, process and marine shipyard sectors, the levy per migrant worker depends on their skill level and whether they are under the MYE. The system is designed so that employers pay a higher levy for every “basic-skilled” migrant worker compared to those who are “higher skilled”. The difference between the levy imposed is very significant. For example, in the construction sector, migrant workers assessed as “basic-skilled” under MYE command a levy of S \$700 (€431,83) per month, more than double the levy for “higher-skilled” set at S \$300 (€185,07). In the process sector, the levy rate for a “basic-skilled” worker is lower than in construction and is set at S \$450 (€277,61) while a “higher skilled” worker commands the same rate: S \$300 (€185,07) per month.

The calculation for the quota and levy for entertainers is much more straightforward. The employer can employ up to 8 migrant workers while larger establishments can employ up to 12 migrant workers determined on a case-by-case basis. As with the **S-Pass**, the monthly levy is higher the more migrants are hired. Employers hiring no more than 8 workers must pay a monthly levy of S \$450 (€277) while those hiring nine or more workers pay S \$750 (€463), which is 70% more.

Levy and Labour Market Test

Indonesia and Malaysia have chosen to combine the imposition of a levy with a labour-market test. In Indonesia, the employer must prioritize the hiring of Indonesian workers. Regulations dictate that the “domestic labour market conditions” determine available positions for migrant workers. Employers hiring migrant workers must also pay a levy of US \$ 100 (€84) per position, per person per month.

Similarly, Malaysia also implements the same combination of measures for its permits catering to the low-skilled: the **Pas Lawatan Kerja Sementara**. Employers hiring under this permit must first advertise in ‘Jobs Malaysia’, a recruitment portal under the Department of Labour. A migrant worker can take only unfilled posts. The amount of levy varies by sector ranging from the lowest (agriculture and plantations) set at RM 640 (€129), to the highest (all other approved sectors) at RM 1850 (€373). Discussions are on-going as to how to refine the “flat-rate” system in force at present, to one that is more specified.⁶²

3. THREE RESTRICTIONS

The permit in Lao PDR combines three restrictions: *quota*, *labour-market test* and *levy*. To promote national employment, regulations require that employers must prioritise the hiring of Lao PDR workers. Job applications are tested against an available pool of eligible workers for the post to make sure no settled worker could do the job. For large investment projects, a labour requirement plan must be submitted to the Ministry of Planning and Investment (MPI) to review and approve in accordance with the Five-years Social Economic Development Plan. A levy is also imposed amounting to 1,020,000 Lao KIP per year (€95) for largescale projects and those prioritised by the government. Here, the proportion of hiring of foreign migrant workers is based on an agreement between the project and the government.

62 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

4.1.3. Terms of stay

As noted earlier, terms-of-stay focus on the difficulty of keeping or holding on to a permit once it is granted. 8 of the 50 measures included in this study fall under terms of stay. The review of 27 permits revealed 72 instances where terms-of-stay related measures are used. This mostly relates to restrictions on the initial length of employment and restrictions related to the portability of the permit. That is to other sectors, employers, and to a lesser degree to other occupations.

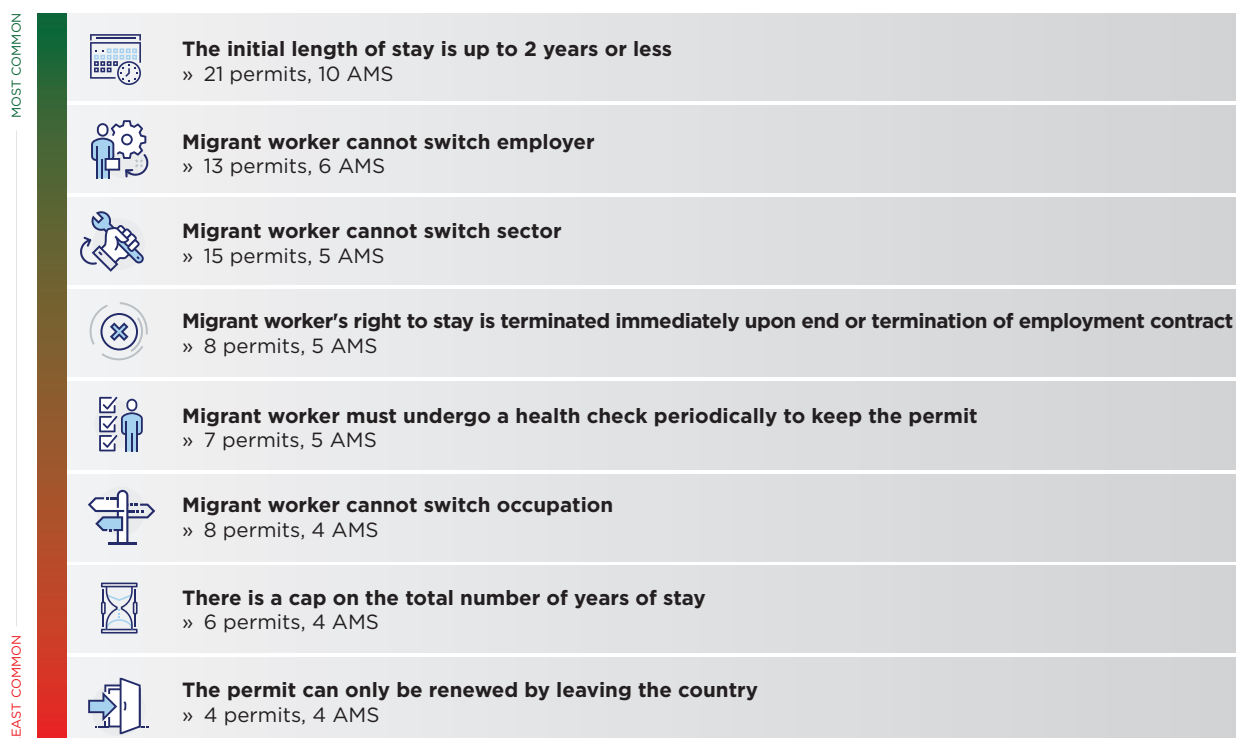
A review reveals four key patterns: (1) Most AMS limit the initial stay of migrant workers to less than two years, true across skill levels. (2) The higher the skills, though, the more opportunity there is to switch sectors, employers and occupation, and the fewer the restrictions on length of stay. (3) There is also more flexibility across ASEAN on renewal of permits, with most AMS allowing migrants to renew at their destination. (4) Although periodic health checks are practiced in the region, it is not a common requirement.

Table 19: Frequency of Terms of Stay Measures

Types of Terms of Stay Measures	No. of Permits with the measure	No. of AMS countries with the measure
The initial length of stay is up to 2 years or less	21	10
Migrant worker cannot switch employer	13	6
Migrant worker cannot switch sector	15	5
Migrant worker's right to stay is terminated immediately upon end or termination of employment contract	8	5
Migrant worker must undergo a health check periodically in order to keep the permit	7	5
Migrant worker cannot switch occupation	8	4
There is a cap on the total number of years of stay	6	4
The permit can only be renewed by leaving the country	4	4

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 12: Terms of Stay Measures in ASEAN, Most Common to Least Common



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Initial length of stay

The most common term-of-stay measure is the limit on the initial length of stay. Of the 27 permits in this study, 21 permits are valid for up to two years or less. Of these permits, 10 can be issued for up to two years, 8 have a maximum length of one year and 3 are valid for either six or three months. 6 permits have much longer validity, with the longest permits set at five years.

1. UP TO 2 YEARS

In four AMS, there are 11 permits that can be issued that are valid for two years. This includes Brunei's **Foreign Workers License** and Indonesia's **Foreign Workers Employment Permit**, as well as 4 of the 8 permits in Singapore (catering to low, mid and high-skilled workers). 5 of the 8 permits⁶³ in Thailand are also valid for up to two years.

2. UP TO 1 YEAR

In this study there are 5 permits that have a maximum of one-year validity. This includes the one permit in Cambodia, Lao PDR and Myanmar. As well as Singapore's permit for entrepreneurs (**EntrePass**) and Malaysia's permit for domestic and low-skilled workers, the **Pas Lawatan Kerja Sementara** and **Foreign Domestic Helper** permits.

63 Section 59: Work permits, general; Section 59: Work permits, through MOU; Section 62: Work permits under the law of Investment Promotion, Petroleum or other laws; Section 63: Work permits with regards to national security, social impact and humanity; Temporary work permits during waiting for deportation/repatriation; Section 63/1 group 1: Work permits while migrants are being withdrawn the nationality & being born in Thailand but have not been granted with the nationality, Section 63/1 group 2: Work permits while migrants are being granted with the status of legal migrant under the notification of the Ministry of Interior, and a foreigner who has not status under the registration and has been given an identification card under the Rule of Central Registration Bureau, Section 63/2: Work permits in the case where the Minister under the law on immigration permits a foreigner or type of foreigner to enter into Thailand under the law on immigration or exempt a foreigner or type of foreigner from complying with the law on immigration, Section 64: Work permits with regards to border type.

3. OTHER LENGTHS

In Singapore and Thailand, there are 3 permits that are shorter than one year. Confinement nannies and performing artistes in Singapore can initially only be employed for four and six months, respectively, while migrants heading to Thailand under the **Section 64: Border Type** permit can only stay up to three months. Another 5 permits have a much longer initial validity. The Philippines' **Alien Employment Permit** and Singapore's **Personalised Employment Pass** are valid for up to three years. The permits with longest validity are Malaysia's **Employment Pass** and Thailand's **Section 63/1 group 1** and **Section 63/1 group 2** with an initial validity of up to five years.

Table 20: Initial Length and Total Length of Stay

Country	Work Permit	Length of the validity of the initial work permit			
		Up to 1 year	Up to 2 years	Up to 3 years	Others
Brunei Darussalam	Foreign Workers License		•		
Cambodia	Foreigner Work Permit	•			
Indonesia	Foreign Workers Employment Permit		•		
Lao PDR	Work Permit	•			
Malaysia	Pas Lawatan Kerja Sementara	•			
	Employment Pass				• Up to 5 years
	Foreign Domestic Helper	•			
Myanmar	Foreign Worker Registration Card	•			
Philippines	Alien Employment Permit			•	
	Special Temporary Permit plus Alien Employment Permit	•			
Singapore	Employment Pass		•		
	EntrePass	•			
	Personalised Employment Pass			•	
	S Pass		•		
	Work Permit for Confinement Nanny				• Up to 4 months
	Work Permit for Foreign Worker		•		
	Work Permit for Performing Artist				• Up to 6 months
	Work Permit for Foreign Domestic Workers		•		

Country	Work Permit	Length of the validity of the initial work permit			
		Up to 1 year	Up to 2 years	Up to 3 years	Others
Thailand	Section 59: General		•		
	Section 59: Memorandum of Understanding		•		
	Section 62				•*
	Section 63	•			
	Section 63/1 group 1				• Up to 5 years
	Section 63/1 group 2				• Up to 5 years
	Section 63/2		•		
	Section 64				• Up to 3 months
Viet Nam	Work Permit		•		

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * Provisional data provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020

Portability of the Permit

Governments in the region have also chosen to adopt measures restricting migrants from switching sectors, and in some cases, their employers as well as their occupation. Generally, the higher the skill level, the more opportunity there is to switch.

As Table 21 below shows, 10 of the 27 permits have no restrictions related to portability and most of these either cater primarily to high-skilled workers or those linked to investments. Permits in this category include, among others, the Philippines' **Alien Employment Permit plus Special Temporary Permit** and Singapore's **Employment Pass, Personalized Employment Pass, S Pass, and Entre-Pass**. Other permits are not fully portable. 2 permits impose one type of restriction, 11 permits combine two restrictions while 4 permits do not allow any forms of switching at all.

1. SINGLE RESTRICTION

- *Cannot switch either sector or occupation:* the **Work Permit for Foreign Worker** (for selected sectors), which caters to low-skilled workers in Singapore, allows migrant workers to change employer and occupations but not the sector. **EntrePass** holders cannot take another occupation.

2. DOUBLE RESTRICTION

- *Cannot switch employer and sector:* 8 permits in four AMS – Malaysia, Philippines, Thailand, and Viet Nam – allow migrants to switch to another occupation but prohibit the changing of employer or sector. This includes the one permit Viet Nam issues, Malaysia's permit catering to both the high and low-skilled (**Pas Lawatan Kerja Sementara** and **Employment Pass**), and the Philippines' **Alien Employment Permit** and Thailand's **Section 59: General, Section 63, Section 63/1 group 1** and **Section 63/2**.
- *Cannot switch sector and occupation:* one permit in Thailand (**Section 59: Memorandum of Understanding**) and 2 in Singapore (**Work Permit for Confinement Nanny** and **Work Permit for Foreign Domestic Workers**) allow a change in employer but not a change in sector or occupation.

3. TRIPLE RESTRICTION

- *Cannot switch employer, sector, or occupation:* In three AMS – Malaysia, Singapore, and Thailand – there are 4 permits that impose restriction on all areas. Domestic workers in Malaysia, performing artistes in Singapore and cross border migrants in Thailand (under **Section 64**) cannot switch their employer, occupation or move to another sector. Performing artistes in Singapore cannot hold another **Work Permit** (even for another occupation) for one year after they stop work.

Table 21: Portability of Stay and Additional Requirements

Country	Name of Permit	No restrictions	With Restrictions			Requirements to be able to switch					
			Cannot switch sector	Cannot switch occupation	Cannot switch employer	Must reapply with a new permit	Must get approval from government authority issuing the permit	Must inform the government authority issuing the permit	Must get approval from the original employer	Switch allowed only to specific occupations or sectors	Must show that the resignation is the employer's fault or that the migrant has paid damages to the employer
Brunei Darussalam	Foreign Workers License	•					•		•		
Cambodia	Foreigner Work Permit	•						•			
Indonesia	Foreign Workers Employment Permit	•					•				
Laos	Work Permit		•		•						
Malaysia	Pas Lawatan Kerja Sementara		•		•						
	Employment Pass		•		•						
	Foreign Domestic Helper		•	•	•						
Myanmar	Foreign Worker Registration Card	•									
Philippines	Alien Employment Permit		•		•	•					
	Alien Employment Permit plus Special Temporary Permit	•									
Singapore	Employment Pass	•				•					
	EntrePass			•			•				
	Personalised Employment Pass	•						•			
	S Pass	•				•					

Country	Name of Permit	No restrictions	With Restrictions			Requirements to be able to switch					
			Cannot switch sector	Cannot switch occupation	Cannot switch employer	Must reapply with a new permit	Must get approval from government authority issuing the permit	Must inform the government authority issuing the permit	Must get approval from the original employer	Switch allowed only to specific occupations or sectors	Must show that the resignation is the employer's fault or that the migrant has paid damages to the employer
Singapore continued	Work Permit for Confinement Nanny		•	•	•						
	Work Permit for Foreign Worker		•			•			•		
	Work Permit for Performing Artist		•	•	•						
	Work Permit for Foreign Domestic Workers		•	•					•		
Thailand	Section 59: General		•		•					•*	
	Section 59: Memorandum of Understanding		•	•							•
	Section 62	•				•					
	Section 63		•		•		•**				
	Section 63/1 group 1		•		•		•***				
	Section 63/1 group 2	•									
	Section 63/2		•		•						
	Section 64		•	•	•						
Viet Nam	Work Permit			•	•						

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: * Can change occupation according to the list of prohibited occupations. ** Can change occupation according to the Government Gazette. *** Can change occupations under the Ministerial regulations announced in 1978 for 27 occupations.

4. ADDITIONAL REQUIREMENTS TO SWITCH SECTORS OR EMPLOYER

Of the 23 permits with some options for portability, 15 have additional requirements that migrants or their employers must fulfil before the government allows a switch. These requirements range widely both in obligation and complexity, with some permits requiring employers to inform authorities of the change, while others requiring permission and a reapplication for a new permit. The most restrictive provision requires the consent of the original employer. There is a clear pattern: the higher the skill level or income of the migrant, the less stringent the requirements related to switching.

Must inform the government authority issuing the permit

In Singapore, for holders of the **Personalised Employment Pass**, which caters only to very high-income migrant workers, switching employers is possible if they inform the Ministry of Manpower when starting or leaving employment and changing employers. There is no need to re-apply for a new pass when changing jobs. The same rules apply in Cambodia, although regulations require that migrant workers sign a new employment contract with the new employer and register it with the MoLVT.

Must get approval from government authority issuing the permit

In three AMS – Singapore, Indonesia, and Thailand – approval from the issuing authority is required. In Singapore, the **EntrePass** holder must get approval from the Ministry of Manpower before conducting any business that is not within the original **EntrePass** application. The holder must submit a request letter to the Work Pass Division if they wish to change their business activity. Similar regulations exist in Indonesia⁶⁴ and Thailand.⁶⁵

Must reapply with a new permit

The 3 permits in Singapore that cater to high-skilled workers (**Employment Pass**); mid-skilled workers (**S-Pass**) and low-skilled workers (**Work Permit for Foreign Worker**) each require that the new employer apply for a new permit on behalf of the worker.

Must get approval from the original employer

An additional line of control exists for migrants in Brunei Darussalam and low-skilled migrants and domestic workers in Singapore. Here, their switch requires not just the approval of the government entity issuing the permit but also the approval of the original employer (except nearing the expiry of the work pass for selected sectors).⁶⁶

Must switch to prescribed occupations only

In Thailand, migrants under **Section 59 General** can change occupations in accordance with the list of prohibited occupations.

Must fulfil no-fault provision

Migrants under **Section 59: Memorandum of Understanding**, can also switch employers in Thailand provided that the employer is at fault in their resignation or in other case that the migrant has paid damages to the employer.

64 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020; See Presidential Regulation Number 20 of 2018 concerning Foreign Workers Utilization Article 16 (1) TKA Employers can submit applications for changes to the RPTKA before the end of the RPTKA period. (2) Changes as referred to in paragraph (1) include a. the name of the TKA Employer's, the address of the TKA Employer, TKA work location;d. TKA positions, number of TKA;f. period of time;g. business sector; and / or h. Number of Assistance Workers."

65 Ruttiya Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020; If the foreign workers intend to work with another employer, such employer must place securities and obtain the Director-General's permission for employing such foreign worker. The new employment must start within 15 days as from the date of termination of the working with the original employer. However, in case that the foreign worker fails to find a replacement, the original employer remains have a duty to repatriate such foreigner to the country of origin within 7 days as from the date of the expiration of such period and notify the Director-General within 7 days from the date that the foreigner leaves the Kingdom (Section 51).

66 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Loss of employment and right to stay

Another measure under stay terms regulates how soon after the loss of employment a migrant worker has before there is a subsequent withdrawal of their right to stay. 22 of the 27 permits have this measure with varying lengths of time between the loss of employment and the required return to the country of origin. Some require an immediate return, while others only after a certain period. Again here, the pattern is clear: the higher the skill and income of the migrant, the longer their right to stay.

1. IMMEDIATELY

In five AMS – Brunei, Indonesia, Malaysia, Singapore and Thailand⁶⁷ – 8 permits impose immediate return to the country of origin. This includes the one permit administered in Brunei and Indonesia administer, all permits in Malaysia, 2 permits in Thailand and those for confinement nannies in Singapore.

2. ONLY AFTER A CERTAIN PERIOD

In 9 permits, the obligation to return to the country of origin upon losing employment is not immediate and takes effect only after a certain period, which ranges from around two weeks in some permits to as much as six months in others.

Two weeks

Two AMS – Singapore and Viet Nam – have a two-week grace period between the cancellation of the work permit and the obligated departure of the worker. In Singapore, this rule applies to low-skilled workers, performing artistes and domestic workers who are not allowed to work or look for another employment after the work permit is cancelled. These two weeks, thus, are not a grace period to look for another job.⁶⁸ Likewise, in Viet Nam, the migrant worker is given a 15-day visa to give the employee time prepare to leave Viet Nam.

One month

In Singapore 3 permits catering to the high-skilled (**Employment Pass**), entrepreneurs, investors and innovators (**EntrePass**) and mid-skilled workers (**S-Pass**) have a 30-day Short Term Visit Pass (STVP) after the migrant worker loses employment. Whilst in Thailand one permit for migrant workers under an MOU (**Section 59: General Type MOU**) also provides the same privilege.

Six months

The longest grace period in the ASEAN region is reserved under the **Personalised Employment Pass** in Singapore. The PEP, which caters to workers with very high incomes, allows for a continuous stay of up to six months without a job to allow searching for new employment.

67 Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020. The permits include Section 59: General Type; Section 62: Investment Promotion; Section 63: Born in the Kingdom without Acquiring Thai Nationality; Section 64: Border Type; Under Section 50, when the employment of foreign workers terminated by (1) justifiable reasons (2) resignation of foreign workers for any reason other than the breach of the contract of employers or violation of law, (3) expiration of the term under the contract of employment concluded in the country, employers have duty to notify to the authority (the Director-General of the Department of Employment) and must repatriate foreign workers to the country of origin within 7 days when the employment concludes.

68 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Table 22: Loss of Employment and Right to Stay

Country	Name of Permit/s	Loss of employment leads to withdrawal of right to stay?					
		No	Yes, immediately	Yes, only after a certain period			
				2 weeks	1 month	6 months	Others
Brunei Darussalam	Foreign Workers License		•				
Cambodia	Foreigner Work Permit	•					•
Indonesia	Foreign Workers Employment Permit		•				
Lao PDR	Work Permit						•
Malaysia	Pas Lawatan Kerja Sementara		•				
	Employment Pass		•				
	Foreign Domestic Helper		•				
Myanmar	Foreign Worker Registration Card						•
Philippines	Alien Employment Permit	•					
	Alien Employment Permit plus Special Temporary Permit						•
Singapore	Employment Pass				•		
	EntrePass				•		
	Personalised Employment Pass					•	
	S Pass				•		
	Work Permit for Confinement Nanny		•				
	Work Permit for Foreign Worker			•			
	Work Permit for Performing Artist			•			
	Work Permit for Foreign Domestic Workers			•			

Country	Name of Permit/s	Loss of employment leads to withdrawal of right to stay?					
		No	Yes, immediately	Yes, only after a certain period			
				2 weeks	1 month	6 months	Others
Thailand	Section 59: General			•*			
	Section 59: Memorandum of Understanding			•			
	Section 62		•				
	Section 63		•**				
	Section 63/1 group 1	•					
	Section 63/1 group 2	•					
	Section 63/2	•					
	Section 64						•***
Viet Nam	Work Permit			•			

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: * Must find a new employer within 15 days from the date of cessation of the working with the previous employer. If the migrant worker fails to do so, the original employer shall repatriate him/her to the country of origin within 7 days. ** As this group is waiting for deportation/ repatriation, once they are deported/ repatriated, the employment is terminated automatically. ***Within the 30-day border pass.

Periodic health check

In five AMS – Brunei Darussalam, Cambodia, Indonesia, Malaysia and Singapore – there are 7 permits that require migrant workers to undergo periodic health checks in order to keep their employment permit. Failure to pass this medical check results in cancellation of the permit and immediate return to the country of origin. These periodic checks, however, mainly affect low-skilled workers, particularly domestic workers.

In Brunei Darussalam and Malaysia, the periodic health check is conducted annually, whilst the frequency of checks in Singapore depends on the screening to be done. Pregnancy and syphilis tests are conducted every six months while HIV/AIDS and Tuberculosis are screened every two years. In Cambodia, migrants undergo a health check a year after receiving their work permit.

Table 23: Timing and Frequency of Medical Tests

Country	Name of Permit	Health check before the issuance of permit			Periodic Health Check After the Issuance of the Permit		
		While at origin country	Immediately upon arrival at destination	While at origin country and immediately upon arrival at destination	One year after receiving work permit	Immediately upon arrival at destination and every six months	While at origin country; immediately upon arrival at destination one year after receiving work permit
Brunei Darussalam	Foreign Workers License						•
Cambodia	Foreigner Work Permit	•	•		•		
Indonesia	Foreign Workers Employment Permit				•		
Lao PDR	Work Permit			•			
Malaysia	Pas Lawatan Kerja Sementara					•	
	Foreign Domestic Helper					•	
Myanmar	Foreign Worker Registration Card			•*			
Singapore	Employment Pass		•				
	S Pass		•				
	Work Permit for Foreign Worker					•	
	Work Permit for Performing Artist		•				
	Work Permit for Foreign Domestic Workers					•	

Country	Name of Permit	Health check before the issuance of permit			Periodic Health Check After the Issuance of the Permit		
		While at origin country	Immediately upon arrival at destination	While at origin country and immediately upon arrival at destination	One year after receiving work permit	Immediately upon arrival at destination and every six months	While at origin country; immediately upon arrival at destination one year after receiving work permit
Thailand	Section 59: General		•				
	Section 59: Memorandum of Understanding		•				
	Section 62		•**				
	Section 63		•**				
	Section 63/1 group 1		•**				
	Section 63/1 group 2		•**				
	Section 63/2		•**				
Viet Nam	Work Permit	•					

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: *Provisional data ** The health check result must be attached with the permit application.

■ Caps on the total length of stay

Of the permits covered in this study, 6 of the 27 also impose a cap on the total number of years a migrant worker can stay in the destination country. The cap varies in length and can be found in four AMS: Singapore, Lao PDR, Indonesia and Malaysia. Interestingly, caps affect not just low-skilled migrants, but also the high-skilled.

For example, in Singapore and Malaysia, 2 permits have a cap that covers both ends of the skill spectrum. In Singapore, the **Personalised Employment Pass**, which is reserved for migrants with very high incomes, limits the total number of years of stay to three years. Whereas the **Work Permit for Foreign Worker**, which caters to low-skilled workers has no limits or a higher cap of between 14 and 26 years. The applicability of each cap depends on the migrant worker’s nationality, sector of work and skill level. Workers from Non-traditional sources (NTS) such as India, Sri Lanka, Thailand, Bangladesh, Myanmar, and the Philippines are subjected to a maximum period of employment depending on their industry and level of skills, as described earlier. In construction, marine shipyard, and process sectors, for example, the cap is set at 14 years for “basic-skilled” and at 26 years for “higher skilled” workers. The cap for “basic skilled” workers in the manufacturing and service sectors is also 14 years while the cap for “higher skilled” workers is set at 22 years. It is important to note that work permit holders from Malaysian, South Korea, Taiwan, Macau, and Hong Kong working in all sectors are not subjected to a maximum period of employment in Singapore.⁶⁹

In Malaysia, 2 permits – one catering to the high-skilled (**Employment Pass**) and another to low-skilled workers (**Pas Lawatan Kerja Sementara**) – both have a limit of 10 years total stay, while the cap in Lao PDR is set at five years and Indonesia is set at six years.

Table 24: Cap on the Total Length of Stay

Country	Work Permit	Limit on the total length of stay				
		No limit	Up to 3 years	Up to 6 years	Up to 10 years	14 to 26 depending on nationality and skill level
Brunei Darussalam	Foreign Workers License	•				
Cambodia	Foreigner Work Permit	•				
Indonesia	Foreign Workers Employment Permit			•		
Lao PDR	Work Permit			•		
Malaysia	Pas Lawatan Kerja Sementara				•	
	Employment Pass				•	
	Foreign Domestic Helper	•				
Myanmar	Foreign Worker Registration Card	•				

⁶⁹ Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Country	Work Permit	Limit on the total length of stay				
		No limit	Up to 3 years	Up to 6 years	Up to 10 years	14 to 26 depending on nationality and skill level
Philippines	Alien Employment Permit	●				
	Alien Employment Permit plus Special Temporary Permit	●				
Singapore	Employment Pass	●				
	EntrePass	●				
	Personalised Employment Pass		●			
	S Pass	●				
	Work Permit for Confinement Nanny	●				
	Work Permit for Foreign Worker	●**				●
	Work Permit for Performing Artist	●				
	Work Permit for Foreign Domestic Workers	●				
Thailand	Section 59: General	●*				
	Section 59: Memorandum of Understanding		●* (up to 4 years)			
	Section 62	●*				
	Section 63	●*				
	Section 63/1 group 1	●*				
	Section 63/1 group 2	●*				
	Section 63/2	●*				
	Section 64	●* (upon 30 days pass)				
Viet Nam	Work Permit	●				

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: *Provisional data provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020. ** Only applies to migrant workers from Malaysia, Hong Kong, Macau, South Korea and Taiwan.

■ Possibility to renew contract while at destination

The least common restriction in the stay measures category pertains to regulations requiring migrant workers to first return home before their contract can be renewed. Only 4 of the 27 permits have this requirement, including one issued in Brunei Darussalam and Indonesia, as well as Singapore's permit for entertainers (**Work Permit for Performing Artist**) and Thailand's permit for cross-border workers. Clearly, there is a pattern in the region towards flexibility in allowing migrants to renew their contract without needing to return home.

4.2. Incorporation measures

Incorporation measures pertain to regulations delineating the set of privileges and rights migrant workers have access to while staying in the country of destination. As discussed, this study focused on three key dimensions of incorporation: social and health rights, judicial rights, and civil rights. 13 of the 50 measures included in this study belong to this category. A review of the 27 permits in the ASEAN region suggests that social and health rights and judicial rights are the most accessible, whilst civil rights are still relatively limited. Health rights, particularly access to healthcare and to a lesser extent disability insurance, cuts across all skill levels, whereas civil rights tend to be more accessible to the high-skilled and high-earners.

4.2.1. Social and health rights

There are various dimensions to social and health rights: (1) access to social security rights such as healthcare, employment injury and or death benefit and pension fund, (2) access to public educational institutions, and (3) employer-provided access to reasonable or adequate accommodation.

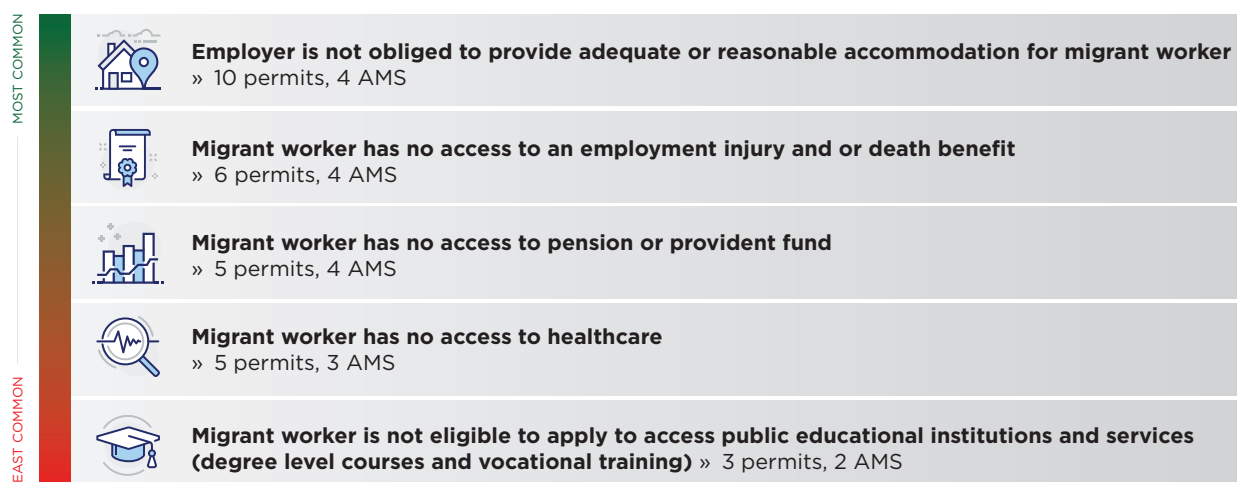
Access to social security rights is most common among these three dimensions, particularly access to health care. This access does not vary by skill level. The majority of AMS also provide access to public educational institutions and oblige employers to ensure reasonable or adequate accommodation.

Table 25: Frequency of Measures under Social and Health Rights

Types of Measures	Number of Permits with the measure	Number of AMS countries with the measure
Employer is not obliged to provide adequate or reasonable accommodation for migrant worker	10	4
Migrant worker has no access to an employment injury and or death benefit	6	4
Migrant worker has no access to pension or provident fund	5	4
Migrant worker has no access to healthcare	5	3
Migrant worker is not eligible to apply to access public educational institutions and services (degree level courses and vocational training)	3	2

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam; Correspondence and communication with national focal points to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG) of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam, September and October 2020.

Figure 13: Social and Health Rights Measures in ASEAN, Most Common to Least Common



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Social security rights

A review of 27 permits reveals that access to healthcare and to some extent pension funds and disability benefits is almost universal, and interestingly, this is regardless of skill level. 11 permits provide access to social security rights in parity with citizens while 15 permits provide partial access. In the region, only migrants under Malaysia's **Foreign Domestic Helper** permit do not have access to social security rights.

1. UNIVERSAL AND EQUAL ACCESS TO SOCIAL SECURITY

In five AMS – Cambodia, Indonesia, Lao PDR, Myanmar, and Thailand – 11 permits provide migrant workers with access to social security rights at the same level or in parity as citizens, and these permits cut across all skill levels. For example, in Indonesia, employers must ensure that migrant workers who are employed for at least six months participate in the Social Security Program. Similarly, in Lao PDR, migrant workers can participate in the National Social Security Scheme where they enjoy the same benefits as Lao PDR citizens.⁷⁰

In Myanmar, migrant workers also enjoy health care, medical treatment and cash benefits during a period of reduced or lost income due to injury or illness.⁷¹ Further, employers are liable to pay compensation to migrant workers for personal injuries and diseases arising out of or during employment. For those workers who have been injured due to an Occupational Accident or have contracted an Occupational Disease not covered under the Social Security Law 2012, the Employer must pay for medical expenses to check the extent of capacity reduction and class of disability for that worker.⁷²

In Thailand, migrant workers have equal access to the social security system which operates two critical funds: the Social Security Fund and the Compensation Fund.⁷³ Migrant workers must register with the Social Security Office (SSO) and remit 5% of their remunerations to the Social Security Fund, a contribution matched by employers and the government at 5% and 2.75% of salary, respectively. Migrant workers under

70 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020; See Labor Law 2013 (Article 71), Lao PDR.

71 Khin Mar Yee, Migration Laws and Policies in Myanmar, National Study Report, August 2020; see Section 21 of the Social Security Law (2012).

72 Ibid, see Section 28 of the Occupational Safety and Health Law (2019).

73 Rutiya Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020; See Social Security Act B.E. 2533 (1990) and the Compensation 2537 (1994) (Department of Employment, 2018).

this fund are entitled to a wide range of benefits including: injury or sickness; maternity; invalidity; death; child rearing; and old age. Migrant workers are also entitled to unemployment benefits which can prove critical in times of crises. A recent and stark example is the COVID-19 pandemic, when the Social Security Office (SSO) provided relief measures for migrant workers whose employers temporarily closed business. This amounted to 62% of their daily wage for up to 90 days.⁷⁴

Thai employers of migrant workers must also contribute between 0.2 to 1% of their wage to the 'Compensation Fund' so that they can receive benefits in case of damage, sickness, invalidity, loss or death resulting from work. Migrant workers under MOU with specific types of work, such as domestic workers and those in the agriculture, livestock, fishery, and non-business commercial sectors must also be registered in the healthcare system. Administered by the Ministry of Public Health worker received health service benefits after payment of health insurance costs of 1,600 THB (€43) per year.

2. PARTIAL ACCESS TO SOCIAL SECURITY

In four AMS – Brunei Darussalam, Singapore, Philippines, and Malaysia – 10 permits provide partial access to social security benefits typically by obliging employers to buy insurance in the private marketplace. Only 2 permits provide just health care benefits, 6 come with at least two benefits (injury and death benefits on top of health care), while 10 permits offer migrants the option to contribute to a provident fund or a retirement savings scheme.⁷⁵

Healthcare only: In Thailand, cross-border migrants under the Section 64 permit have access to healthcare. In Singapore, employers of confinement nannies are responsible for their medical treatment and should buy medical insurance of at least S \$15,000 during their employment.

Healthcare and employment injury and/or death benefit: 6 permits in three AMS – Brunei Darussalam, Philippines and Singapore – have added employment injury and death benefits to health care. In Brunei Darussalam, all employers are required to insure all migrant workers with both medical and workmen's compensation insurance. National social security and pension schemes are only accessible to citizens of Brunei Darussalam. However, public healthcare is accessible to all levels of society and migrant workers pay a nominal fee for outpatient treatment. Nevertheless, employers are expected to bear the costs of medicines and outpatient or private clinic consultations for migrant workers they employ. Likewise, in the Philippines access to employment-related injury benefits, and health care for **Alien Employment Permit** holders is provided in the employment contract. This includes provisions requiring the purchase of private health insurance through a health maintenance organisation (HMO).

In Singapore, 3 permits catering to mid-skilled workers (**S Pass**), low-skilled workers (**Work Permit for Foreign Worker** and **Foreign Domestic Worker**) and entertainers (**Work Permit for Performing Artist**) also require employers to buy and maintain medical insurance for at least S \$15,000 (€9,240) per year that covers inpatient care and day surgery.⁷⁶ Except for the Foreign Domestic Workers permit, these migrant workers also have entitlements under the Work Injury Compensation Act (WICA), which allows employees to make claims for work-related injuries or diseases. Compensation benefits under WICA include medical leave wages,⁷⁷ medical expenses due to the work injury and lump-sum compensation for permanent incapacity or death. WICA covers all workers in Singapore under a contract of service or contract of apprenticeship and

74 Ibid.

75 Provident fund is another name for pension fund. Its purpose is to provide employees with lump sum payments at the time of exit from their place of employment. This differs from pension funds, which have elements of both lump sum as well as monthly pension payments. As far as differences between gratuity and provident funds are concerned, although both types involve lump sum payments at the end of employment, the former operates as a defined contribution plan, while the latter is a defined benefit plan.

76 From 1 April 2018, however, employers are no longer required to bear the pregnancy-related medical costs incurred by their S Pass holders. Employers must still bear the medical consultation fees and there are also strict rules before employers can have a co-pay arrangement with the S Pass holder. The employer can have a co-pay arrangement with the S Pass holder only if the medical treatment is not for work-related inpatient expenses, the co-pay amount is reasonable and does not exceed 10% of the worker's monthly salary, the duration co-payment does not exceed 6 months and the co-payment option is explicitly in the employment contract or collective agreement and has the worker's full consent; Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020.

77 Refers to wages for days the migrant worker is on medical leave or light duty due to the work injury or disease.

regardless of salary, age or nationality, but it excludes domestic workers. Employers of domestic workers are responsible for their medical treatment. They must buy personal accident insurance (PAI) of at least S \$60,000 for the domestic workers to provide them compensation in the event of death or permanent disability during their stay in Singapore. Likewise, employers of confinement nannies are also responsible for their medical treatment if needed.⁷⁸

Health care, injury, and option to join provident fund: Malaysia offers somewhat similar benefits to its migrant workers as Singapore but with one additional benefit, as it provides migrant workers the option to join Malaysia's own provident fund scheme called the Employees Provident Fund. If they elect to contribute, the rate is the same as that for Malaysians or 11% of their wages. However, the employer's contribution is only RM 5 (€1) per month compared to a contribution rate of 12 or 13% with Malaysian employee's wages (depending upon their salary level).⁷⁹ Non-Malaysian members of the Fund can withdraw their funds when they leave the country, providing they are not intending to return.

Beginning January 2019, migrant workers in Malaysia can also avail the benefits from the Employees' Social Security Act. This is an insurance scheme which provides compensation to employees who are hurt because of an accident in the workplace, while commuting to and from their workplace, or if the employee suffers from a work-related illness. Both employers and employees pay a small monthly contribution to the Social Security Organisation (SOCSO).⁸⁰ The Act previously excluded migrant workers, and employers had to buy insurance from approved insurance companies to compensate them if they were involved in an accident. Considering the number of workers employed in manufacturing, construction, and plantations – all industries with a high risk of accidents – this insurance was important to these workers. The policy on this protection was changed in 2019 as there were suggestions that the previous system was discriminatory against migrants. Like Singapore's WICA, the Act provides protection to all levels of employees, but not to domestic workers.⁸¹

Singapore also operates a Central Provident Fund (CPF) This is a mandatory social security savings scheme for working Singaporeans and residents funded by contributions from both employers and employees to help them plan for their retirement. The employer's contribution is made above and beyond the employee's salary and the rate is determined by the government. The CPF does not extend to migrant workers and employers are not required to pay CPF for them. Ministry of Manpower officials explain that this is because migrant workers are not expected to retire in Singapore.⁸² Instead, migrant workers wanting to save for their retirement can do so via the voluntary Supplementary Retirement Scheme (SRS), which is open to foreigners and provides tax incentives to save for retirement.⁸³

78 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

79 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

80 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

81 Ibid.

82 Ibid.

83 Investment returns under SRS are tax-free before withdrawal and only 50% of the withdrawals from SRS are taxable at retirement.

Table 26: Access to Social Security

Country	Name of Permit	No access	Citizens and migrants have equal access	Migrant workers access is only within certain restrictions			Employer has main responsibility to provide access
				Have access to healthcare	Have access to an employment injury and or death benefit fund	Have access to pension or provident fund	
Brunei Darussalam	Foreign Workers License			•			•
Cambodia	Foreigner Work Permit		•				
Indonesia	Foreign Workers Employment Permit		•				
Lao PDR	Work Permit		•				
Malaysia	Pas Lawatan Kerja Sementara			•	•	•	
	Employment Pass			•	•	•	
	Foreign Domestic Helper	•*					
Myanmar	Foreign Worker Registration Card		•				
Philippines	Alien Employment Permit			•	•		•
	Alien Employment Permit plus Special Temporary Permit			•	•		
Singapore	Employment Pass				•	•**	
	EntrePass				•	•**	
	Personalised Employment Pass				•	•**	
	S Pass			•	•	•**	•
	Work Permit for Confinement Nanny			•		•**	•
	Work Permit for Foreign Worker			•	•	•**	•
	Work Permit for Performing Artist			•	•	•**	•
	Work Permit for Foreign Domestic Workers			•		•**	•

Country	Name of Permit	No access	Citizens and migrants have equal access	Migrant workers access is only within certain restrictions			Employer has main responsibility to provide access
				Have access to healthcare	Have access to an employment injury and or death benefit fund	Have access to pension or provident fund	
Thailand	Section 59: General		•				
	Section 59: Memorandum of Understanding		•				
	Section 62		•				
	Section 63		•				
	Section 63/1 group 1		•				
	Section 63/1 group 2		•				
	Section 63/2		•				
	Section 64				•		
Viet Nam	Work Permit			•			

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * But no such benefits exist for citizens either; ** Refers to the Supplementary Retirement Scheme (SRS)

Access to public educational institutions

Access to public educational institutions in the region varies. In this study, 12 of the 27 permits allow migrants full access to public educational institutions and services including degree-level courses and vocational training, while the rest provide partial restrictions. Unlike social security rights, access to public educational institutions tends to depend on the migrant's skill level or income. The higher the skill level and income, the easier they can gain access to educational institutions. Clearly, in some countries there is an effort to give access to low-skilled workers, although even then the privilege usually still comes with some restrictions.

1. NO RESTRICTIONS

Seven AMS – Cambodia, Indonesia, Lao PDR, Singapore, Myanmar Thailand, and Viet Nam – offer permits with no restrictions. For example, in Lao PDR, the law requires that employers ensure that migrant workers can upgrade their skills and capacity through training, including certification of expertise. Migrant workers, regardless of age, have the right to access public education and vocational trainings. Employers are required to have capacity building plans for their staff and ensure all workers have certain knowledge and skills to accomplish their work.⁸⁴

84 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020.

In Myanmar, there is also no restriction for migrant workers to access public educational institutions and services, this is prescribed by law in the education sector⁸⁵ and in the Constitution.⁸⁶ Migrant workers attend public universities typically taking part-time courses in business administration, business law and foreign languages.⁸⁷

Similarly, in Viet Nam, the rights and obligations of employers and employees with regards to time and funds for training, retraining, and raising occupational skills qualifications do not discriminate against migrant workers. Singapore, too, provides similar access to holders of selected permits, particularly those catering to entrepreneurs and investors (**Entre-pass**) and to the high and mid-skilled (**Employment Pass, Personalised Employment Pass and S Pass**) Thailand also offers permits with no restrictions to education. However, some full-time educational institutions do request a student visa.⁸⁸

2. PARTIAL RESTRICTIONS

In three AMS – Brunei Darussalam, Malaysia, and Singapore – 8 permits offer access to public educational institutions, but with some restrictions. These include differentiated fees, regulations requiring permission from government authorities and employers, and restricted courses. For example, Brunei Darussalam has higher fees for non-citizens whilst Malaysia requires its **Employment Pass** holders to only take part-time study and first receive permission from the government entity issuing the employment permit. In Singapore, low-skilled workers under the **Work Permit for Foreign Worker** can take courses provided they upgrade job-relevant skills. As noted earlier, workers recognised as “higher skilled” command a lower levy, thus employers encourage their workers to upgrade their qualifications by taking required courses.

3. FULL RESTRICTION

There are 5 permits, however, that come with full restrictions to accessing public educational institutions and services. In the Philippines, foreign nationals must secure a Sec. 9(F) student visa to study there. This does not allow them to study and work at the same time.⁸⁹ Malaysia also restricts access for domestic workers and permit holders of the **Pas Lawatan Kerja Sementara** (catering to low-skilled workers), while Singapore imposes similar restrictions on entertainers.

Table 27: Right to Equal Access to Public Educational Institutions and Services

Country	Name of Permit/s	Full Access	No access	Partial Access				
				Differentiated fees	Must get permission from government entity issuing the employment permit	Must be part-time study	Must get permission from employer	Must be on specific courses
Brunei Darussalam	Foreign Workers License			•				
Cambodia	Foreigner Work Permit	•						
Indonesia	Foreign Workers Employment Permit	•						

85 Ibid, see the National Education Law,2014 and Its Amending Law,2015, The Basic Education Law, 2019.

86 Official input provided to author by the national focal point of the Government of Myanmar to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February 2021, See the Constitution of the Republic of the Union of Myanmar, 2008.

87 Ibid.

88 Official input provided to author by the national focal point of the Government of Thailand to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

89 Provisional data provided to author by the national focal point of the Government of the Philippines to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Country	Name of Permit/s	Full Access	No access	Partial Access				
				Differentiated fees	Must get permission from government entity issuing the employment permit	Must be part-time study	Must get permission from employer	Must be on specific courses
Lao PDR	Work Permit	•						
Malaysia	Pas Lawatan Kerja Sementara		•					
	Employment Pass				•	•		
	Foreign Domestic Helper		•					
Myanmar	Foreign Worker Registration Card	•						
Philippines	Alien Employment Permit		•*					
	Alien Employment Permit plus Special Temporary Permit		•*					
Singapore	Employment Pass			•				
	EntrePass			•				
	Personalised Employment Pass			•				
	S Pass			•				
	Work Permit for Confinement Nanny			•				
	Work Permit for Foreign Worker							•
	Work Permit for Performing Artist		•					
	Work Permit for Foreign Domestic Workers			•				

Country	Name of Permit/s	Full Access	No access	Partial Access				
				Differentiated fees	Must get permission from government entity issuing the employment permit	Must be part-time study	Must get permission from employer	Must be on specific courses
Thailand	Section 59: General	●						
	Section 59: Memorandum of Understanding	●						
	Section 62	●						
	Section 63	●						
	Section 63/1 group 1	●						
	Section 63/1 group 2	●						
	Section 63/2	●						
	Section 64	●						
Viet Nam	Work Permit	●						

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * Provisional data provided to author by the national focal point of the Government of the Philippines to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020 ** No data provided as of writing.

Adequate accommodation

This study also investigated whether employers have obligations to provide adequate accommodation for migrant workers. A trend is evident: the higher the skill or income of migrant workers, the less the employer is obligated to provide accommodation. 15 permits do not come with such provisions, although it is important to note that for 8 of these 15 permits, no such benefits exist for citizens either.

In the case of Thailand and Viet Nam, provisions related to accommodation are usually stated in the employment contract. In Viet Nam in particular, the Labour Code and its decrees do not provide any provision for this issue. The provision of accommodation for workers may be made by agreement of both parties and the 2012 Labour Code encourages agreements to ensure that workers have more favourable conditions than the labour law.⁹⁰

In the ASEAN region there are 12 permits that come with specific provisions obliging employers to provide reasonable or adequate accommodation. This includes the one permit issued in Brunei Darussalam, Indonesia and Lao PDR. In Brunei Darussalam, every employer must provide “sufficient and proper hygienic accommodation”, “sufficient supply of wholesome water”, and “sufficient and proper sanitary arrangements.”⁹¹

⁹⁰ Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Viet Nam (Clause 1, Article 4 of the Labor Code). Qualitative survey

⁹¹ Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam; Accordance with the Employment Order, 2009, Article 80,

In Lao PDR, employers are obligated to provide adequate and suitable accommodation for migrants working for large investment and development projects.⁹²

Likewise, in Malaysia, employers of low-skilled and domestic workers must meet the conditions set out in the Minimum Standards of Housing, Accommodation and Amenities Act. This establishes the minimum standards which must be met by an employer if they choose to provide accommodation for their workers, whether foreign or local.⁹³

Singapore provides similar provisions, in accordance with the Employment of the Foreign Manpower Act (EFMA). The Act requires employers of migrant workers under the Work Permit for Foreign Worker to ensure that they live in proper housing and to provide the workers' residential addresses to the Ministry of Manpower. There are various types of housing for foreign workers, each with its own set of requirements. Examples of approved housing types for all foreign employees include purpose-built dormitories, factory-converted dormitories, Housing Development Board (HDB) flats and private residential premises (PRPs).⁹⁴ Employers of confinement nannies and domestic workers in Singapore are also expected to provide acceptable accommodation for their employees. The employer's guide states that accommodation for foreign domestic workers must meet these requirements:⁹⁵

- Adequate shelter – the accommodation must adequately protect the domestic worker from environmental elements such as sun, rain or strong winds.
- Basic amenities – employers must minimally provide their domestic worker with a mattress, pillow, blanket, bathroom amenities and toiletries. Examples of toiletries include soap, shampoo, toothbrush, toothpaste, etc.
- Sufficient ventilation – the domestic worker's accommodation must be sufficiently ventilated. Mechanical ventilation (e.g. electrical fan) must be provided if natural ventilation is inadequate.
- Safety – the domestic worker must not sleep near any dangerous equipment or structure that could potentially cause harm or hurt to them.
- Modesty – the domestic worker must not sleep in the same room as a male adult or teenager. If video recording devices are installed at home, employers must inform the domestic worker of the devices and where they are placed. The recording devices must not be installed in areas that will compromise her privacy or modesty, e.g. where she sleeps, changes clothes, or the bathroom area.
- Space and privacy – domestic workers should be provided with a separate room. If that is not possible, employers must ensure that their accommodation has adequate space and privacy.

Table 28: Employers' Obligation to Provide Adequate or Reasonable Accommodation

Country	Name of Permit/s	With no obligation	With no obligation but no such benefits exist for citizens either	With Obligation
Brunei Darussalam	Foreign Workers License			•
Cambodia	Foreigner Work Permit	•*		
Indonesia	Foreign Workers Employment Permit			•

92 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020

93 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020

94 Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020; Only migrant workers in the construction sector are eligible to live in construction temporary quarters that are either standalone temporary quarters (accommodation is opened to foreign construction workers working at this construction project only) or quarters in uncompleted buildings and temporary occupation licence quarters. In addition, non-Malaysian WP holders from the manufacturing sector are only allowed to rent bedrooms in HDB flats but not the whole flat. There are no similar restrictions on Malaysian WP holders or those who work in the services sector

95 Ibid.

Country	Name of Permit/s	With no obligation	With no obligation but no such benefits exist for citizens either	With Obligation
Lao PDR	Work Permit	•*		
Malaysia	Pas Lawatan Kerja Sementara			•
	Employment Pass	•		
	Foreign Domestic Helper			•
Myanmar	Foreign Worker Registration Card	•*		
Philippines	Alien Employment Permit	•*		
	Alien Employment Permit plus Special Temporary Permit	•*		
Singapore	Employment Pass		•	
	EntrePass		•	
	Personalised Employment Pass		•	
	S Pass		•	
	Work Permit for Confinement Nanny			•
	Work Permit for Foreign Worker			•
	Work Permit for Performing Artist	•		
	Work Permit for Foreign Domestic Workers			•
Thailand	Section 59: General		•	
	Section 59: Memorandum of Understanding			•
	Section 62		•	
	Section 63			•
	Section 63/1 group 1		•	
	Section 63/1 group 2			•
	Section 63/2			•
	Section 64			•
Viet Nam	Work Permit		•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: *Provisional data

4.2.2. Judicial rights

Judicial rights refer to measures giving migrants access to the state system of justice. This study focused on two measures: whether migrant workers have protection against confiscation of identity documents and if they have equal treatment and protections before criminal courts and tribunals. All the 27 permits reviewed have provisions for each measure, either implied in laws and regulations or in some cases explicitly specified. This means that, unlike many measures in this study, those pertaining to judicial rights does not discriminate by skill or income of migrants.

Protection against confiscation of identity documents

Measures against confiscation of identity documents are universal in the region and are implied in the laws and regulations of Cambodia, Myanmar and the Philippines, and explicitly specified in the other AMS. For example, Brunei Darussalam’s Passports Act provides that any person who, without lawful authority, has in their possession any passport or internal travel document issued for the use of some person other than themselves, shall be liable to a fine of B\$10,000 and imprisonment for five years.⁹⁶ Similarly, in Singapore, the Passports Act considers it as an offence to keep or withhold someone else’s passport. The Employment of Foreign Manpower Act also prohibits any other person from gaining possession of migrant workers’ identity documents. In Lao PDR employers are prohibited from confiscating a foreign worker’s ID card or travel documents. In cases where the migrant workers break national laws, authorities have the right to detain or confiscate travel documents for a temporary period and authorities must report this to the Consular Department of Ministry of Foreign Affairs within 48 hours. Likewise, in Thailand, the Foreigners’ Working Management Emergency Decree B.E. 2560 (2017) Section 131 specifies liability for those employers who withhold a work permit or an essential personal document of a migrant worker. The minimum liability is a term of imprisonment not exceeding six months or a fine not exceeding 100,000 THB or both.⁹⁷

Right to equal treatment and protections before criminal courts and tribunals

All AMS also provide migrant workers the right to equal treatment and protections before criminal courts and tribunals. For example, in Indonesia, when migrant workers get involved in a dispute pursuant to working issues, work contract violations, private matters and criminal actions, they have the same rights as Indonesian workers to submit the said dispute to the Industrial Relations Court for working disputes and the District Court for private and criminal actions (Law No. 13 of 2003 concerning Manpower). Migrant workers also have the right to hire lawyers and to be heard in court proceedings.⁹⁸

Table 29: Access to Judicial Rights

Country	Name of Permit/s	Protection against confiscation of identity documents, other than a public official duly authorised by law (i.e. passports)			Right to equal treatment and protections before criminal courts and tribunals	
		No protection	With Protection		With Rights	With no rights
			Explicitly specified in laws or regulations	Implied in laws or regulations		
Brunei Darussalam	Foreign Workers License		•		•	
Cambodia	Foreigner Work Permit			•	•	

96 See: <http://www.immigration.gov.bn/en/SiteAssets/SitePages/Enforcement/Passport%20Act%20Chapter%20146.pdf>

97 Ruttia Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020.

98 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

Country	Name of Permit/s	Protection against confiscation of identity documents, other than a public official duly authorised by law (i.e. passports)			Right to equal treatment and protections before criminal courts and tribunals	
		No protection	With Protection		With Rights	With no rights
			Explicitly specified in laws or regulations	Implied in laws or regulations		
Indonesia	Foreign Workers Employment Permit		•		•	
Lao PDR	Work Permit		•		•	
Malaysia	Pas Lawatan Kerja Sementara		•		•	
	Employment Pass		•		•	
	Foreign Domestic Helper		•		•	
Myanmar	Foreign Worker Registration Card			•	•	
Philippines	Alien Employment Permit			•		
	Alien Employment Permit plus Special Temporary Permit			•		
Singapore	Employment Pass		•		•	
	EntrePass		•		•	
	Personalised Employment Pass		•		•	
	S Pass		•		•	
	Work Permit for Confinement Nanny		•		•	
	Work Permit for Foreign Worker		•		•	
	Work Permit for Performing Artist		•		•	
	Work Permit for Foreign Domestic Workers		•		•	

Country	Name of Permit/s	Protection against confiscation of identity documents, other than a public official duly authorised by law (i.e. passports)			Right to equal treatment and protections before criminal courts and tribunals	
		No protection	With Protection		With Rights	With no rights
			Explicitly specified in laws or regulations	Implied in laws or regulations		
Thailand	Section 59: General		•		•	
	Section 59: Memorandum of Understanding		•		•	
	Section 62		•		•	
	Section 63		•		•	
	Section 63/1 group 1		•		•	
	Section 63/1 group 2		•		•	
	Section 63/2		•		•	
	Section 64		•		•	
Viet Nam	Work Permit		•		•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

4.2.3. Civil rights

Civil rights include measures that promote opportunities for migrant workers to take part in the civil process and lead a civilized life in society while in the destination country. This study looked specifically at the presence of six measures including provisions allowing migrants to join or form trade unions and other associations, apply for permanent residence, citizenship and to marry citizens as well as rules surrounding the rights of their spouse to work.

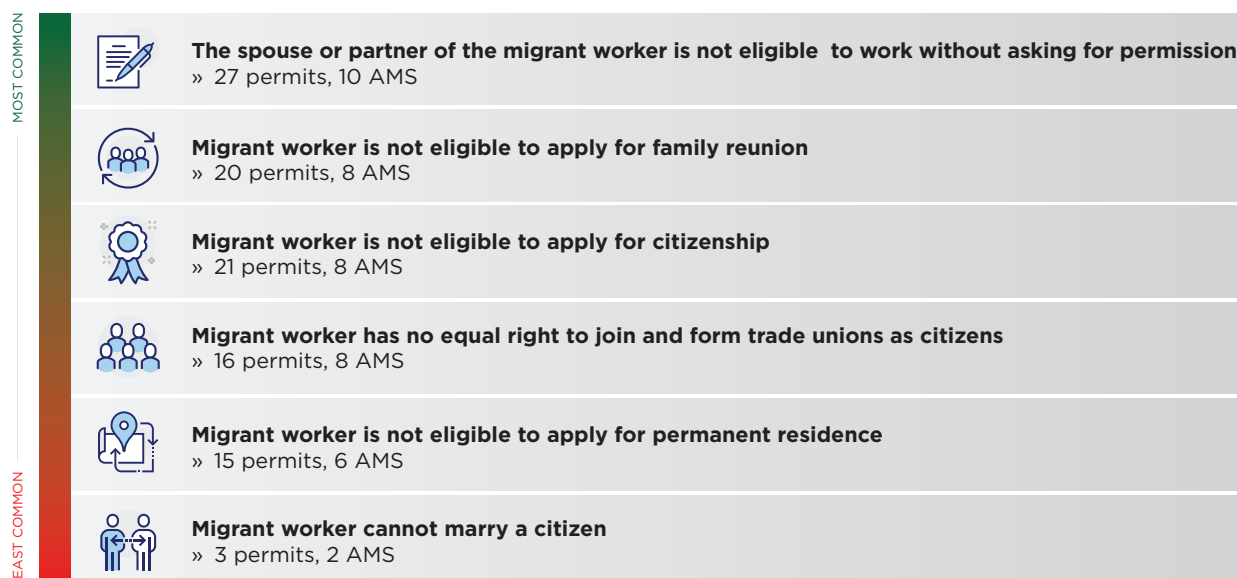
The right to apply for family reunion is highly restricted in the region, along with access to citizenship and permanence residence. And even for those who can bring their family along, their spouse has no automatic right to work. A clear pattern is evident: these rights, if available at all, are almost always reserved for the high-skilled. In contrast, the right to marry citizens is fully recognised in all AMS except two: Malaysia and Singapore. Further, migrant workers in nearly all AMS but two also work under permits that give no equal right to join and form trade unions as citizens.

Table 30: Frequency of Measures Under Civil Rights

Types of Measures	No. of Permits with the measure	No. of AMS countries with the measure
The spouse or partner of the migrant worker is not eligible to work without asking for permission	27	10
Migrant worker is not eligible to apply for family reunion	20	8
Migrant worker is not eligible to apply for citizenship	21	8
Migrant worker has no equal right to join and form trade unions as citizens	16	8
Migrant worker is not eligible to apply for permanent residence	15	6
Migrant worker cannot marry a citizen	3	2

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam; Correspondence and communication with national focal points to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG) of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam, September and October 2020.

Figure 14: Civil Rights in ASEAN, Most Common to Least Common



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam; Correspondence and communication with national focal points to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG) of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam, September and October 2020 and February 2021.

■ Eligibility to apply for citizenship and permanent residence

Of the 27 permits in this study, 19 do not allow migrants to apply for citizenship while 10 permits prohibit migrants from applying for permanent residency.

1. NO RESTRICTIONS

Only 5 permits in three AMS – Lao PDR, Thailand and Viet Nam – provide migrant workers with access to permanent residency and citizenship. For example, the Law on Lao Nationality amended in 2017 provided favourable conditions for migrant workers living in Lao PDR who wish to apply for Lao PDR citizenship. Migrant workers applying for Lao PDR nationality, as well as residency, must have at least stayed in Lao PDR for ten consecutive years, have professions and qualifications in certain areas, a sufficient economic status, and have not been imprisoned or sentenced by any court.⁹⁹

In Viet Nam, whose permit is open only to the high-skilled, migrant workers can apply for permanent residency after three years of working in Viet Nam. Eligible migrant workers include those who have “made meritorious services and contributions to the national construction and defence of Viet Nam and awarded medals or state honorary titles by the Vietnamese Government”. Scientists or experts temporarily residing in Viet Nam are also eligible, as well as migrant workers who have been living in Viet Nam for at least five years. Requirements for citizenship include knowledge of the Vietnamese language “sufficiently enough to integrate themselves into the social community of Viet Nam,” combined with financial self-sufficiency.

Thailand also allows access to both permanent residency and citizenship for migrants working under selected permits including those who are linked to investment promotion (**Section 62**), as well as the highly skilled (**Thailand: Section 59: General Type**).

2. NO RIGHT TO PERMANENT RESIDENCE AND CITIZENSHIP

In six AMS – Brunei Darussalam, Cambodia, Malaysia, Philippines, Singapore and Thailand – there are 14 permits that do not provide migrant workers access to either permanent residency or citizenship. This includes the single permit issued in Brunei Darussalam and Cambodia, as well the permits catering to low-skilled and domestic workers in Malaysia. Singapore has similar restrictions for confinement nannies, entertainers, low-skilled workers, and domestic workers. 5 of the 8 permits issued in Thailand have similar limitations – **Section 59: General Type MOU, Section 63, Section 63/1 group 1, Section 63/1 group 2, Section 63/2 and Section 64**.

3. RIGHT TO PERMANENT RESIDENCY ONLY

In three AMS – Malaysia, Myanmar, and Singapore – 6 permits allow migrant workers to apply for permanent residence (PR) but not citizenship. These permits usually cater to the highly skilled and those linked to investments. For example, Singapore’s work pass holders (**Employment Pass** and **S Pass**) can apply for PR if they are employed at the time of the application. In assessing these applications, the Immigrant and Checkpoints Authority (ICA) considers many factors. These include the individual’s family ties to Singaporeans, economic contributions, qualifications, age, family profile and length of residency, the applicant’s ability to contribute to Singapore and integrate into society, as well as his or her commitment to sinking roots. Work pass holders must obtain PR status first before they can apply for Singapore citizenship.

In Malaysia, the right to permanent residency is strictly limited. As explained earlier, even highly skilled workers under the Employment Pass will only be allowed to work in the country for a maximum of ten years.¹⁰⁰ Malaysia, however, operates a points system to evaluate applications from skilled workers who wish to continue working in the country and to change their status to permanent resident. Once they have this status, they no longer require any employment pass and are free to change employers as they please, like citizens of the country. The points system evaluates whether the migrant worker has qualifications and

99 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

100 Exception is given to migrants holding a key post or a shareholder of the organisation in which they are employed.

professional expertise that can contribute to the development of Malaysia without affecting the rights of existing citizens. Applicants must also produce certificates issued by the Minister of Home Affairs confirming that their entry to Malaysia is beneficial to economic development.¹⁰¹

In Myanmar, a migrant worker can apply for permanent residence after three years of continuous residence.¹⁰² The spouse and legitimate children under 18-years-old¹⁰³ are also allowed to apply. However, under the Citizenship Law, 1982, migrant workers cannot become a citizen of Myanmar.

Table 31: Eligibility to Apply to Permanent Residency and Citizenship

Country	Name of Permit/s	No eligibility to apply	With eligibility to apply	
			Permanent residence only	Both permanent residence and citizenship
Brunei Darussalam	Foreign Workers License	•		
Cambodia	Foreigner Work Permit	•		
Indonesia	Foreign Workers Employment Permit	•		
Lao PDR	Work Permit			•
Malaysia	Pas Lawatan Kerja Sementara	•		
	Employment Pass		•	
	Foreign Domestic Helper	•		
Myanmar	Foreign Worker Registration Card		•	
Philippines	Alien Employment Permit	•		
	Alien Employment Permit plus Special Temporary Permit	•		
Singapore	Employment Pass		•	
	EntrePass		•	
	Personalised Employment Pass		•	
	S Pass		•	
	Work Permit for Confinement Nanny	•		
	Work Permit for Foreign Worker	•		

101 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020

102 Official input provided to author by the national focal point of the Government of Myanmar to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February 2021. If the migrant worker departs Myanmar during these three years, the period of his/her stay abroad should not exceed consecutive 90 days within one year. See Rule 3 of the Permanent Residence of a Foreigner Rules 2014 and its Amending Rules 2017

103 Ibid, see Rule 9 of the Permanent Residence of a Foreigner Rules, 2014 and its Amending Rules 2017

Country	Name of Permit/s	No eligibility to apply	With eligibility to apply	
			Permanent residence only	Both permanent residence and citizenship
Singapore continued	Work Permit for Performing Artist	•		
	Work Permit for Foreign Domestic Workers	•		
Thailand	Section 59: General			•
	Section 59: Memorandum of Understanding	•		
	Section 62			•
	Section 63	•		
	Section 63/1 group 1	•		
	Section 63/1 group 2			•
	Section 63/2	•		
	Section 64	•		
Viet Nam	Work Permit			•

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Family reunion

Most permits – 20 of the 27 – do not allow for family reunion. These permits are issued in all AMS except Brunei Darussalam and mostly cater to the low-skilled.

1. NO RIGHTS TO FAMILY REUNION

Permits with no access to family reunion include the one permit issued in Cambodia and Indonesia and all 8 permits issued in Thailand. Malaysia and Singapore prohibit family reunion among low-skilled migrants (**Pas Lawatan Kerja Sementara; Work Permit for Foreign Worker**) and domestic workers. Singapore also limits family reunion rights of confinement nannies and entertainers.

2. WITH RIGHTS TO FAMILY REUNION

In five AMS – Brunei Darussalam, Lao PDR, Viet Nam, Singapore and Malaysia – there are 7 permits that allow for family reunion and they have varying requirements on what type of family members are eligible. Some permits only allow for a spouse and children under 18-years-old, such as Brunei Darussalam and Lao PDR, while others are much more open to a wider range of family members including step-children, parents and in-laws. For example, migrant workers under Malaysia's **Employment Pass**, which caters to the highly skilled, can bring also parents and parents-in-law, as well as all unmarried children.¹⁰⁴

¹⁰⁴ Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020

In Singapore, there are 4 permits that allow for family reunification beyond just the spouse and dependent children under 18. These permits cater to: entrepreneurs, investors and innovators (**EntrePass**); very high-income workers (**Personalised Employment Pass**), highly skilled (**Employment Pass**) and the mid-skilled (**S-Pass**). However, the exact type and number of eligible family members depends on the income of the migrant worker and for those under the **EntrePass**, on the monetary value of the company, including the number of Singaporeans the company employs. Not all migrant workers under these permits can bring family members since the income requirement for family reunification is much higher than the income requirement to qualify for getting the permit. For example, migrant workers applying for the **S-Pass** must have a minimum salary of S \$2,500 (€1,584) per month, but only those whose salary is at least S \$6,000 (€3,960) a month are eligible to apply to bring immediate family to Singapore. Essentially, the higher the migrant worker's income, the wider the range of family members eligible to live with that migrant worker. For example, only **Employment Pass** holders earning at least S \$12,000 or €7,920 a month can bring their parents to Singapore (see Table 32 below).

Table 32: Family Reunification Rules in Singapore

Name of Work permit	Wage, Income or Financial Threshold to Qualify for the Permit	Wage, Income or Financial Threshold to Bring Family Members	Eligible Family Members
S-Pass	At least S \$2,500 (€1,584) per month	At least S \$6,000 (€3,960) a month	<ul style="list-style-type: none"> • Legally married spouse • Unmarried children under 21, including those legally adopted • Common-law spouse • Unmarried handicapped children above 21 • Unmarried step-children under 21
Employment Pass	At least S \$4,500 (€2,574)	At least S \$6,000 (€3,960) a month	<ul style="list-style-type: none"> • Legally married spouse • Unmarried children under 21, including those legally adopted • Common-law spouse • Unmarried handicapped children above 21 • Unmarried step-children under 21
		At least S \$12,000 or €7,920 a month	<ul style="list-style-type: none"> • All of the above plus parents
Personalised Employment Pass	At least S \$12,000 (€7,920) or S \$18,000 (€11,880) for last monthly salary overseas	None	<ul style="list-style-type: none"> • Legally married spouse • Unmarried children under 21, including those legally adopted • Common-law spouse • Unmarried handicapped children above 21 • Unmarried step-children under 21 • Parents

Name of Work permit	Wage, Income or Financial Threshold to Qualify for the Permit	Wage, Income or Financial Threshold to Bring Family Members	Eligible Family Members
Entre-pass (For entrepreneurs, innovators and investors)	None	Total annual business spending is at least S \$100,000 (€66,000) and employs at least 3 LQS (full-time employees, formerly known as FTE) or 1 local PME (professional, manager or executive)	<ul style="list-style-type: none"> Spouse (common-law or legally married) Children
		Total annual business spending is at least S \$200,000 (€132,000) and employs at least 6 LQS or 2 local PMEs	<ul style="list-style-type: none"> All of the above plus parents

Note: *LQS (formerly known as FTE) refer to Singaporeans and Permanent Residents who earn a monthly salary of at least \$1,400 or €858 (from 1 July 2019), and receive CPF contributions for at least 3 months. Local PMEs refer to professionals, managers and executives who are Singaporeans or Permanent Residents, earn a monthly salary of at least S \$3,900 or €2,376 and receive CPF contributions for at least 3 months. 1 local PME counts as 3 LQS. For example, to meet the requirements of 6 LQS, you can employ 3 LQS and 1 local PME.

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to Singapore.

Right of spouse/partner of the principal migrant to work without having to apply for permission

Of the 11 permits that allow family reunion, none give the spouse or partner of the principal migrant worker the automatic right to work. In 8 permits, the spouse must get their own separate employment permit to work. In Malaysia, however, there is an unwritten policy that work-permit applications from spouses are usually positively considered. In Singapore, spouses **Employment Pass, PEP** and **Entre-pass** holders can request a Letter of Consent from the Ministry of Manpower to work in Singapore if they find a job.

Table 33: Rights to Family Reunion and Spouse Access to Work

Country	Name of Work Permit	With no rights	With rights							Spouse can live with the migrant but has no automatic right to work
			Type of Family Members Allowed							
			Spouse and dependent children	Legally married spouse	Common-law spouse	Un-married Children under 21	Unmarried handicapped children above 21	Un-married Step-children under 21	Parents	
Brunei Darussalam	Foreign Workers License		•							•
Cambodia	Foreigner Work Permit	•								
Indonesia	Foreign Workers Employment Permit	•								
Lao PDR	Work Permit		•							•
Malaysia	Pas Lawatan Kerja Sementara	•								
	Employment Pass		•							•
	Foreign Domestic Helper	•								
Myanmar	Foreign Worker Registration Card	•*								
Philippines	Alien Employment Permit	•								
	Alien Employment Permit plus Special Temporary Permit	•*								
Singapore	Employment Pass			•	•	•	•	•	•**	•
	EntrePass			•	•	•	•	•	•***	•
	Personalised Employment Pass			•	•	•	•	•	•	•
	S Pass			•****		•****				•

Country	Name of Work Permit	With no rights	With rights							Spouse can live with the migrant but has no automatic right to work
			Type of Family Members Allowed							
			Spouse and dependent children	Legally married spouse	Common-law spouse	Un-married Children under 21	Unmarried handicapped children above 21	Un-married Step-children under 21	Parents	
Singapore continued	Work Permit for Confinement Nanny	•								
	Work Permit for Foreign Worker	•								
	Work Permit for Performing Artist	•								
	Work Permit for Foreign Domestic Workers	•								
Thailand	Section 59: General	•								
	Section 59: Memorandum of Understanding	•								
	Section 62	•								
	Section 63	•								
	Section 63/1 group 1	•								
	Section 63/1 group 2	•								
	Section 63/2	•								
	Section 64	•								
Viet Nam	Work Permit	•								

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: *Provisional data. ** Only for Employment Pass permit holders earning at least S \$12,000 or €7,920 a month *** Only for EntrePass permit holders with annual business spending is at least S \$200,000 (€132,000) and employs at least 6 LQS or 2 local PME**** Only for S Pass permit holders earning at least \$6,000 (€3,960) a month.

■ Right to join or form a trade union

In three AMS – Malaysia, Myanmar and Singapore – 11 permits allow migrant workers the same rights as citizens to join and form trade unions, whilst another 13 permits provide partial rights with some restrictions. The remaining 3 permits in Thailand, Viet Nam and Lao PDR do not allow for migrant workers to join and form trade unions.

Myanmar and Malaysia are the only AMS that provide all migrant workers the same rights as citizens to join and form trade unions. In Singapore, migrant workers can join and form unions but are restricted in taking up leadership roles.¹⁰⁵ Five other AMS – Philippines, Brunei Darussalam, Indonesia, Malaysia and Cambodia – offer partial rights based on some conditions such as the following:

- *Only on reciprocity basis:* In the Philippines, migrants under the **Alien Employment Permit** can join or form trade unions only if the country of origin grants reciprocal rights.
- *Must meet length of service requirements:* In Brunei Darussalam, rights to join trade union are based on the length of service in a specific field of occupation, number of representatives registering as a union and other provisions encapsulated in legislation and that may be required of other Government agencies.
- *Cannot take leadership or paid roles:* In Indonesia, Malaysia and Thailand, migrant workers can join trade unions, but they are barred from taking up leadership roles. According to Malaysia's Trade Unions Act, for example, the position of officer in a union is only open to Malaysian citizens. Further, the act also prohibits migrant workers from working as an employee of a trade union.¹⁰⁶
- *Extra requirements in forming unions:* In Cambodia, migrant workers can join unions but those who wanted to organise or establish a trade union must be able to read and write in Khmer, according to the Trade Union Law.

105 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Singapore.

106 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

Table 34: Right to Join or Form Trade Unions

Country	Name of Permit/s	No Rights	Same rights as citizens	Partial Rights				
				Only on reciprocity basis	Requirements in joining the union			Requirement in forming unions
					Must meet length of service requirements	Cannot take leadership roles	Cannot take leadership roles without permission from government entity issuing the employment permit	Must be able to read and write in the national language
Brunei Darussalam	Foreign Workers License				•			
Cambodia	Foreigner Work Permit							•
Indonesia	Foreign Workers Employment Permit					•		
Lao PDR	Work Permit	•						
Malaysia	Pas Lawatan Kerja Sementara		•					
	Employment Pass		•					
	Foreign Domestic Helper		•					
Myanmar	Foreign Worker Registration Card		•					
Philippines	Alien Employment Permit			•				
	Alien Employment Permit plus Special Temporary Permit			•				
Singapore	Employment Pass		•					
	EntrePass		•					
	Personalised Employment Pass		•					
	S Pass		•					

Country	Name of Permit/s	No Rights	Same rights as citizens	Partial Rights				
				Only on reciprocity basis	Requirements in joining the union			Requirement in forming unions
					Must meet length of service requirements	Cannot take leadership roles	Cannot take leadership roles without permission from government entity issuing the employment permit	Must be able to read and write in the national language
Singapore continued	Work Permit for Confinement Nanny		•					
	Work Permit for Foreign Worker		•					
	Work Permit for Performing Artist		•					
	Work Permit for Foreign Domestic Workers					•		
Thailand	Section 59: General					•		
	Section 59: Memorandum of Understanding					•		
	Section 62					•		
	Section 63					•		
	Section 63/1 group 1					•		
	Section 63/1 group 2					•		
	Section 63/2					•		
	Section 64	•						
Viet Nam	Work Permit	•						

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Rights to apply to marry citizens

Except for Malaysia and Singapore, almost all permits issued in AMS allow all migrant workers to marry citizens. In Viet Nam, for example, the Law on Marriage and Family stipulates that marriages are respected and protected by law, whether between Vietnamese citizens of different ethnicities and religions, between religious and non-religious people, between religious people to those who do not have faith, between Vietnamese citizens and foreigners.¹⁰⁷

Malaysia and Singapore, however, prohibit marriage for specific categories of workers. In Malaysia, this prohibition only applies to domestic workers and low-skilled workers under the **Pas Lawatan Kerja Sementara**, while in Singapore it applies to entertainers.

3 other permits in Singapore catering to low-skilled workers (**Work Permit for Foreign Worker**), domestic workers and confinement nannies only allow for marriage with a citizen when there is permission from the Ministry of Manpower (MOM). This means that MOM can refuse to give approval for the marriage.¹⁰⁸ Migrant workers who neglect to seek approval from MOM risk an entry ban and may lose their right to work in Singapore. This regulation applies even to former domestic workers with an expired, cancelled, or revoked permit.

Table 35: Rights to Apply to Marry Citizens

Country	Name of Work Permit	No Rights	With Rights	
			No additional restrictions	Must get permission from government entity issuing employment permit
Brunei Darussalam	Foreign Workers License		•	
Cambodia	Foreigner Work Permit			•
Indonesia	Foreign Workers Employment Permit		•	
Lao PDR	Work Permit		•	
Malaysia	Pas Lawatan Kerja Sementara	•		
	Employment Pass		•	
	Foreign Domestic Helper	•		
Myanmar	Foreign Worker Registration Card		•	
Philippines	Alien Employment Permit		•	
	Alien Employment Permit plus Special Temporary Permit		•	

¹⁰⁷ Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Viet Nam; No.52/2014/QH13.

¹⁰⁸ A former Work Permit Holder whose last held work pass was upgraded to Employment Pass or S Pass, or who is now a Singapore citizen or Singapore PR need not seek permission.

Country	Name of Work Permit	No Rights	With Rights	
			No additional restrictions	Must get permission from government entity issuing employment permit
Singapore	Employment Pass		•	
	EntrePass		•	
	Personalised Employment Pass		•	
	S Pass		•	
	Work Permit for Confinement Nanny			•
	Work Permit for Foreign Worker			•
	Work Permit for Performing Artist	•		
	Work Permit for Foreign Domestic Workers			•
Thailand	Section 59: General		•	
	Section 59: Memorandum of Understanding		•	
	Section 62		•	
	Section 63		•	
	Section 63/1 group 1		•	
	Section 63/1 group 2		•	
	Section 63/2		•	
	Section 64		•	
Viet Nam	Work Permit		•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

4.3. Exit measures

The third category of measures included in this study pertains to procedural requirements that migrant workers and/or their employer must fulfil before returning to their country of origin. This study focused on three exit measures: whether prior permission or approval is required before the migrant worker can return home; whether penalties are given to the employer and/or migrant worker if a migrant worker returns to the country of origin before the expiration of the contract; and whether a deported migrant worker is subjected to an entry ban. A pattern is clear: an entry ban for deported workers is universally applied in the region while the other two measures are not practiced at all, with only minor exceptions.

Table 36: Frequency of Measures under the Exit category

Types of Measures	No. of Permits with the measure	No. of AMS countries with the measure
A deported migrant worker is subjected to an entry ban	27	10
Prior approval is required before the migrant worker could return to the country of origin	1	1
Penalty/ies is /are given to employer and/or migrant worker if a migrant worker return to the country of origin before the expiration of the contract	0	0

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

4.3.1. Entry ban

An entry ban is the most common measure related to exit and it is practiced by all AMS, but generally only for a serious offence. For example, in Brunei Darussalam, the imposition of an entry ban is dependent on the circumstance behind the deportation of a worker. Deportation for an offence related to laws of the State may include an entry ban. Similarly, in Lao PDR, migrant workers that have committed a serious offence against national laws and regulations will be put on a blacklist.

In Singapore, the Immigration Act empowers the government to remove those who are present in Singapore unlawfully, and to prohibit, either for a stated period or permanently, the re-entry into Singapore of those deported. This also applies to those who break other laws in Singapore, including those who did not comply with the recently implemented COVID-19 safe distancing measures. Migrants in these situations will be deported from Singapore and require the written permission of the Controller of Immigration to re-enter.¹⁰⁹ Likewise, in Malaysia, a permanent blacklist is in effect after deportation based on an expired permit or involvement in criminal activity.¹¹⁰ Also, if an employee absconds during their contract period, the employer is required to make a police report and inform the Immigration Department (a form is provided for this very purpose). Any worker who absconds either during their employment contract or fails to return to their

¹⁰⁹ Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020; See also Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020. See <https://www.channelnewsasia.com/news/singapore/covid-19-12-people-deported-barred-from-singapore-12926636> and <https://www.mom.gov.sg/newsroom/press-releases/2020/0625-140-work-passes-revoked-for-breach-of-circuit-breaker-measures-shn-qo>

¹¹⁰ Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia.

country of origin at completion, will be blacklisted from any further to application to work in Malaysia.¹¹¹ Viet Nam also applies an entry ban to deported workers, but only for three years.¹¹²

4.3.2. Requirement of prior permission to leave the country

Almost all AMS do have regulations in place that ban the departure of individuals, whether migrant workers or not, who have either committed crimes or have tax and other liabilities in the country. This is like regulations imposed in many countries worldwide. However, none of the AMS except in Myanmar, require that migrant workers get prior permission, such as a no-objection certificate from employers or any other authorities, before they can leave the country.

In Myanmar, regulations require that prior to departure migrant workers must procure a certificate from tax authorities stating that they have no liability to pay tax or that a satisfactory arrangement has been made for payment. Migrant workers must also surrender their **Foreigner Registration Certificate (FRC)** to the Registration Officer of the district from which they are to leave Myanmar. The Registration Officer retains the certificate and provides them with a temporary certificate stating that the migrant worker has surrendered their Registration Certificate as they are about to leave, specifying the period for which the temporary certificate is valid. If, for any reason, the migrant worker is unable to leave Myanmar within the period of validity of that temporary certificate, he or she shall report to the Registration Officer again giving full reasons, and the period of validity may thereupon be extended. Foreign national registration certificate holders are expected to report their entry and exit from the country to the Immigration Department and pay a fee of about US\$6 (€5) for every re-entry.¹¹³

4.3.3. Penalties to employers/migrant workers returning to country of origin before contract expiration

In AMS, there are also no required penalties imposed to employers or migrant workers if the migrant worker leaves before their contract expires. Penalties could, however, be imposed on either side depending on the terms of the contract. For example, in Indonesia, the terms of the employment agreement are specified in the employment contract between the employer and the workers, as well as the employment validity period and the terms of termination of the contract. And if it is agreed in the work agreement that the party who terminates the employment relationship will be subject to a fine, then the migrant must pay the fine to keep to the contract.¹¹⁴

Similarly, in Malaysia, workers who wish to leave the country before the expiry of their contract of employment are required to give notice to their employer as per any requirements stated in the contract. Skilled employees are commonly required to give three months' notice. However, some contracts include a clause whereby if the employee leaves prior to the expiry of the contract, the migrant will have to pay an indemnity to the employer, sometimes equivalent to the wages which would have been paid in the remaining period of the contract. This is clearly a major disincentive to an employee, discouraging any resignation before the end of the contract.¹¹⁵

111 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020

112 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Viet Nam; Clause 5 Article 21 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam No.47/2014/QH13 stipulates that foreigners are expelled from Vietnam within the last 3 years, counted from the effective date of the expulsion decisions will not be allowed for entry.

113 In practice, when a foreigner exits from Myanmar, the Immigration Officer at any International Airport of Myanmar can check their passport only and may not be deemed to get authorised to inspect whether such foreigner has already paid all taxes payable under Myanmar laws and surrendered his FRC under the Registration of Foreigners Rules.

114 If any one of both sides in a work agreement for a specified period of time shall terminate the employment relation prior to the expiration of the agreement, or if their work agreement has to be ended for reasons other than what is given under subsection (1) of Article 61, the side that terminates the relation is obliged to pay compensation to the other side. The amount of the compensation pay shall be the same as the amount of wages that the migrant workers in the work agreement is entitled to receive from the point of termination until the expiration of the agreement.

115 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

Table 37: Exit Measures

Country	Name of Work permit	Requirement of a prior permission before return to country of origin	Entry ban for deported migrant workers	Penalties to employers/migrant workers returning to their country of origin before their contract expires
Brunei Darussalam	Foreign Workers License		•	
Cambodia	Foreigner Work Permit		•	
Indonesia	Foreign Workers Employment Permit		•	
Lao PDR	Work Permit		•	
Malaysia	Pas Lawatan Kerja Sementara		•	
	Employment Pass		•	
	Foreign Domestic Helper		•	
Myanmar	Foreign Worker Registration Card	•	•	
Philippines	Alien Employment Permit		•	
	Alien Employment Permit plus Special Temporary Permit		•	
Singapore	Employment Pass		•	
	EntrePass		•	
	Personalised Employment Pass		•	
	S Pass		•	
	Work Permit for Confinement Nanny		•	
	Work Permit for Foreign Worker		•	
	Work Permit for Performing Artist		•	
	Work Permit for Foreign Domestic Workers		•	

Country	Name of Work permit	Requirement of a prior permission before return to country of origin	Entry ban for deported migrant workers	Penalties to employers/migrant workers returning to their country of origin before their contract expires
Thailand	Section 59: General		•	
	Section 59: Memorandum of Understanding		•	
	Section 62		•	
	Section 63		•	
	Section 63/1 group 1		•	
	Section 63/1 group 2		•	
	Section 63/2		•	
Viet Nam	Work Permit		•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

4.4. Enforcement Measures

The enforcement category comprises regulations designed to ensure compliance to rules for all actors involved in the migration process, including not just the migrants and their employers but also other individuals. This category identifies two sets of measures: (1) registration controls and (2) penalties for non-compliance.

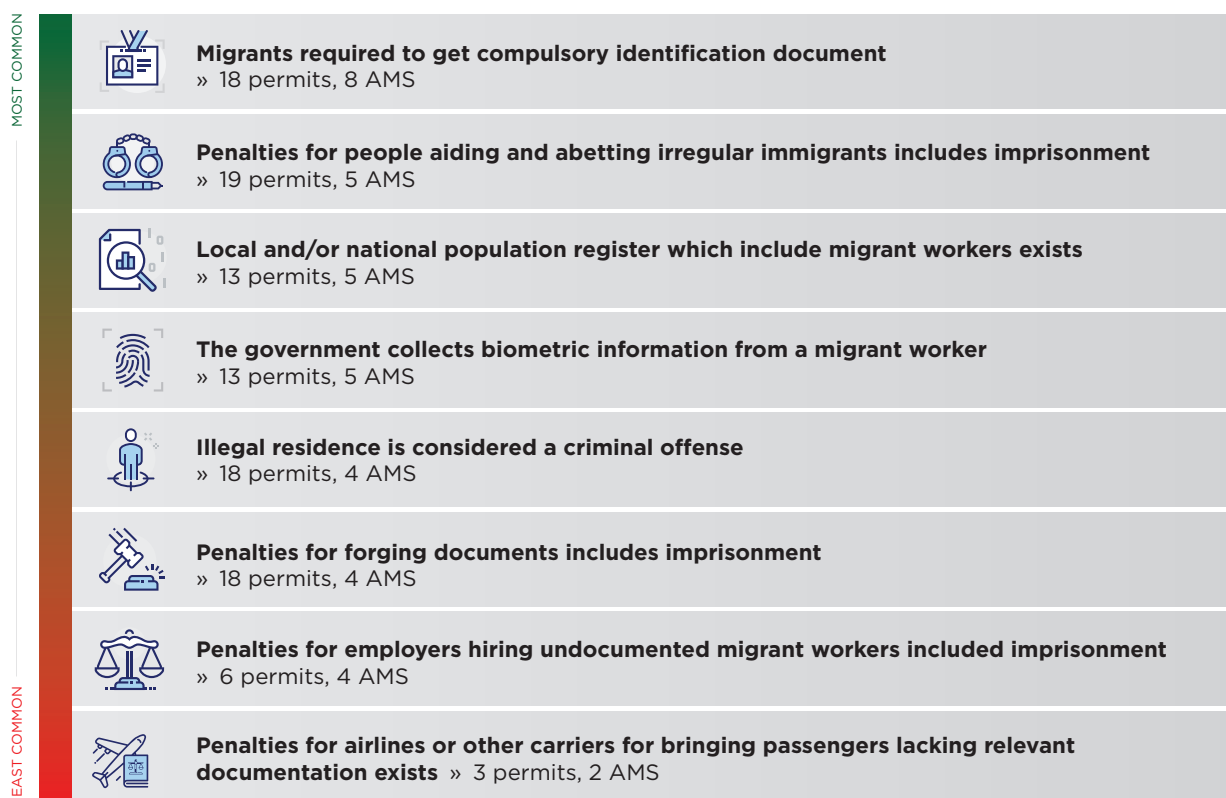
For this study, registration controls include: regulations requiring migrants to obtain a compulsory identification document and always carry it; the collection of biometric information; and the operation of local and/or national population registers that include migrant workers. The penalties for non-compliance looks at: whether illegal residence is a criminal offence; and whether aiding and abetting irregular immigrants, forging documents and hiring undocumented migrant workers are punishable by imprisonment. Whilst most AMS require migrants to obtain a compulsory identification document, only half of AMS institute penalties involving imprisonment, and even less consider illegal residence as criminal offence. There is a clear division in the region when it comes to imposition of penalties, with one group imposing harsher penalties than the other group.

Table 38: Frequency of Measures under the Enforcement Category

Types of Measures	No. of Permits with the measure	No. of AMS countries with the measure
Migrants required to get a compulsory identification document	18	8
Penalties for people aiding and abetting irregular immigrants includes imprisonment	19	5
Local and/or national population register which include migrant workers exists	13	5
The government collects biometric information from a migrant worker	13	5
Illegal residence is a criminal offence	18	4
Penalties for forging documents includes imprisonment	18	4
Penalties for employers hiring undocumented migrant workers includes imprisonment	6	4
Penalties for airlines or other carriers for bringing passengers lacking relevant documentation exists	3	2

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 15: Enforcement measures in ASEAN, Most Common to Least Common



Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

4.4.1. Registration controls

■ Legal compulsory identification documents (IDs) Issued to citizens and/or Migrants

AMS institute varied regulations on the issuance of identification documents (e.g. residence permit, IDs or suchlike) and whether migrant workers always need to carry them. Four AMS – Cambodia, Indonesia, Myanmar and the Philippines – only issue identity documents to migrant workers and in the case of Cambodia and Myanmar, migrant workers are always required to carry these documents.

In four AMS – Brunei Darussalam, Lao PDR, Malaysia and Singapore – IDs are issued to migrant workers as well as citizens and there is a requirement to always carry the ID, except in Singapore. In Malaysia, for example, one of the main roles of the Royal Malaysian Police Force is to stop and check any persons in public who are suspected of being undocumented. Thus, police on patrol or in police cars who note such persons may ask to see their documents. If the person is unable to provide immediate evidence that he has a valid work permit he will be taken to the nearest police station for further investigation, or he will be handed over to the Immigration Department for the same purpose.¹¹⁶

■ Alien's Register or a Population Register that included migrant workers

Six AMS – Brunei, Cambodia, Indonesia, Myanmar, Thailand and Viet Nam – operate Aliens' Registers or a Population Register that also includes migrant workers. In Singapore, such a registry only exists for citizens and permanent residents. Here, there is no national aliens' register, or a population register that includes migrant workers – regular or irregular.

■ Collection of Biometric information

Four AMS – Brunei Darussalam, Cambodia, Indonesia, and Singapore – collect biometric information on migrant workers. In Indonesia, for example, a biometric photo and recording session are conducted at only certain airports and ports. These include Soekarno-Hatta International Airport (Jakarta), Juanda International Airport (Surabaya), Kualanamu International Airport (Medan), Ngurah Rai International Airport (Bali) and Batam Port Center (Batam).

116 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

Table 39: Presence of Registration Controls

Country	Legal compulsory identification documents (IDs) Issued to citizens and/or migrants?					Local and/or national population register exist?			Government collect biometric information from all citizens and/or all migrants?			
	No	Yes				No	Yes		No	Yes		
		To migrant workers only	To citizens only	Both to migrant workers and citizens	Requirement to Carry IDs Exists		For citizens and permanent residents only	For citizens, permanent residents and temporary migrant workers		From migrant workers only	From citizens only	From both migrant workers and citizens
Brunei Darussalam				•	•			•				•
Cambodia		•			•							•
Indonesia		•						•				•
Lao PDR				•	•	•					•	
Malaysia				•*		•*			•*			
Myanmar		•			•			•			•	
Philippines		•						•				•
Singapore				•			•					•
Thailand			•					•	•			
Viet Nam			•		•			•			•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: * Provisional data.

4.4.2. Penalties on the migrant

This study also investigated the range of penalties for migrant workers found guilty of forging documents and illegal residence.

Illegal residence

Illegal residence is an administrative offence in Cambodia, Lao PDR, Myanmar, Philippines and Viet Nam and a criminal offence in Brunei Darussalam, Indonesia, Singapore and Thailand, where the associated penalties are also much more severe. For example, in Viet Nam, illegal residence is only punishable by a fine. Undocumented migrant workers can be fined between VND 500,000 and 2 million (€18-74) for an illegal stay of up to 15 days and between 3 and 5 million VND (€110-184) for illegal stays of 16 days or more. Likewise, in the Philippines, migrant workers without valid or expired **Alien Employment Permit** are fined 10,000 pesos (€171) per each year of violation or a fraction thereof, and 500 pesos (€9) for each month or a fraction thereof for overstay without valid visa.¹¹⁷

In Singapore and Brunei Darussalam, however, illegal residence is punishable not only by fines, but by imprisonment and caning or whipping. In Brunei Darussalam, illegal residence of up to less than 90 days commands fines of up \$4,000 (€2,472) and up to six months imprisonment. Illegal stays of over 90 days are punishable from three months to 2 years of imprisonment and whipping of at least three strokes. Likewise, in Singapore, illegal residence not exceeding 90 days is punishable by a fine of up to S \$4,000/€2,640 and/or imprisonment of up to six months. For illegal residence over 90 days, it is punishable by imprisonment of up to six months and, as in Brunei Darussalam, by caning of at least three strokes. Whereby virtue of the Criminal Procedure Code, the offender is not punishable with caning, they shall, in lieu of caning, be punished with a fine of up to S \$6,000/€3,960.

Table 40: Illegal Residence as Criminal or Administrative Offence

Country	Is illegal residence a criminal or an administrative offence?				
	Yes, Administrative offence	Yes, Criminal offence	Associated Penalties		
			Fine	Imprisonment	Whipping or Caning
Brunei Darussalam	•	•	•	•	•
Cambodia	•				
Indonesia		•	•		
Lao PDR	•				
Malaysia	•*				
Myanmar	•				
Philippines	•				
Singapore		•	•		•
Thailand		•	•	•	

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: *Provisional data

¹¹⁷ Official input provided to author by the national focal point of the Government of the Philippines to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

■ Penalties for migrant workers with forged documents

Penalties for migrants with forged documents varies across AMS. In Viet Nam, for example, the offence is punishable by fine of between VND 500,000 and 2 million (€18-€74) and no imprisonment. In Brunei Darussalam, Indonesia, Singapore and Thailand, the offence is also punishable by imprisonment. For instance, in Brunei Darussalam forging documents carries a \$10,000 (€6,180) fine and up to five years imprisonment under the Passports Act, with up to a \$2,000 fine (€1,236) and up to six months under the Immigration Act. Singapore imposes broadly the same level of fines as Brunei Darussalam but has a longer imprisonment term. In Singapore, document forgery is punishable by up to S \$10,000 [€6,600] fine and/or ten years imprisonment under the Passports Act and up to S \$4,000 [€2,640] fine and 12-month imprisonment under the Immigration Act.¹¹⁸ In Thailand, the severity of the penalty is dependent on the type of documents forged. Forging official documents carries between 1,000 to 10,000 Baht (€ 27 to €270) in fines and five years in imprisonment, whilst financial and other related instruments carry a higher fine of 20,000 to 200,000 Baht (€ 540 to €5,400) along with one to ten-years' imprisonment. The highest fine for forged documents is found in Indonesia reaching of up to 500 million Rupiah (€ 29,300).

¹¹⁸ Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Table 41: Penalties on Migrant Workers

Country	Penalties for migrants with illegal residence			Penalties for migrant workers with forged documents	
	Fines	Imprisonment	Caning or whipping	Fines	Imprisonment
Brunei Darussalam	Up to B\$4,000 / € 2,472 for illegal stay less than 90 days;	Up to 6 months for overstay less than 90 days; From 3 months up to 2 years for illegal stay over 90 days	Whipping not less than 3 strokes for illegal stay over 90 days	Up to B\$10,000 (€ 6,180) under Passports Act; Up to 2,000 (€ 1,236) under the Immigration Act	Up to 5 years under Passport Act; Up to 6 months under Immigration Act
Cambodia	N.D.*	N.D.*	N.D.*	N.D.*	N.D.*
Indonesia	Up to Rp 25,000,000 (€1,463)	Up to 10 years in detention while awaiting deportation**		Up to Rp 500 million (€29,300)	Up to 5 years
Lao PDR	US\$100 (€82)	None	None	None	None
Malaysia	N.D.*	N.D.*	N.D.*	N.D.*	N.D.*
Myanmar	Fine of a minimum of MMK 1500 (maximum between MMK 30,000 to MMK 500,000)	At least 6 months up to five years			
Philippines	Fine of PhP10,000 (€ 171,68) per each year of violation or a fraction thereof, and PhP 500 (€ 8,58) for each month or a fraction thereof for overstay without valid visa.	None	None	None	None

Country	Penalties for migrants with illegal residence			Penalties for migrant workers with forged documents	
	Fines	Imprisonment	Caning or whipping	Fines	Imprisonment
Singapore	Up to S \$4,000/ €2,640 for illegal stay not exceeding 90 days; Up to S \$6,000/ €3,960 for illegal stay over 90 days (in lieu of caning only)	Up to 6 months	Caning with not less than 3 strokes for illegal stay over 90 days	Up to S \$10,000 [€6,600] under Passports Act; Up to S \$4,000 [€2,640] under Immigration Act	Up to 10 years under Passport Act; Up to 12 months under Immigration Act
Thailand	None	None	None	Up to 6,000 Baht (€ 162); between 1,000 to 10,000 Baht (€ 27 to 270) for forging official documents; 20,000 to 200,000 Baht (€ 540 to 5400) for forging financial and other related instruments;	Up to 3 years; 6 months to 5 years for forging official documents; 1 to 10 years for forging financial and other related instruments;
Viet Nam	Between VND 500,000 and 2 million (€ 18-74) for illegal stay up to 15 days after receiving prior authorization; Between VND 3 and 5 million (€ 110-184) for illegal stay for 16 days or more after receiving prior authorization; Between VND 30,000,000 and 40,000,000 (€ 1,100-1,838) for illegal stay without receiving prior authorization.	None	None	Between VND 500,000 and 2 million (€18-74)	none

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Notes: *No data provided as of writing; **Refers to the expiration of Stay Permit for more than 60 (sixty) days. Foreigners are in detention while waiting for their deportation because they do not have residence permit.

4.4.3. Penalties for other actors

AMS also impose penalties to individuals hiring, aiding, or abetting undocumented migrant workers, and in one AMS, additionally on airlines or other carriers bringing passengers lacking the correct documentation.

■ Penalties for employers hiring migrant workers

The penalties for employers hiring undocumented migrant workers varies across AMS. Malaysia imposes the most severe punishment including fines, imprisonment and caning, whilst in Brunei Darussalam, Cambodia, Indonesia, Myanmar and Singapore, the offence carries only a fine and imprisonment. The rest of AMS – Lao PDR, Philippines, Thailand, and Viet Nam – only impose fines.

In Malaysia, the Immigration Act imposes severe penalties for those employing undocumented workers. A fine may be imposed of between RM10,000 to RM 50,000 (€2,014 to €10,068). If the employer is found to have employed five or more undocumented workers, they may be imprisoned for a period of six months to five years and may be whipped by up to six strokes. The Deputy Home Minister announced in Parliament that in the first nine months of 2018, 72 employers had been charged under the Act.¹¹⁹

In Brunei Darussalam hiring undocumented migrant workers is punishable by between B\$6,000 and B\$10,000 (€3,713 to €6,188) and imprisonment of six months to three years. However, in Singapore, the maximum fine is much higher, reaching up to S \$30,000 (€19,800), and up to 12 months' imprisonment. For subsequent convictions, offenders also face heavier fines and mandatory imprisonment. In 2019, 86 employers were convicted of illegal employment offences while 248 were convicted of harbouring illegal offenders.¹²⁰

In Indonesia, hiring undocumented migrant workers is punishable by: up to two years' imprisonment under the Immigration law; up to one year under Law concerning Manpower; fines of up to Rp 200 million (€11,717) under Immigration Law; and between Rp100 million (€5,859) and Rp 400 million (€23,435) under Law concerning Manpower.

In Cambodia, employers are liable to a fine of 61 to 90 days of the base daily wage or to imprisonment of six days to one month. In the event of a subsequent offence, the offender is liable on conviction to imprisonment of one to three months.¹²¹

Instead of imposing a maximum fine, Myanmar implements a minimum fine of 1500 Kyats (€0,95) and/or imprisonment from six months to five years.

The fines in Lao PDR, Thailand and Viet Nam vary according to the number of undocumented migrants that were hired. In Lao PDR, the fine is US\$250 per migrant worker, whilst in Thailand the fine ranges from between Baht 10,000 to Baht100,000 (€271 to 2,715) per worker. In Viet Nam, cases involving up to 10 workers carry a fine of between VND 30,000,000 to VND 45,000,000 (€1,102 to 1,653), whilst cases involving 11-20 workers carry a higher fine of between VND 45,000,000 to VND 60,000,000 (€1,102 to 2,204). Cases involving more than 20 workers are fined between 60,000,000 to VND 75,000,000 (€2,204 to 2,755).

In the Philippines, employers that hire migrant workers using an expired work permit or those without a valid work permit receive a fine of PhP10,000 (€172) per each year of violation or a fraction thereof. No penalty of imprisonment is imposed on employers.¹²²

119 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report , August 2020 <https://www.thestar.com.my/news/nation/2018/12/12/two-employers-sentenced-with-whipping-for-keeping-illegal-immigrants> and <https://www.malaymail.com/news/malaysia/2016/08/18/suhakam-eaic-told-to-probe-alleged-torture-at-penang-detention-centre/1185923#sthash.BGmTRODi.dpuf> It is not known whether conditions have improved since these reports were made

120 Immigration & Checkpoints Authority, "Volume Of Travellers And Cargoes Cleared At The Checkpoints Increased In 2019 <https://www.ica.gov.sg/docs/default-source/ica/stats/annual-stats-report/ica-annual-statistics-2019.pdf>

121 Official input provided to author by the national focal point of the Government of Cambodia to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020. See article 372 of the Cambodia Labour Law.

122 Official input provided to author by the national focal point of the Government of the Philippines to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

Penalties for people aiding and abetting undocumented migrants

AMS also impose a range of penalties on individuals found to be aiding and abetting undocumented migrants. At one end of the spectrum the Philippines does not punish individuals aiding irregular migrant workers since, according to the law, it is employers that are accountable on the irregularity or lack of documentation of migrant workers. Other AMS do introduce penalties but in varying degrees. While Viet Nam only imposes fines of between VND 15,000,000 and 25,000,000 (€551 to 918) and no other penalties, other AMS punish the offence with imprisonment. Brunei Darussalam and Singapore also impose the penalty of caning or whipping (of at least three strokes). In Indonesia, aiding and abetting undocumented migrants is punishable by up to Rp 200 million (€11,717) and up to two years imprisonment. Individuals convicted under human smuggling face much higher fines ranging from Rp 500 million (€29,294) and Rp1.5 billion (€87,881) and between five and fifteen years of imprisonment. In Thailand, the associated penalties are set at Baht 200,000 to 600,000 (€5,418 to €16,254) and between one to two years imprisonment.

Penalties for airlines or other carriers for bringing passengers lacking relevant documentation

Finally, only Indonesia imposes penalties on airlines or other carriers for bringing passengers lacking the relevant documentation. If immigration officers find such a passenger, the government impose certain 'carrier sanctions' in the form of fees and expenses required to return the passenger out of Indonesia.

Table 42: Penalties for Other Actors

Country	Penalties for employers hiring migrant workers			Penalties for people aiding and abetting irregular immigrants			Penalties for airlines or other carriers for bringing passengers lacking relevant documentation		
	Fine	Imprisonment	Others	Fine	Imprisonment	Caning or whipping	Fine	Imprisonment	Others
Brunei Darussalam	Between \$6,000 and \$10,000 (€ 3,712 to 6,187)	Between 6 months and 3 years	None	None	Between 2 years and 7 years	Whipping with not less than three strokes	None	None	None
Cambodia	2 440 000 Riels to 3 600 000 Riels (€ 514 to € 758)	From 6 days to 3 months	None	N.D.*	N.D.*	N.D.*	None	None	None
Indonesia	Up to Rp 200 million (€ 11717) under Law No. 6 of 2011 concerning Immigration; Between Rp 100 million (€ 5,858 and Rp 400 million (€ 23,434) under Law No. 13 of 2003 concerning Manpower	Up to 2 years under Law No. 6 of 2011 concerning Immigration; Up to 1 year under Law No. 13 of 2003 concerning Manpower	None	Up to Rp 200 million (€ 11717,48); Between Rp 500 million (€ 29,293) and Rp1.5 billion (€ 87,881) for those convicted under human smuggling	Up to 2 years; Between 5 and 15 years for those convicted under human smuggling	None	Up to Rp 200 million (€ 11,717)	None	Must pay back return cost
Lao PDR	250 USD (€211) per migrant worker (provincial level); USD 200 (€168) per migrant worker (enterprises)	None	None	N.D.*	N.D.*	N.D.*	None	None	None
Malaysia	RM10,000 to RM 50,000 (€2,013 to €10,068)	Six months to five years (for 5 or more workers)	Whipped up to 6 strokes	N.D.*	N.D.*	N.D.*	None	None	None
Myanmar	Minimum 1500 Kyats (€0,95)	Minimum 6 months to maximum 5 years	None	Minimum 1500 Kyats (€0,95)	Minimum 6 months to maximum 5 years	None-	Minimum 1500 Kyats (€0,95)	Minimum 6 months to maximum 5 years	None

Country	Penalties for employers hiring migrant workers			Penalties for people aiding and abetting irregular immigrants			Penalties for airlines or other carriers for bringing passengers lacking relevant documentation		
	Fine	Imprisonment	Others	Fine	Imprisonment	Caning or whipping	Fine	Imprisonment	Others
Philippines	10,000 PHP (€172) per each year of violation	None	None	None	None	None	500 PHP	None	Must pay back return cost
Singapore	Between S \$5,000 (€3,300) and \$30,000 (€19,800)	Up to 12 months	Banned from employing foreign workers	For harboring offences: Up to S \$6,000 [€3,960] For abetting entry: Up to S \$6,000 (in lieu of caning only)	For abetting entry or harboring: Between 6 months to 2 years	For abetting entry only: Caning with not less than 3 strokes	None	None	None
Thailand	Baht 10,000 to 100,000 (€ 270 to 2,708) per worker	None	None	Baht 200,000 to 600,000 (€ 5,417 to 16,253)	Between 1 to 3 years	None	None	None	None
Viet Nam	Between VND 30,000,000 to VND 45,000,000 (€ 1,102 to 1,653) involving up to 10 workers; Between VND 45,000,000 to VND 60,000,000 (€ 1,102,04 to 2,204) involving 11 – 20 workers; Between 60,000,000 to VND 75,000,000 (€ 2,204 to 2,755) involving more than 20 workers	None	Operation suspended for 1-3 months	Between VND 15,000,000 and 25,000,000 (€551 to 918)	None	None	None	None	None

Source: Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Note: *No data provided as of writing.

5. MIGRATION MEASURES IN THE ASEAN REGION: AN ANALYSIS USING THE ILMA INDEX

The previous section provided necessary detail on the individual measures, analysing each measure across the main categories of *entry and stay, incorporation, exit, and enforcement*. Going beyond the focus on individual measures, this section provides an overall comparative analysis of key patterns and trends in ASEAN. This comparative analysis is guided by the International Labour Market Access Index (ILMA). Migration Policy Analysis (MPA) developed this composite measure, and this has been utilised here to evaluate labour-market accessibility.

The ILMA index quantifies the relative accessibility of labour markets by using employment permits for migrant workers as the unit of analysis. It deploys the combined scores of each employment permit on 50 different indicators as a proxy to measure and compare labour-market accessibility within and across countries. The ILMA index is based on a binary coding system. For each employment permit, each enacted migration measure or requirement that makes it more difficult for migrant workers to access the labour market receives a score of 1. Where there is an absence of such a measure or requirement, the indicator receives a score of 0, as the absence of such requirements facilitates migrants' access to the national labour-market. For example, one of the 50 measures included in the ILMA labour market accessibility index is the requirement of a job offer. Employment permits that require a job offer receive a score of 1 in the ILMA index, whilst permits that do not require a job offer receive a score of 0.

Given that there are 50 migration measures in this study, the index has been customised to the ASEAN context by including those specific indicators to provide a minimum score of 0 and a maximum score of 50. The higher the employment permit score in the ILMA index, the more difficult it is for migrant workers to access labour-markets through that specific employment permit. By contrast, the lower scores reflect a lower level of restriction and, hence, easier accessibility to labour markets for migrant workers.

The main advantage of the ILMA methodology is that it facilitates the development of a truly *regional* view of immigration policy, particularly through the ability to generalise about the occurrence of combinations of specific policy measures and policy trends for the ASEAN region as a whole. The ILMA labour-market accessibility index, for example, can identify the degree to which specific measures are related to particular types of employment permits. This includes the distinction between permits catering to either low or high-skilled migrant workers, or between permits where a job offer is needed and where it is not. Since the scores in the ILMA index can be updated periodically, the current report can also serve as a robust benchmark for analysing future labour-migration policy trends, not only within the ASEAN region but also in comparison to other countries and regions.

An analysis of the data collected for this study across ASEAN countries using the ILMA methodologies has yielded four key observations:¹²³

- There are large variations in the ease of obtaining employment permits across ASEAN countries and these variations are greater within countries than between countries.
- Low-skilled workers face greater obstacles in accessing ASEAN labour-markets, with key differences between low and high-skilled employment permits. These differences are greater regarding terms of stay and civil rights, and lesser regarding health and social rights.
- All employment permit systems come with a range of regulations, that bring both certain rights and benefits along with the expected restrictive measures. Even the most accessible and least restrictive employment permit systems still include several restrictive measures.
- The distribution of the scores exhibits a bimodal (or two-humped) pattern coinciding with the average scores on the ILMA index for employment permits targeting low and high-skilled workers. Despite differences between national contexts, it is skill-levels that matter most in determining labour-market accessibility.

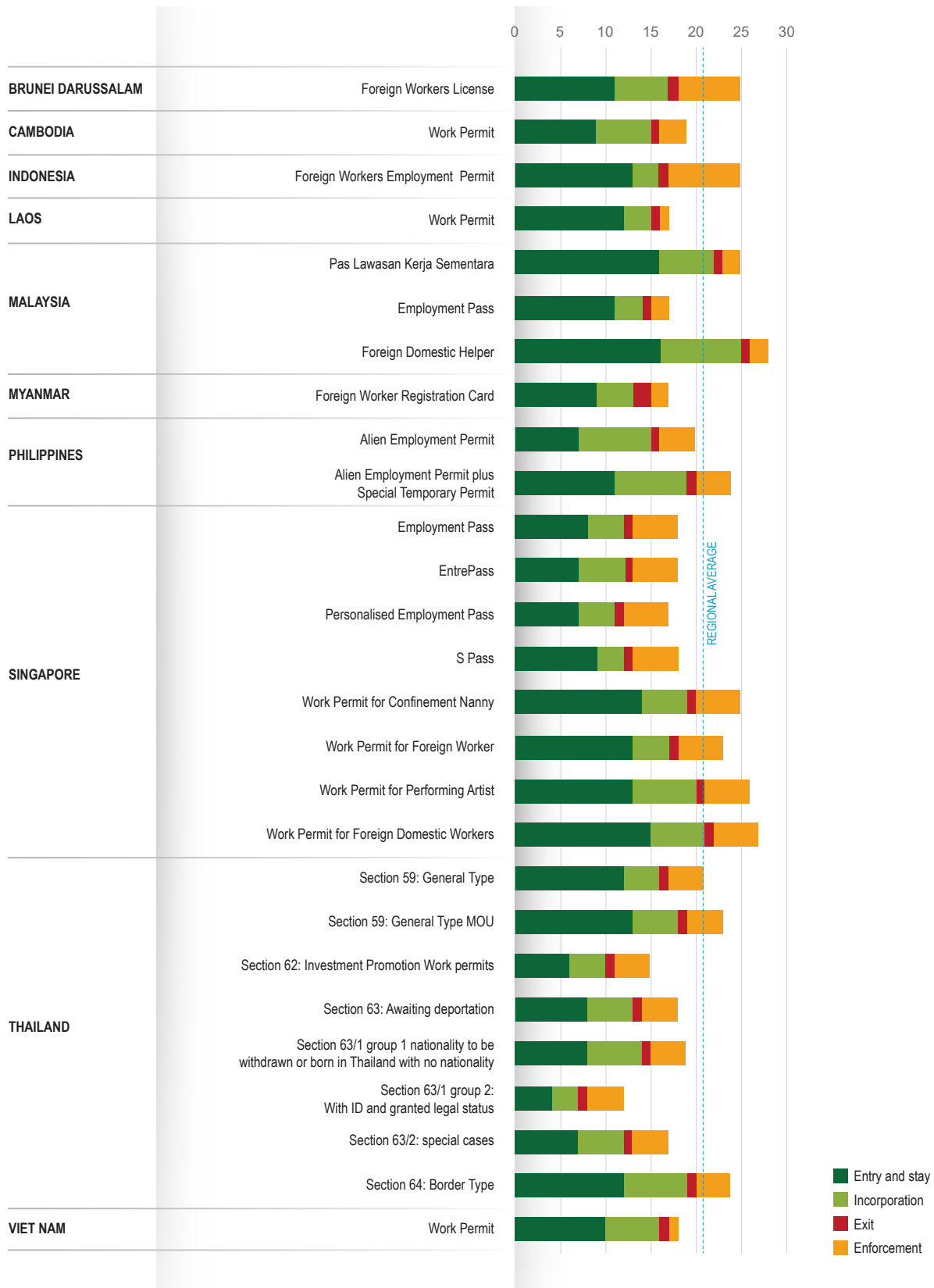
5.1. Score variations across all permits

There are large variations in the ease of obtaining employment permits across and within ASEAN countries, with some permits clearly allowing for easier access to the labour than others. As Figure 16 shows, the ILMA accessibility scores for employment permits in the ASEAN region ranges from 12 to 28, with the regional average set at 20.6. There are 15 permits that score below the average, whilst 12 score above the average. The lowest score is 12, reflecting the highest level of accessibility, applying to the Thai Section 63/1 group 2. Whilst the Thai Section 62: Investment Promotion permit scored 15. The permit for domestic workers in Malaysia has the highest level of restrictiveness, with a score on the ILMA index of 28.

A key observation is that the variation in the ILMA scores is higher within countries, rather than between countries. This is shown by the significant difference in scores within countries that operate multiple permits. In Singapore, for example, the 4 permits catering to the high-skilled and high-income migrants scored below the average while the 4 permits catering to the relatively low-skilled scored above average. Similar variations can be seen in Thailand, Malaysia, and the Philippines.

¹²³ A background analysis of the associations between restrictiveness of policies across the main four policy categories included in the ILMA index was also conducted. This analysis revealed a rather strong, positive correlation ration ($R=0.40$) between entry and stay measures and incorporation measures. So, employment permits that score high on entry and stay also tend to score high on incorporation measures, vice versa. There is no correlation between entry and stay measures and exit regulations and between incorporation measures and enforcement. The analysis of correlations between sub-measures also yielded some interesting insights. First of all, within the entry and stay category we found no correlation between eligibility requirements and procedural requirement. However, we found a rather strong positive correlation ($R=0.50$) between eligibility requirements and terms of stay; and also a positive correlation ($R=0.46$) between procedural requirements and terms of stay. This defies the idea that the accessibility or restrictiveness in one sub-category would substitute for the other, but that accessibility in terms of eligibility seems to co-vary with accessibility in terms of stay. This seems to confirm the idea that as work permits become more accessible, this tend applies to most regulations within the entry and stay category. Within the category of incorporation, the picture is different, as we did not find any correlation between the level of health and social rights on the one hand, and civil rights on the other. Accessibility or restrictiveness levels on the two sub-measures therefore seem to be rather independent from each other. This confirms the earlier observation that access to health and social rights is relatively independent from type of employment permit and skill levels, whereas civil rights packages tend to be more generous for employment permits targeting the higher-skilled.

Figure 16: International Labour Market Access Index (ILMA) in the ASEAN Region

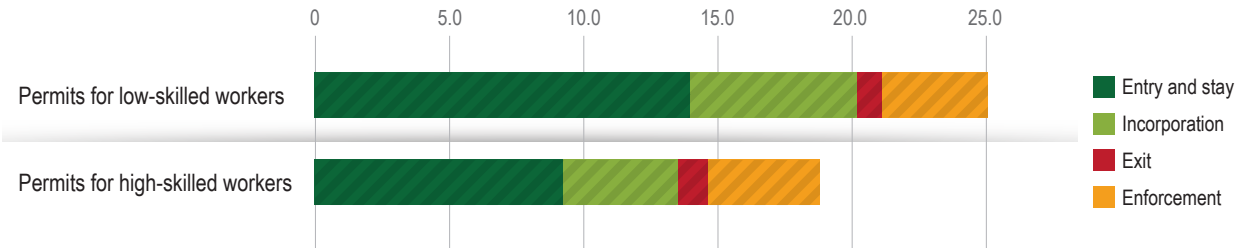


Source: Author's analysis using the ILMA methodology based on response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

5.2. Score variations along skill levels

The high variations in ILMA scores within countries suggest that skill levels of the targeted groups of migrant workers may be more relevant than the national context in determining the accessibility of the labour market and employment permits. This study therefore also analysed relative labour market accessibility of different employment permits across different AMS by making a distinction between permits for low and high-skilled migrants. As Figure 17 shows, low-skilled workers must fulfil much higher requirements to enter and have less rights in terms of staying compared to high-skilled migrant workers, who face lower entry requirements. They are also granted more rights with regards to incorporation. With an average value of 25.1, permits targeting low-skilled workers score more than six points higher on the ILMA index than permits regulating labour market access for high-skilled migrant workers, which have an average accessibility score of 18.9. This confirms that low-skilled workers face higher obstacles in accessing ASEAN labour markets.

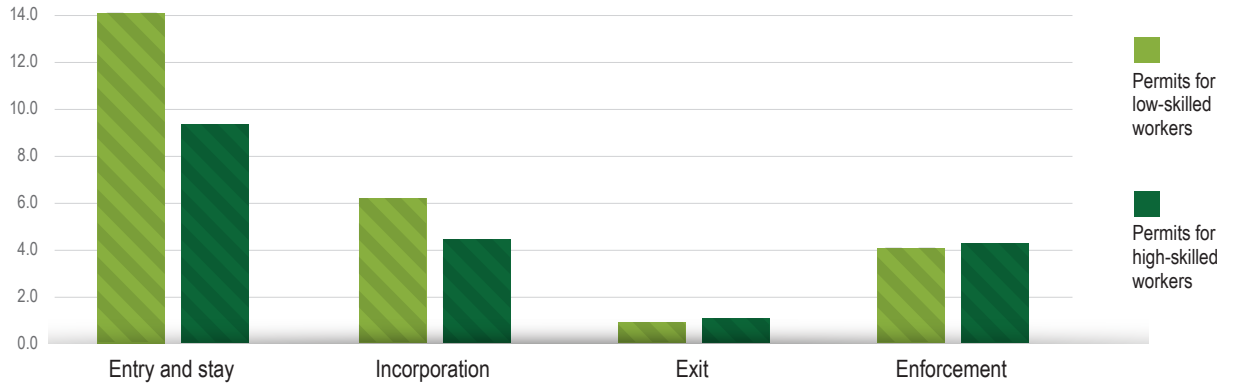
Figure 17: International Labour Market Access Index (ILMA), by skill level



Source: Author’s analysis using the ILMA methodology based on response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 18 shows that there are no noticeable differences between the scores of low and high-skilled workers on the exit measures and enforcement measures. The difference in total scores on the ILMA index is explained by the different scores on the entry and stay as well as incorporation measures. For example, with regards to entry and stay measures the permits for low-skilled worker permits scored an average value of 14.0 compared to 9.4 for the high-skilled employment permits. With regards to incorporation measures, the low-skilled permits scored an average 6.1 compared to 4.4 for high-skilled migrant workers.

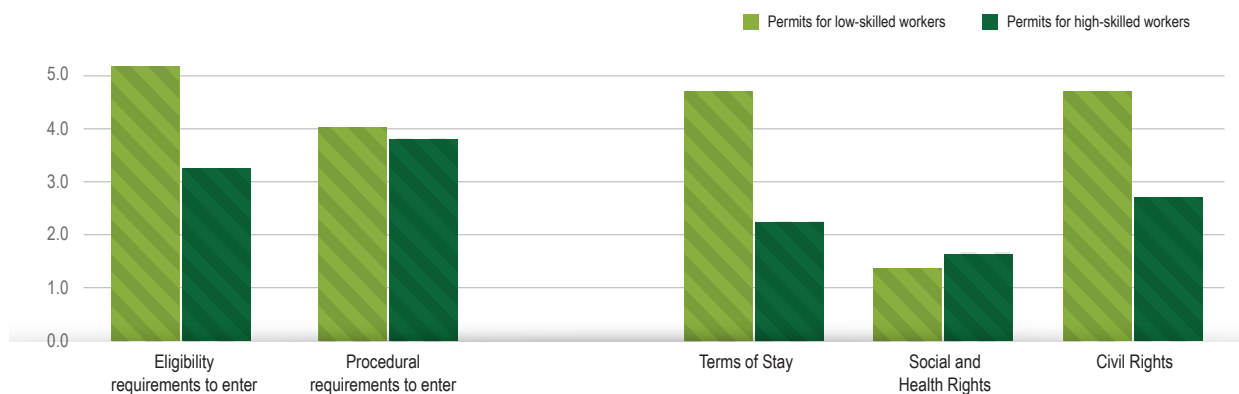
Figure 18: ILMA Scores on Main Policy Categories, by Skill Level



Source: Author’s analysis using the ILMA methodology based on response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 19 zooms in further, to examine the five sub-categories under the entry and stay and incorporation measures. The analysis shows quite clear differences between low-skilled and high-skilled workers. In all five categories, permits for low-skilled workers score higher, although there is a clear differentiation across various types of measures. Differences between low and high-skilled employment permits are particularly large regarding terms of stay and civil rights, but relatively smaller regarding health and social rights. This indicates that health and social rights are more equally accessible for low and high-skilled migrant workers.

Figure 19: ILMA Scores on Main Entry and Stay and Incorporation Measures, by Skill Level

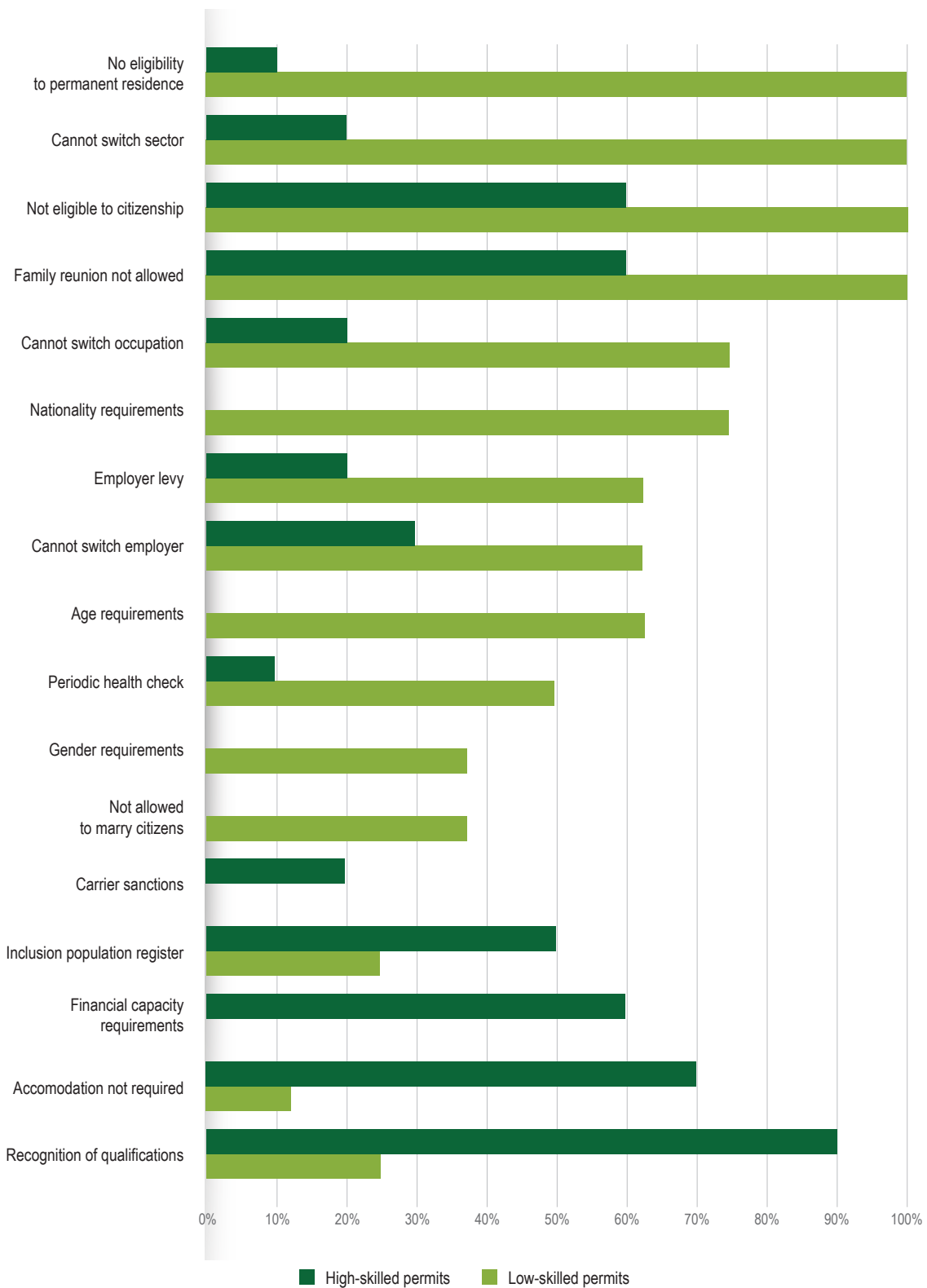


Source: Author's analysis using the ILMA methodology based on response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

Figure 20 identifies several measures and requirements that are particularly prevalent for employment permits targeting low and high-skilled workers, respectively, and so, account for the main differences between these two types of employment permits. The upper half of figure 20 indicates which regulations are most common for low-skilled employment permits. It shows that *all* lower-skilled employment permits prohibit migrant workers from taking up jobs in a different sector and exclude them from family reunion, and access to permanent residence and citizenship. The prevalence of such restrictions is much less common for high-skilled migrant workers.

Over half of low-skilled employment permits include regulations precluding workers from switching occupations, or include nationality requirements, periodic health checks or employer levies. Such regulations rarely apply to high-skilled workers. Whilst these high-skilled workers generally have much easier access to ASEAN labour-markets, some regulations are quite specific to high-skilled employment permits. These are shown in the lower half of Figure 20 – this particularly applies to financial capacity requirements, recognition of qualifications, accommodation requirements, mandatory inclusion in population registers, as well as carrier sanctions.

Figure 20: Highest Prevalence of Selected Measures and Requirement, by Skill Levels



Source: Author's analysis using the ILMA methodology based on response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

5.3. Absolute and relative accessibility and corresponding benefits and rights

The analysis using the ILMA index revealed that the ASEAN labour-market tends to be more accessible for high-skilled compared to low-skilled workers. However, it is also important to emphasize that even the most restrictive low-skilled employment permit has an ILMA score of 'only' 28 (out of a potential maximum score of 50) and that even the most accessible high-skilled employment permit 'still' has a score of 12. With scores on the ILMA labour-market accessibility index ranging from 12 to 28, this shows that labour market access should not be thought of in terms of 'closed' and 'open' channels, but rather in terms of relative openness.

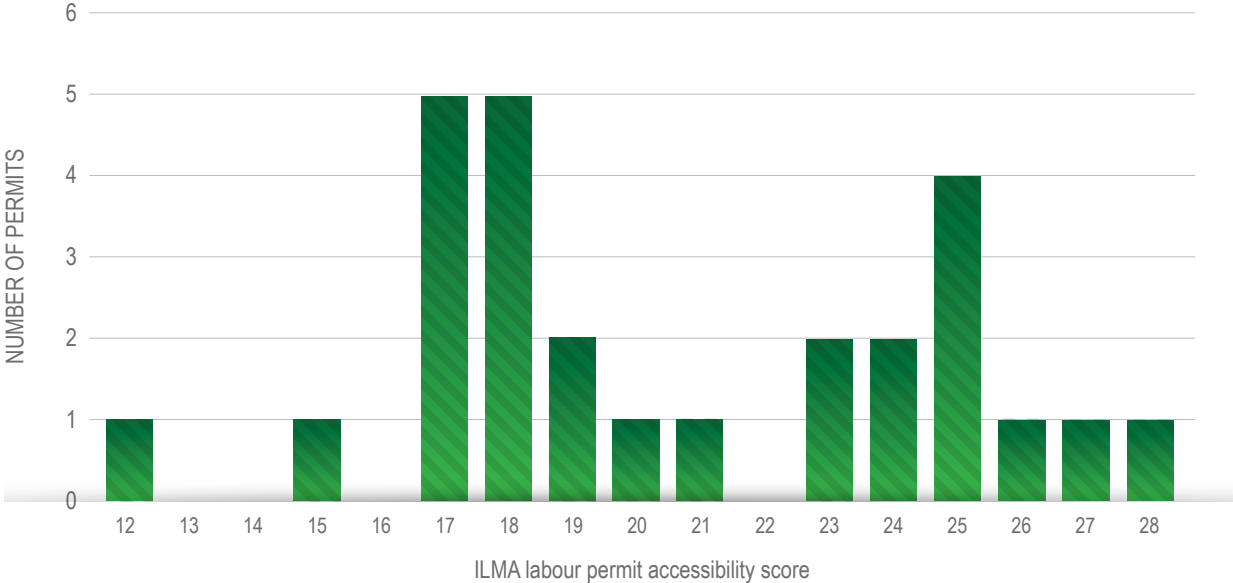
In other words, all employment permit systems come with a range of regulations, including several rights and benefits as well as restrictive measures. Even the most accessible, least restrictive employment permit systems still include several restrictive measures. For example, *all* three employment permits with the lowest ILMA scores still carry significant requirements. Here, migrant workers are required to have a job offer, to pay application fees, to acquire special visas or entry permits, to obtain compulsory identification documents, restrict the initial length of stay to two years or less, prohibit family reunion and subject deported workers to an entry ban.

Conversely, the three employment permits with the highest ILMA score all comprise some 'privileges' for migrant workers. These include the waiving of requirements on financial capacity requirements, working condition, marital status, and language; while they all include provisions that protect migrant workers from the confiscation of identity documents, guarantee equal treatment before courts, and give them the right to join trade unions. This highlights the complexity and fine-grained nature of regulations as well as the fact that there is neither a completely open nor closed permit system. This underlines the value of the ILMA methodology employed in this report, as it assesses the accessibility of employment permits through a disaggregated analysis of a broad range of 50 different underlying regulations. This allows for the systematic comparison of employment systems within and between AMS.

5.4. Distribution of ILMA scores in ASEAN

Finally, figure 21 shows the distribution of ILMA scores of the 27 ASEAN employment permits included in this study. The distribution of the scores seems to follow a two-humped (bimodal) pattern, with more open employment permits clustering around values of 17-18 and more restrictive employment permits clustering around values of 23-25. This coincides with the average scores on the ILMA index for employment permits targeting high and low-skilled workers, respectively, that were reported above. Demonstrating that despite the differences between national contexts, it is skill-levels that matter most in determining labour-market accessibility. It also exemplifies the problems of analysing migration policies at the national level without breaking them down into their different composite entry channels. It confirms the validity and power of the ILMA methodology to assess and compare labour-migration policies.

Figure 21: Distribution of Labour Market Accessibility Scores



Source: Author’s analysis using the ILMA methodology based on response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to national focal points of the Governments of Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), February to May 2020; Official input provided by the Governments of Cambodia, Myanmar, Philippines, Singapore, Thailand and Viet Nam to author, September to October 2020.

6. PROGRESS AND CHALLENGES IN IMPLEMENTATION

The previous two sections explained the varied and sophisticated array of measures that AMS currently implement to manage the mobility of inbound migrant workers into the ASEAN region. This section analyses the extent to which these measures are actually implemented in practice. To assess this, the national experts who are part of this study's research team wrote country-level reports outlining the situation in each AMS. They conducted interviews, mostly in local languages, with key government officials in the AMS as well as other practitioners including embassy personnel, heads of recruitment agencies, officials of international and non-governmental organisations and migrant organisations. These interviews helped identify several areas where marked progress has been made and where persistent challenges remain.

6.1. Progress

In recent years, there has been remarkable progress on policy implementation in four key areas:

- (1) the initiation of critical legislative and regulatory reforms;
- (2) the establishment of coordination structures at various levels of government;
- (3) investment in critical infrastructure; and
- (4) the achievement of key policy objectives.

6.1.1. Regulatory and legal reforms and overhaul

A key area of progress in many AMS is constituted by reforms in the laws, regulations and procedures pertaining to the management of inbound migrant workers into the region. This has been reported in Malaysia, Thailand, Cambodia, Lao PDR, Viet Nam and Indonesia.

For example, in Malaysia, regulations that permitted the outsourcing of foreign workers has been rescinded. Prior to 2019, the authorities allowed agencies to import and supply migrants to employers needing unskilled workers. The migrants employed in this way were the employees of the outsourcing company and not the actual end-user of the workers' services. As Maimunah Aminuddin notes in her report on such practices in Malaysia, "exploitation and abuses of workers were common with this system. While the end-users of the labour may have paid the outsourcing companies' reasonable rates per worker, not all of this money would reach the workers." Aminuddin further notes that when complaints were made, the outsourcing companies simply denied that they were the employer of the worker. When complaints reached the Labour Department about the poor treatment of the workers, the company (quite often a one-man outfit) simply disappeared leaving the workers with no redress.¹²⁴

¹²⁴ Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020; See <https://www.thestar.com.my/news/nation/2019/03/12/better-welfare-for-foreign-workers-employers-laud-abolishment-of-outsourcing-outfits-managing-forei>

Similarly, in Thailand, there have been improvements in the regulation of recruitment agencies. In their report on Thailand, Ruttiya Bhula-or and Ratchada Jayagupta note that authorised recruitment agencies can only collect service fees and charge other related expenses from the employers and at the rates prescribed in the Notification of the Director-General of the Department of Employment. Bhula-or and Jayagupta highlight that Thailand is the only destination country within ASEAN that implements such fee policies during their recruitment. The Royal Ordinance also allows a migrant worker who lives outside Thailand to apply for a work permit and pay fees through an electronic system.¹²⁵

In Lao PDR, the legal framework is fairly well established and provides a “good reference for implementation”, according to a government official in answer to the survey conducted to inform this study. Tingthong Phetsavong, in his report on Lao PDR, notes that the amendment to the Labour Law in 2014 also made it more “in line with international labour standards”,¹²⁶ and comes with provisions to protect migrant workers. The term ‘migrant workers’ was defined in this law for the first time, and the law applies to both local and foreign workers. In 2014, the government also introduced a new Law on Immigration and Foreigner Management,¹²⁷ and although as of this writing some implementing measures are still being finalised it is expected to be approved by the Prime Minister by the end of 2020.¹²⁸ In 2013, Lao PDR also developed the Operations Manual on the Protection and the Management of Migrant Workers. This manual is a guideline for government staff in three ministries at central and local levels to facilitate and manage migrant workers both from Lao PDR and heading to Lao PDR. Phetsavong explains that this guideline is developed to ensure that there is consistency in the implementation of labour-migration management mechanisms among inter- government agencies.¹²⁹

Similarly, in Cambodia, reforms have been introduced related to four critical laws – the Labour Law, Immigration Law, Social Security Schemes Law and Trade Union Law – according to a government official in answer to the survey conducted to inform this study.¹³⁰

In Viet Nam, Le Kim Dzung notes in her report that critical improvements in the legal system have strengthened the management of migrant workers and brought the legal system closer to international standards. New laws, decrees and circulars have been promulgated since 2012 including the Labour Code which has specific provisions on migrant workers. The government has also issued different legal documents guiding the implementation of relevant laws, including resolutions stipulating the conditions for migrant workers, while relevant ministries and sectors have issued circulars directly guiding the management of migrant workers. Dzung further notes that Viet Nam has also periodically reviewed, supplemented and amended mechanisms and policies to support organisations, enterprises and individuals receiving and employing migrant workers. These include reforms of administrative procedures linked to the processing of work permits.¹³¹

Likewise, in Indonesia, there has been recent progress in simplifying employment permit procedures. Rina Shahriyani Shahrullah, in her report on Indonesia, notes that previously the application process was lengthy and complicated because the employer had to obtain recommendations from various relevant institutions and ministries.¹³² Now, a permit to employ a foreign worker can be obtained simply by submitting a Plan for Foreign Workers Utilization (RPTKA) to the Ministry of Manpower under a simpler procedure. Shahrullah explains that “in principle, the Indonesian government has adopted a permit pattern from abroad by applying the principle of fast, easy and transparent procedure. So that foreign nationals who will work in companies in Indonesia do not experience complicated and long-winded bureaucracy.”¹³³

125 Ruttiya Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020.

126 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

127 This law come to replace the Prime Minister’s Decree No. 13 on the Foreigner Management, issued in 2009.

128 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020, Report.

129 Ibid.

130 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Cambodia; Survey B.

131 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

132 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

133 Ibid.

6.1.2. Creation of coordination structures at various levels

There has also been progress in the creation of coordination structures for policy formulation and operations at various levels particularly at (1) the inter-agency level; (2) between public and private sectors, including the civil society, and (3) at the inter-governmental level.

Coordination at inter-agency level

In Thailand, Brunei Darussalam, and Cambodia, progress has been made in improving inter-agency cooperation. Thailand, for example, operates a One Start One Stop Services (OSOS) which brings together staff from investment-related agencies to assist companies doing business in Thailand.¹³⁴ The OSOS offers a wide range of investment-related services, including a work-permit application system. The OSOS also provides information and consultation on tax and any related issues, including basic information on the Eastern Economic Corridor (EEC) and the Special Economic Zones (SEZ). There are also “one-stop-service centres” (OSS) established for workers whose nationality is yet to be verified and who are seeking work permits. Bhula-or and Jayagupta explain that Thai authorities were trying to legalise all migrant workers, by encouraging them and their employers to undergo proper registration. “It helped to expedite the process,” according to Bhula-or and Jayagupta. The OSS centres reduced the time required for registration from ten to six hours.¹³⁵

Indeed, Thai government officials, in their answers to the survey conducted to inform this study, highlight the “integrative cooperation” between the relevant departments. These include the Ministry of Public Health, Ministry of Labour, Immigration Bureau, and the Department of Provincial Administration. They see this as a key accomplishment along with the “close proximity between the border and the work-permit registration office.” The officials further note that related departments “jointly work well”, such as the Immigration Bureau and Ministry of Public Health.¹³⁶

Similarly, in Brunei Darussalam, improved domestic inter-agency cooperation has also contributed to discovering and determining cases of exploitation of workers (from general violations of civil liberties to more egregious cases). According to a government official, in reply to the survey conducted to inform this study, such cooperation is the result of a continuous willingness in domestic enforcement agencies to share information, perform joint operations and exchange best practices on their individual purviews and scopes of work.¹³⁷

In Cambodia, the “good cooperation” between the Ministry of Labour and Vocational Training (General Department of Labour) and Ministry of Interior (General Department of Immigration) in conducting inspections on foreign workers is also considered as a key accomplishment by a government official consulted to inform this study.¹³⁸

134 See: OSOS, the investment service center. “We make it easier for you to do business in Thailand.” http://www.boi.go.th/tir/issue/201508_25_8/cover.htm.

135 Ruttia Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020

136 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand; A Sec 64 and Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand; A Sec 63.

137 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam Part B.

138 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Cambodia, Part A.

■ Coordination between public and private sectors

In Viet Nam and Lao PDR, coordination between the government and other stakeholders has also improved. In Lao PDR, for example, the government has established institutional mechanisms that link the government to other actors such as the National Tripartite Committee on Labour Migration. This is comprised of the Ministry of Labour and Social Welfare, the Lao Federation Trade Union and the Lao National Chamber of Commerce and Industry.¹³⁹ Viet Nam, likewise, has made progress in communicating with employers, particularly by raising their awareness and understanding of the laws and responsibilities of enterprises when employing migrant workers. Here, primarily by organising policy dialogues and training on employment policies, among other initiatives.¹⁴⁰

■ Coordination at the inter-governmental level

There has also been progress made in inter-governmental cooperation in Singapore, Viet Nam and Lao PDR. For example, a key Singapore government official in reply to the survey conducted to inform this study, highlighted the “good relationships with foreign diplomatic missions in Singapore in facilitating repatriation of overstayers or illegal immigrants.”¹⁴¹

The National Study Reports on Viet Nam and Lao PDR both highlighted the signing of international treaties and agreements related to the management and employment of migrant workers as an important step forward. Viet Nam has negotiated and signed many bilateral labour agreements with its partners, including social security agreements that support the access to a social protection system of migrant workers essentially linking Viet Nam’s pension scheme to the migrant’s country of origin. Now, Viet Nam has just concluded a negotiation with the Federal Republic of Germany and the Republic of Korea, reaching the stage of internal consultations for signing.¹⁴²

Likewise, Lao PDR has signed bilateral and multi-lateral agreements with neighbouring countries at sub-regional level on anti-human trafficking and labour-management cooperation, including three Memoranda of understanding on employment cooperation with Thailand, Japan and the Republic of Korea.¹⁴³

6.1.3. Investment in information technology (IT) infrastructure

Significant investment has also been made in improving relevant IT infrastructure, particularly for managing work permit applications. These investments have improved efficiency, including the turn-around time of work permit applications, in many AMS, including in Brunei Darussalam, Cambodia, Malaysia, Singapore and Thailand.

Paryono, in his report drafted to inform this study, notes that Brunei Darussalam has made some progress in the adoption of an online system, using a biometric system in the ID/s, and expanding their border control system using a web-based application.¹⁴⁴ The Department of Labour and Department of Immigration and National Registration together introduced the new technology and migrated the service system from paper-based to online-based. Paryono highlighted that “this is a commendable move regardless of some difficulties encountered by the employment agencies,” which will be discussed further later. Before the new online system took effect, it usually took 42 days for the permit application to be completed. The processing time now is down to between 7 to 10 days.¹⁴⁵ Indeed, a key government official from Brunei Darussalam, in reply to the survey conducted to inform this study, highlights that the “turnaround time has been improved over past performance.”¹⁴⁶

139 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

140 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

141 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Singapore Part B.

142 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

143 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

144 Paryono, Migration Laws and Policies in Brunei Darussalam, National Study Report, August 2020.

145 Brunei National Study Report.

146 Ibid.

Similarly, in Malaysia, employers applying for a permit catering to low-skilled workers under the Pas Lawatan can get approval within 30 minutes after the interview, whilst processing times for other permits decreased by a third: from three months to one month. An official from Malaysia notes that it is a government policy to provide as many online services as possible.¹⁴⁷ Aminuddin underlines that recent years have indeed seen progress in the application processes for employment passes in Malaysia. This is not only by putting information on the required procedures and documentation online to serve as guidelines to prospective employers, but also by creating special portals that guide the applicant through the process and lead to speedier approvals. For high-skilled migrants the services of an agent are no longer needed, and this reduces the costs for employers.¹⁴⁸

Cambodia also developed the 'Foreign Workers Centralised Management System' (FWCMS), an online system designed to register and issue the work permit, employment card and handle quota related applications.¹⁴⁹ Khoun Bunny, in his report on Cambodia commissioned to inform this study, notes that the FWCS makes it easier to apply for the foreign worker quota and work permit.¹⁵⁰

Similar observations apply in Viet Nam, where agencies authorised to grant work permits or certify the exemption of a work permit have not only simplified administrative procedures but also implemented digital or online portals to increase compliance with the law. Dzung underlines that almost 100% of persons exempted from work permits have completed the procedures for certification of exemption. Whilst more than 95% of the non-exempt have been granted permits. Software for managing, granting and renewing permits for migrant workers is also administered synchronously across the country.¹⁵¹

Indonesia also maintains the online system for foreign workers 'Tenaga Kerja Asing Online' (TKA Online). This is an integrated data-sharing system between the Ministry of Manpower and the Ministry of Law and Human Rights used in the approval of employment permits and the issuance of travel documents to migrant workers. TKA Online also connects the Ministry of Manpower with the Ministry of Finance to facilitate the payment of injury, disability and other benefits to migrant workers under the Compensation Fund. TKA Online also links surveillance activities of the Foreigners Monitoring Team (PORA TEAM) involving various ministries and government agencies, including the police.¹⁵²

In Thailand, the Department of Employment also maintains an online system, but the focus here is on facilitating a website to process complaints filed by migrant workers: <https://www.doe.go.th/helpme>. The website is available in six languages including Thai, English, Khmer, Myanmar, Lao and Vietnamese, and allows migrant workers to file various types of complaints from corruption charges against government officials, to employer abuse and unpaid wages. Bhula-or and Jayagupta conclude that this system provides a convenient and accessible channel for migrant workers when they face difficulties and problems relating to employment.¹⁵³

Singapore also utilises new technology but here the focus is on instituting checks at the border. In reply to the survey conducted to inform this study, a key Singaporean government official notes that technology helped "to sieve out many illegal workers and keep the ex-offenders away" while also helping in investigations against errant employers and individuals harbouring irregular migrants.¹⁵⁴

147 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, Domestic Helper Permit; Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, A Pas Lawatan.

148 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

149 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Cambodia, Part A.

150 Khoun Bunny Migration Laws and Policies in Cambodia, National Study Report, August 2020.

151 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

152 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

153 Ruttiya Bhula-or and Ratchada Jayagupta, Migration Laws and Policies in Thailand, National Study Report, August 2020.

154 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Singapore, Part B.

6.1.4. Achievement of key policy objectives

Several AMS also noted progress in achieving key policy objectives, from skills transfer to strict enforcement of immigration and labour laws. For example, in Lao PDR, a key government official, in reply to the survey conducted to inform this study, said that inbound migrant workers have “sufficient skills to meet the requirement of investment promotion” and skills transfer to Lao PDR workers is happening.¹⁵⁵

Officials from the Philippines and Indonesia made similar observations. Filipino professionals for example, do benefit from working as local counterparts or understudies of migrant workers, promoting transfer of knowledge and skills.¹⁵⁶ Officials from the Philippines noted that the availability of advance technology in the country brought by highly skilled migrant workers attracts even more investment into the country.¹⁵⁷

Similarly, in Indonesia, the presence of migrant workers is also as seen positively impacting the level of scientific development and the adoption of new technology in certain fields of work, since migrant workers' certification and skills tend to be higher than those of the local workforce.¹⁵⁸

The Philippines also experiences progress in better monitoring and profiling of migrant workers which provides critical labour-market information to key industries and sectors,¹⁵⁹ whilst in Malaysia there is improvement in better understanding changing business needs.¹⁶⁰

Some AMS also show progress in the implementation of the permit system, including the stricter enforcement of immigration and labour laws. For example, Lao PDR officials note that the government can control and manage labour quota based on the proportion of migrant workers as planned.¹⁶¹

Likewise, in Viet Nam, Dzung notes that most businesses, agencies, and organisations employing migrant workers “strictly abide by the laws.” She writes: “Enterprises, agencies and organisations wishing to employ foreign labourers basically comply with the processes and procedures for applying for work permits or certifications of work permit exemption for foreign workers.”¹⁶²

Both Thailand and Singapore also cite achievements in stricter enforcement of regulations and laws.¹⁶³ Brenda Yeoh and Theodora Lam, in their report in Singapore drafted to inform this study, conclude that “strong and stringent enforcement of immigration and labour laws provides an important foundation to build a well-regulated system of labour mobility.” Yeoh and Lam note that “irregular migration is not a major issue and the numbers are small.” Singapore minimises irregular migration through strong law enforcement practices, well-regulated recruitment, and employment channels, each buttressed by clear penalties for transgression and the consistent enforcement of immigration and labour laws. Interviews conducted in Singapore suggest that “people generally do not want to test the system”. Yeoh and Lam explain that this has served Singapore well as “there is little incentive to follow the irregular route when there are proper employment routes.” They also note that strong law enforcement also closes the implementation gap, engendering “confidence the contractual terms will not be changed, and the laws will not be violated”.¹⁶⁴

155 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Lao People's Democratic Republic, Part A.

156 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, administered to respondents in the Philippines, Part A, Alien Employment Permit plus Special Temporary Permit.

157 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, administered to respondents in the Philippines, Part A, Alien Employment Permit.

158 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

159 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, administered to respondents in the Philippines, Part A, Alien Employment Permit.

160 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, Employment Pass.

161 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Lao People's Democratic Republic Part A.

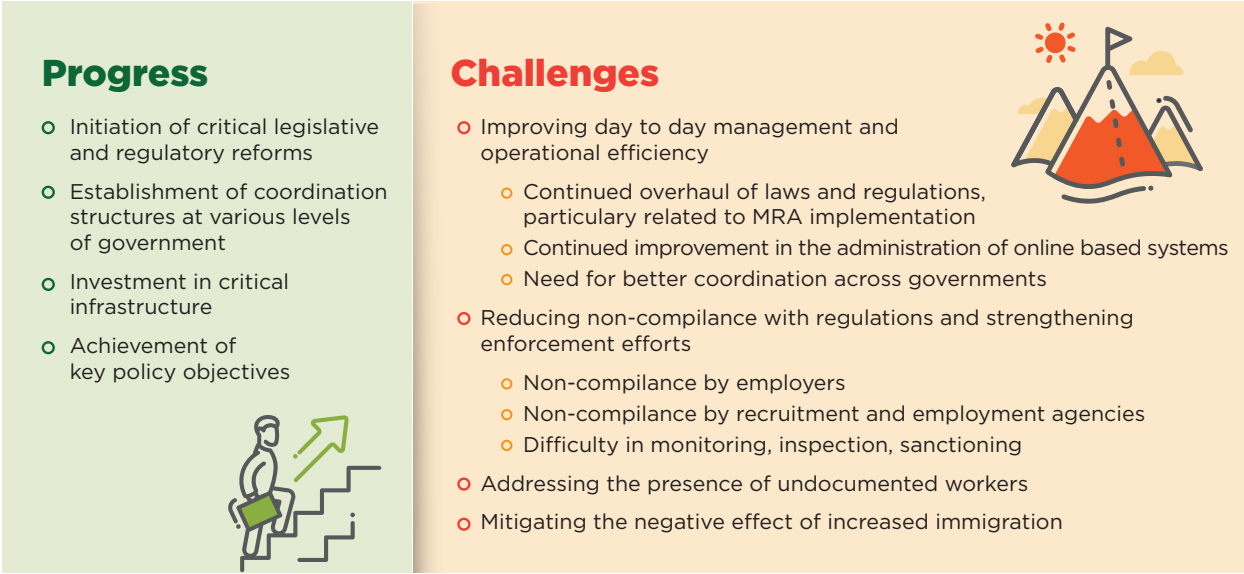
162 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

163 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A Sec 63.

164 Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020.

The availability of legal recourse in Singapore is also important as it confers assurance that “there are legal implications for both employers and employees [if contracts are not being followed]. The workers can get deported, and the employers get penalised and barred from hiring foreign workers”. Yeoh and Lam underline that strong enforcement standards, which uphold the integrity of the regulatory framework, are also important for their signalling effect. Indeed, in 2018, the Ministry of Manpower suspended the license of an employment agency who had advertised their foreign domestic worker services in an undignified manner. The key appointment holders and employment agency personnel were also taken to task not only to emphasise the importance of abiding with regulations but also to send a signal that unethical market practices would not be tolerated.¹⁶⁵

Figure 22: Progress and Challenges in Implementation



Source: Author’s illustration.

165 Ibid.

6.2. Challenges

Clearly, highly significant progress has been made in better managing the mobility of inbound migrant workers to the ASEAN region. However, persistent challenges on key areas remain. And most of these challenges are in some way linked to the need to build on the progress that has already been made.

The remaining challenges include:

- improving day to day management and efficiency of operations;
- reducing regulatory non-compliance;
- addressing the presence of undocumented workers; and
- mitigating the negative effects, real and perceived, of increased immigration on the societies and economies of ASEAN countries.

6.2.1. Improving day-to-day management and operational efficiency

A key area of concern in many AMS pertains to the further improvement of day-to-day management and efficiency in operations of government offices mandated to manage the mobility of inbound migrant workers to the region. Efficient administration is made complicated by the still daunting task ahead in many AMS to continue: (1) overhauling of laws and regulations; (2) improve database management; and (3) better coordinate, particularly across various government agencies.

Continued overhaul of laws and regulations

Despite progress already made in updating and reforming laws and regulations in many AMS, the work remains unfinished in some, as several laws and regulations are still out of date. For example, in Lao PDR, some regulations have not been revised for the last ten years and government officials, in reply to the survey conducted to inform this study, highlight the need for an immediate update.¹⁶⁶

Similarly, in Cambodia, the immigration law was passed in 1994, more than 25 years ago. Bunny notes that the government is now amending the law to update it and has convened two meetings to check the primary essence of the law. The government has not studied it in depth as of yet, and at the last meeting they decided that members will be divided into smaller groups, with each carrying out studies in line with their expertise.¹⁶⁷

Myanmar is also in the middle of drafting a Foreign Worker Law to regulate the entry of migrant workers. Khin Mar Yee, in her report on the situation in Myanmar commissioned to inform this study, notes that the current bill aims to protect rights of migrant workers and strengthen the skills and technical expertise of local workers. It mainly focusses on the administration of work permits and migrant workers' benefits. Under the bill, migrant workers may be entitled to the same rights as local workers. Yet the bill is still silent on the income tax liability of migrant workers, which creates uncertainty. In addition, the bill requires another layer of assessment in recognising qualifications even where international mutual recognition exists. Further, the bill will only allow migrants to work for four years and is silent on any possible extension. Mar Yee cautions that the Foreign Worker Law remains just a bill and it is not sure what will be in the actual provision of the law.¹⁶⁸

In some AMS, inconsistent or ineffective regulations make the smooth administration of the permit system even more difficult. In Malaysia and Thailand, the challenge rests on determining the appropriate length of the work-permit validity. A key Malaysian government official notes that the long period during which the

166 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020; Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Lao People's Democratic Republic, Part A.

167 Khoun Bunny Migration Laws and Policies in Cambodia, National Study Report, August 2020.

168 Khin Mar Yee, Migration Laws and Policies in Myanmar, National Study Report, August 2020.

Pas Lawatan permit can be renewed (10 years) is an issue.¹⁶⁹ Likewise, in Thailand, government officials note the permit **Section 64: Border type** is only issued for three months and there is no renewal. Thus, the work-permit holder must register again, and a new work permit is issued every time.¹⁷⁰

For Brunei Darussalam and the Philippines, a key dilemma is how to properly implement the labour-market test for certain occupations, including those that clearly do not interest locals. Paryono explains that some jobs are unattractive to locals because they are physically too demanding. Stakeholder interviews in Brunei Darussalam conducted to inform this study suggest that it is likely more efficient if these types of physically demanding jobs which do not attract locals were to be exempted from the labour market test.¹⁷¹ In the Philippines, government officials consulted for this study suggest the need to develop a Skilled Occupational Shortage List and Negative List that should be reviewed every two years, or as the need arises, based on labour-market trends and demands.¹⁷²

In some AMS, the regulatory framework still lacks uniformity, thus creating legal loopholes which unscrupulous actors exploit to their advantage. Under these conditions, either regulations that contradict each other co-exist or there is an absence of clear regulation. For example, in Viet Nam, the management of migrant workers is regulated through an array of different laws, which leads to overlaps and a lack of uniformity. Dzung explains in her report that one of the key issues is the lack of clear regulation on the probation period for migrant workers. Under the regulations, migrant workers cannot be hired under probation, which leads to some enterprises breaking the law by asking the migrant worker to initially work on a 30-day tourism visa and then offer that person a contract. Other enterprises take advantage of a loophole allowing migrants to work without a work permit for up to three months. Within those three months of working, the enterprise will then complete the dossiers and the workers will apply for a work permit. Some enterprises also take advantage of a regulation exempting those from applying for a work permit for capital-contributing members or owners of limited liability companies. Since the Law on Investment does not have specific provisions on the minimum capital contribution to be considered as an investor, there are some cases where migrant workers contribute just a few million dong to companies and ask for exemption from applying for a work permit.¹⁷³

In Indonesia, a key problem arises from laws and regulations that are either asynchronous or contradictory. For example, Shahrullah explains that some of the provisions under the Presidential Regulation No. 20 of 2018 concerning Foreign Workers Utilization contradicts with the umbrella legislation pertaining to manpower (Law No. 13 of 2003 concerning Manpower). She explains that the Presidential Regulation excluded shareholders who serve as members of the Board of Directors or Board of Commissioners from applying for a permit. For Shahrullah, this “additional provision is a wrong approach from the legal perspective” because Law No. 13 of 2003 concerning Manpower is higher in the hierarchy of legislation than the Presidential Regulation. There are still many laws and regulations governing Foreign Workers in Indonesia that are not synchronous. An interview with a government official for this study suggested that this regulation needs reforming. Recently, there has been progress towards this end. Shahrullah explains that the new Omnibus Law on Work Establishment has finally been signed into law in November 2020. Superseding Law No. 13 of 2003 concerning Manpower, the Omnibus Law has addressed many legal discrepancies and overlaps. She concludes that the “vertical internal conflict of laws pertaining to foreign workers may be no longer be an issue in Indonesia.”¹⁷⁴

169 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, Employment Pass.

170 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A Sec 64.

171 Paryono, Migration Laws and Policies in Brunei Darussalam, National Study Report, August 2020.

172 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, administered to respondents in the Philippines, Part A, Alien Employment Permit.

173 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020; The Law on Entry, Exit, Transit, and Residence of Foreigners in Viet Nam (Article 8) (amended and supplemented by Article 1, Clause 3 of Law No.51/2019/QH14) stipulates 27 different types of visa symbols for foreigners entering Viet Nam, amongst which, foreign workers in Viet Nam can use one of the visa symbols including: “LD1” and “LD2” – granted to people who come to work; “DN1” and “DN2” – issued to people who come to work with companies in Viet Nam; “LV1” and “LV2” – issued to people who come to work for some central Government Agencies or Organisations; “DT1”, “DT2”, “DT3”, and “DT4” – issued to foreign investors in Viet Nam. Article 10 of this Law stipulates that only the LD1 and LD2 visa requires conditions to have a work permit before visa issuance, other types of visas such as “DN1”, “DN2”, “LV1”, “LV2”, “DT1”, “DT2”, “DT3”, or “DT4” do not have such requirements. Therefore, in many localities, over the past years, foreign workers working in enterprises have been granted visas with the “DN” symbol by the immigration authorities which has a term of up to 3 months of working without a work permit.

174 Rina Shahrriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

In Malaysia, a key problem pertains to the lack of written policies relating to various facets in the management of the intake of migrant workers. Aminuddin explains in her report that there are several internal policies used within the relevant government departments and agencies, but these are not made known to the stakeholders, specifically the employers wishing to recruit migrant workers. She writes: “This dearth of information leads to suspicion amongst these parties that special privileges are available to some and not others.”¹⁷⁵

In Singapore, the main concern is over retention issues for critical workers who may choose to leave Singapore because of the restrictions on their rights and privileges. As explained earlier, the various permits in Singapore come with different sets of privileges and restrictions, with a strong preference given to the highest skilled. Skilled workers such as healthcare workers on the mid-level S-Pass do not enjoy all the privileges attached to the Employment Pass. Foreign healthcare workers on the S-Pass tend to occupy a lower rank in the healthcare sector (for example, as enrolled nurses or nursing aides rather than registered nurses). They are paid a lower salary compared to the majority of their local counterparts at the same rank and they are unable to have their family members migrate with them.¹⁷⁶ For the Ministry of Manpower, the lower salary could be attributed to the fact that employers are more liable for their medical costs than for local workers.¹⁷⁷

Yeoh and Lam emphasise that these conditions mean that for many **S-Pass** holders Singapore may not be a viable place to work in the long term. It is only a stepping-stone to gain work experience for a few years before heading elsewhere, such as Canada, the United States of America and Europe where there is the possibility of working towards permanent residency and unifying their family. Those offered upskilling opportunities, higher salaries and promotion may be prepared to stay longer in Singapore. In the wake of the COVID-19 pandemic and the global upsurge of competition for essential healthcare workers, Yeoh and Lam note that these incentives to build and retain a strong pipeline of foreign healthcare workers may become increasingly pressing.¹⁷⁸

■ MRA regulations

Another related policy challenge, particularly in Lao PDR, Viet Nam, Brunei Darussalam and Myanmar, is the lack of effective regulation relating to the implementation of the MRA, which can create obstacles in terms of labour-market accessibility for migrant workers.

In Lao PDR, for example, Phetsavong notes that there is no specific law, policy, or mechanism related to MRA implementation at the national level. The MRAs have not been integrated in the existing national laws and policies. Therefore, there is very limited knowledge and understanding on this regional framework among key government officials working on labour-migration issues. Very few of them have been involved at regional and national forums on MRA, and there is also a lack of dissemination of information on MRAs at country level.¹⁷⁹

Similarly, in Viet Nam, difficult situations arise where migrant workers under MRA occupations are granted work permits but are not allowed to practice. Dzung explains in her report that there are currently no specific guidelines and regulations for work permits to implement the MRA. There are many disparities between AMS and there is a need for much more time for harmonisation. Each sector has its own specific requirements for practicing certificates and professional qualifications. Therefore, to be granted a work permit, a worker must also meet specialised requirements. Before applying for a work permit or practice certificate, migrant workers and employers must carefully study Vietnamese regulations on the relevant procedures for making such applications. In the future, Dzung notes that Viet Nam will have to work on this issue to ensure the rights of relevant stakeholders.¹⁸⁰

175 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

176 Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020.

177 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

178 Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020.

179 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020.

180 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

Brunei Darussalam also faces similar issues in implementing the MRA. Paryono notes in his report that in architecture, which is one of the areas covered under MRA, only few architects go through the MRA arrangement. Most professionals prefer to apply directly to the employers, even though the registration of professionals on the national board is increasing.¹⁸¹

In Myanmar, the key challenge is developing a skills recognition process, which takes time to prepare and benchmark between countries.¹⁸²

Indeed, discussions in the inception meeting of this study highlighted the low number of migrants recognised across the eight MRAs despite years of implementation. Differences in educational and recognition systems as well as restrictive domestic rules and current regulations in destination countries were identified as key challenges to full implementation by both panellists and participants.

Continued improvement in the administration of online based systems

Although many AMS have made highly significant progress in making the transition to online systems and data-sharing, there is still much work that needs to be done to test, retest and calibrate IT systems and complete the transition. For example, in Brunei Darussalam, the conversion to an electronic format or platform is anticipated to be a challenging process. Transfer can be difficult especially for those who prefer the old system. Paryono concludes that “proper socialisation of this initiative may take time.” The employment agencies need to become more IT literate and recognize the advantage of utilising new technology.¹⁸³

Likewise, in Lao PDR, Phetsavong notes in his report that the government does not have a “proper system to monitor and track foreign workers.” There is no One Stop Service Centre for foreign migrant workers in Lao PDR, nor is there a comprehensive data collection system or linkage among key government agencies. Currently, labour-migration data is recorded and tracked on an off-line basis by different government agencies. Therefore, it is a challenge to track and monitor the number of foreign migrant workers who are still working in Lao PDR and those who ended their employment and exited the country in a systematic way.¹⁸⁴

Similar issues exist in Indonesia, Thailand and Viet Nam. The continued development of IT is considered by a key official in Indonesia as an important challenge,¹⁸⁵ whilst in Thailand the transfer to an online system is still to be completed. For example, the work permit issued for migrant workers under Section 59 General Type MOU and Section 64 Border type is still on a paper card and not a smart card.^{186,187} However, migrant workers under the Section 62 work permit under the law on investment promotion is now a digital work permit. In Viet Nam, the public-service software base on the issuance of online work permits is still limited and unable to fully meet the needs for granting, re-granting work permits and certifying subjects nationwide.¹⁸⁸

Need for better coordination across governments

There is also persistent challenge in improving policy and operational coordination across governments. For example, in Brunei Darussalam, in their answers to the survey conducted to inform this study, government officials highlighted that better regional cooperation and sharing of intelligence-related information could aid in curbing cross-border smuggling and trafficking. The officials note, “foreseeably, enhanced bilateral and

181 Paryono, Migration Laws and Policies in Brunei Darussalam, National Study Report, August 2020.

182 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Myanmar, Part A.

183 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam, Part B.

184 Tingthong Phetsavong, Migration Laws and Policies in Lao People's Democratic Republic, National Study Report, August 2020

185 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Indonesia, Part A.

186 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A, General Permit MOU.

187 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A, Section 64.

188 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Viet Nam, Part A.

multilateral ties with open lines of communication with ASEAN enforcement counterparts may circumvent this challenge.”¹⁸⁹

Officials in Lao PDR also point to a lack of systematic and coherent coordination practice among government agencies at central and local level.¹⁹⁰ Interagency coordination is difficult. Phetsavong explains that the management of migrant workers falls under various government agencies’ responsibilities, thus requiring multi-government agency collaboration and coordination, including with the private sector. Sometimes, the roles and mandates among government agencies are duplicated due to lack of knowledge and understanding of legal and policy frameworks, particularly at the sub-national level. For example, labour-visa approvals are sometimes not in line with the quota requirements due to a lack of inter-governmental coordination.¹⁹¹

Officials in Malaysia, Thailand and Viet Nam also highlight the challenges in improving coordination. In Malaysia, various approvals of agencies are required in the processing of the Employment Pass.¹⁹² Whilst in Thailand, a memorandum of understanding is needed to be able to effectively coordinate with the various government authorities to issue a work permit within 15 days.¹⁹³ In Viet Nam, a key challenge is the coordination between the local and central state management agencies. No coordination regulation on the management of migrant workers has been developed at the local level, leading to overlaps in examination and inspection, and causing difficulties for enterprises and migrant workers alike.¹⁹⁴

6.2.3. Reducing regulatory non-compliance and strengthening enforcement efforts

The second set of challenges pertains to regulatory non-compliance by employers and recruitment & placement agencies. The severity of non-compliance is attributed mainly to difficulties in proper monitoring, inspection and sanctioning.

■ Non-compliance by employers

A key challenge is how to increase compliance among employers. In Viet Nam, for example, Dzung notes that many enterprises and organisations recruiting foreign workers have not strictly complied with the laws and regulations. Violations include:

- not advertising vacancies in newspapers;
- failing to provide fully the provisions of Vietnamese law on the rights and responsibilities of workers and employers;
- recruiting migrant workers who do not meet the conditions on qualifications and certifications prescribed by Vietnamese law, particularly workers without technical and professional qualifications;
- failing to strictly follow the order of labour recruitment procedures, particularly foreign contractors winning bids in Viet Nam; and
- failing to fully and promptly report the employment of migrants to the competent agencies as required by Viet Nam law.¹⁹⁵

189 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam, Part B.

190 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Lao People’s Democratic Republic, Part B.

191 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

192 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, Employment Pass.

193 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A, General Permit, MOU.

194 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020

195 Ibid

In Malaysia, a key challenge is ensuring that employers do not take migrants' passports. As explained earlier, confiscation of passports, and other identity documents, is illegal in all AMS. Aminuddin notes, however, that in Malaysia, employers of low-skilled migrant workers typically do so. They fear their employees will abscond, or even have their passports stolen if they are not kept carefully – conditions which may not apply as the workers are housed in hostels. Aminuddin explains that not carrying passports causes problems for the migrant workers. They are legally employed, but if stopped by the police, they may be suspected of being undocumented and will be held at the local police station until the employer comes to pick them up and confirms their legal status.¹⁹⁶

The question of holding a foreign worker's passport, however, does not apply to high-skilled migrant workers. Aminuddin notes that there are no cases known where a high-skilled worker has his or her passport taken away. She writes, "The question may be asked as to why the unskilled workers hand over their passports to their employer. It is obvious that they have no choice, especially when they are required by the employer to complete a declaration that they have 'requested the employer to keep their passport for safe-keeping'."¹⁹⁷

Aside from confiscation of passports, Aminuddin also identified the following issues in her report:

- Failure to pay wages regularly, or at the rate agreed in the employee's contract of employment.
- Failure to pay statutory premium rates for working overtime, on public holidays and rest days.
- Unwarranted wage deductions such as for tardiness, and poor-quality work or high rate of rejects.
- No wage increases during the contract period, even though the cost of living has increased.
- Long working hours on a regular basis.
- Unsanitary and crowded-living accommodation provided by the employer.
- Threats issued that certain actions will not be tolerated and if discovered will lead to the termination of employment, cancellation of work permits and immediate repatriation. Actions which may cause the displeasure of the employer include joining a trade union, reporting an industrial accident, taking sick leave, or any disciplinary problem.

In Singapore, Yeoh and Lam note that while there is no statistically reliable evidence showing whether domestic worker abuse-cases have trended up or down in recent years, the number of serious cases of physical abuse reported seems to have remained quite stable. The top well-being issues in Singapore include those related to salary, including salary shortfall, late payment and withholding salary or non-payment; insufficient food and rest; and illegal deployment. This includes domestic workers being employed at places other than indicated in the permit, such as at another household, at multiple households, in hawker centres or at the employer's home-based business.¹⁹⁸

Apart from these main areas of concern, Yeoh and Lam also note that restrictions in religious practices (such as handling pork in cooking, using non-halal utensils and not wearing the *tudung* for Indonesian Muslim domestic workers) may also inflict emotional or psychological distress. Retention of the worker's passport is not frequently reported as abuse, although this practice still occurs – with some domestic workers requesting their employers to do so for safekeeping – despite regulations to curb the practice. According to Yeoh and Lam, passport retention may be less damaging to the worker than withholding the worker's salary, since the former does not inflict immediate pain while the latter may mean that their family is deprived of remittances.¹⁹⁹

196 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

197 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020.

198 Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020.

199 Ibid .

■ Non-Compliance by recruitment and employment agencies

In Singapore, Yeoh and Lam also explain that, on average, a domestic worker accumulates total debts of up to six months of a monthly salary. This entire amount is paid upfront by their employer when the employment contract is signed, and then repaid by the foreign domestic worker through salary deductions. This arrangement may prove counterproductive from both perspectives. On the one hand, employers who have already paid large placement fees upfront may harbour high expectations and become reluctant to incur further costs for training or may be thwarted by the employment agent when requesting to change an unsuitable worker. Conversely, workers may feel compelled to work off their debts regardless of being faced with abusive situations so that they may go home debt free. They may also feel that they are unable to leave their employment as their family members would then be held accountable for their debts by the recruitment agents at home.²⁰⁰

It is important to note that under Singapore law, an employment agency can only charge a domestic worker a maximum of one month's salary for each year of employment. The agency must also return 50% of the charges to the worker if the employment ends within six months. According to the Ministry of Manpower, any additional fee charged to the worker must have been accrued to the worker's home country employment agency, otherwise the Singaporean agency will be taken to task for overcharging.²⁰¹

Non-compliance among recruitment and employment agencies has also been identified as a key challenge in Brunei Darussalam, particularly in the payment of placement fees. Government officials note, in reply to the survey conducted to inform this report, that the varying fees errant employment agencies charge needs to be resolved, and preferably through enhanced bilateral cooperation with countries of origin.²⁰² Paryono explains in his report that each company can charge a different rate to migrant workers. For example, some are charging B\$3,000 (€1,851) while others charge B\$3,700 (€2,283). Some agencies include the cost of travel expenses and others do not. Country-of-origin embassy officials and the Ministry of Foreign Affairs, employment agencies as well as other related sectors have had discussions over these placement fees. It became clear that there are also many third parties who ask extra payments to expedite an application, which would also then be charged to the employee. Interviews in Brunei Darussalam suggest that some migrant workers willingly participate in this "short-cut process" believing the extra payment enables them to work in Brunei Darussalam.²⁰³

In his report, Paryono further explains that working through employment agencies can be challenging for migrant workers as not all employment agencies explain the scope and details of the work. Sometimes, even the employment agencies do not know for certain what the employers will assign to the migrant worker.²⁰⁴

■ Difficulty in monitoring, inspection, sanctioning

The challenges presented by non-compliance are attributed mainly to difficulties in proper monitoring, inspection and sanctioning. For example, in the Philippines, government officials in charge of regulating the entry and stay of professionals in regulated occupations noted the difficulty in monitoring illegal practices. To address this challenge, the Philippine Regulatory Commission has entered into an agreement with the National Bureau of Investigation and through coordination with the labour inspectors of the Department of Labour and Employment.²⁰⁵

200 Ibid.

201 Official input provided to author by the national focal point of the Government of Singapore to the Working Group of the ASEAN Senior Labour Officials Meeting (SLOM WG), October 2020.

202 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Brunei Darussalam Part A.

203 Paryono, Migration Laws and Policies in Brunei Darussalam, National Study Report, August 2020.

204 Ibid.

205 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, administered to respondents in the Philippines, Part A Alien Employment Permit plus Special Temporary Permit.

Likewise, in Lao PDR, the lack of monitoring, follow up and knowledge exchange on the implementation of related laws and regulations at both national and sub-national levels has created gaps where policy makers can now develop and improve existing policies, legal frameworks and regulations. For example, Phetsavong explains that it is not clear to what extent the Operation Manual on the Protection and Management of Migrant Workers (described earlier) has been implemented.²⁰⁶

Similarly, in Viet Nam, the inspection, supervision and follow-up of regulations have not been strictly implemented. For example, Dzung notes in her report of instances when administrative penalties in the form of deportation were issued but with no follow-up to supervise exit and entry. Thus, deported individuals could still return or move to other localities and continue to violate the law. She concludes that the administrative penalties against violations of the law on management of migrant workers are not sufficient to deter and compel employers and foreign workers to comply.²⁰⁷

In some AMS, poor compliance is linked to limited resources. For example, in Singapore, there are limited resources allotted for repatriation. As a key government official notes in reply to the survey conducted to inform this report, “considerable resources are sometimes required to repatriate overstayers and illegal immigrants who are not in possession of travel documents or lack the funds to pay for their passage home.”²⁰⁸ Whereas in Malaysia there are limited resources available for checking and verifying high-skilled migrant workers under the Employment Pass permit,²⁰⁹ One of Viet Nam’s key resource constraints is related to the assessment of policy impact after it is enacted.²¹⁰ Similarly, in Lao PDR, current development programmes related to labour migration rely mainly on development-partner support and are often carried out in an ad hoc and short-term manner, mainly due to lack of resources and expertise.²¹¹

6.2.3. Addressing the presence of undocumented workers

The presence of undocumented workers is another key challenge that affects nearly all AMS. For example, in Viet Nam, interviews conducted with non-government organisations to inform this study suggest that a small number of foreign-labour contractors and enterprises have not been granted work permits as prescribed. Whilst migrant workers come to work before completing the procedures for applying for work permits. Government officials interviewed added that collating data on migrant workers from ASEAN countries, especially countries bordering with Viet Nam such as Lao PDR and Cambodia, is difficult because most migrants work in the informal sector and do not register for work permits.²¹²

Similarly, in Cambodia the General Immigration Department had, among others, conducted a census of migrants who had been living in Cambodia for a long time. The census revealed that some migrants held improper administrative documents which the department has since revoked. Bunny notes in his report that while the department had received application forms from migrants who registered as legal immigrants, it had also deported others who were not eligible for immigration or the legal status to live and work in Cambodia.²¹³

Similarly, in Lao PDR, the government has recently opened service centres across the country to issue temporary work visas for undocumented migrant workers. This was in response to government measures to monitor and manage foreign workers and foreign-owned businesses and ensure that such business operations comply with national laws and regulations.²¹⁴

206 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

207 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

208 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Singapore, Part B.

209 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, Employment Pass.

210 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Viet Nam, Part A.

211 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

212 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Viet Nam, Part A.

213 Khoun Bunny Migration Laws and Policies in Cambodia, National Study Report, August 2020.

214 Tingthong Phetsavong, Migration Laws and Policies in Lao People’s Democratic Republic, National Study Report, August 2020.

The presence of undocumented migrant workers is also a critical issue in Indonesia because not all companies comply with the requirement to apply for a work permit for those migrant workers they intend to hire. Interviews in Indonesia conducted to inform this study suggest that the presence of undocumented migrants is linked to the country's visa-free policy which allows nationalities from 169 countries to enter Indonesia quite easily. Shahrullah notes in her report that many companies often employ migrant workers even though they have a tourist visa. For example, the Manpower Office of Aceh deported 51 Chinese citizens in early 2020 for working on a travel-free visa and a visitor visa.²¹⁵

In Singapore, the misuse of tourist visas is also a challenge, along with issues over individuals abetting and harbouring irregular migrants who are not easily identified due to multiple layers of sub-letting or sub-contracting schemes.²¹⁶

Challenges concerning undocumented migrants also affect other AMS including Brunei Darussalam, Malaysia and Thailand. The issue in Brunei Darussalam relates to the use of visit visas for work,²¹⁷ whilst in Malaysia possession of fraudulent documents among high-skilled workers under the Employment Pass is a concern.²¹⁸ Implementing effective and preventive measures to promote regular employment is also a key challenge in Thailand, according to key government officials consulted to inform this study.²¹⁹

6.2.4. Mitigating the negative effect of increased immigration

Interviews in the region suggest the importance of more effectively mitigating potentially negative effects of increased immigration to the society and economy on the destination side. This challenge has been raised particularly in Myanmar, Indonesia, Thailand, and Malaysia. Government officials in Myanmar, in answer to the survey conducted to inform this report, noted challenges in ensuring the employment opportunities and job security of local employees, including promoting skills development activities.²²⁰

In Indonesia, there is a concern that the entry of some professionals has led to unfair competition that has disadvantaged local workers. According to some groups, this has allegedly led to an increase in unemployment among Indonesian engineers. Interviews suggest that government should issue regulations to increase the competence of local workers through promoting and subsidising various internationally certified training and skills.²²¹ There is also real value in minimising the socio-economic and cultural gaps between migrant workers and their local community. Shahrullah explains that the high-skilled migrant workers usually become the "Boss" or "leaders" of workers in Indonesia. A survey conducted by Bank Indonesia reveals that the average salary of migrant workers in Indonesia is very high compared to Indonesian workers in the same field. Foreign workers' salaries are around Rp. 25-50 million (€1,443 – €2,887) per month. Salaries of migrant workers in the mining sector are the highest at over Rp. 125 million (€7,219) per month. For Shahrullah, this huge gap in salaries leads to a socio-economic gap as well.²²²

Cultural misunderstanding may also occur during the interaction between migrant and local workers. Saepul Tavip, the President of All Indonesian Workers' Organisations notes that migrant workers working as managers may be perceived as "rude" by Indonesian workers due to cultural differences. Shahrullah notes that it is imperative for employers of migrant workers to provide adequate information regarding Indonesian society and culture, particularly those of the localities where the migrant worker is located.²²³

215 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

216 Singapore, Survey B.

217 Paryono, Migration Laws and Policies in Brunei Darussalam, National Study Report, August 2020.

218 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Malaysia, Part A, Employment Pass.

219 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A, General MOU Permit.

220 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Myanmar.

221 Rina Shahriyani Shahrullah Migration Laws and Policies in Indonesia, National Study Report, August 2020.

222 Ibid.

223 Ibid.

Government officials in Thailand, in reply to the survey conducted to inform this study, also identified cultural misunderstanding as a challenge that needs to be addressed, noting that migrant workers must also understand Thai culture and traditions, along with their labour rights and duties.²²⁴

Aminuddin, in her report on Malaysia, also highlights negative perceptions toward migrant workers. This includes fears that they may be spreading diseases as well as their “take-over” of certain areas, particularly in the capital, Kuala Lumpur, where shops and other services have been established catering to the needs of migrant workers.²²⁵ The influx of migrant workers at all levels is also associated with lower job supply for locals, particularly fresh graduates who face high rates of unemployment.²²⁶ Aminuddin cites an International Labour Organisation study conducted in 2019 which found that most of the 1,009 respondents associated migrant workers with high crime rates and said that they believed their presence had a negative effect on the economy, culture, and heritage of the country.²²⁷ Whilst there is certainly no scientific evidence proving any adverse effect of migrants on destination societies and economies, such negative public perception does remain widespread.

224 Response to Questionnaire on Migration Laws and Policies in the ASEAN Region, February to May 2020, Administered to respondents in Thailand, Part A, General MOU Permit.

225 Maimunah Aminuddin, Migration Laws and Policies in Malaysia, National Study Report, August 2020. <https://www.freemalaysiatoday.com/category/nation/2019/12/18/stop-letting-foreigners-run-small-businesses-putrajaya-told/>

226 Ibid.

227 Ibid.

7. FORGING AN ASEAN WAY FORWARD: RECOMMENDATIONS AND OPPORTUNITIES FOR COOPERATION

The previous sections demonstrated the myriad ways in which governments in the region have managed the mobility of inbound migrant workers, the actual measures they have chosen to adopt as well as the progress they have achieved and challenges they face in implementing these measures. This final section shifts the focus towards the immediate future, by highlighting areas of potential cooperation among AMS. The insights gained from the survey, interviews, national case studies and meetings conducted to inform this study point to various opportunities that can enhance regional cooperation and mutual learning. Such opportunities, if realised, would improve the ability of AMS not just to address the complex challenges of increasing immigration to ASEAN countries, but also to fully benefit from the skills and talents of incoming migrant workers.

Dzung, in her report on Viet Nam, reflects comprehensively on both the challenges and opportunities increased immigration brings and she captures the only way forward for the region: cooperation. As she argues: “Labour migration brings lots of opportunities and benefits for both sending and receiving countries. However, international labour migration also causes challenges related to the labour market, public security issues, and legal compliance. No country is outside of migration and no country can solve it on its own.”²²⁸

Indeed, the important fields of immigration law and policy and, particularly, the vital issues around labour-market access, are more effectively addressed in unity through cooperation with other countries. In the ASEAN region, while recognising that individual member states are at various stages of development and have differing labour-market circumstances, there are still opportunities for cooperation, particularly in the following four areas.

First, there is significant value in improving access of migrants under the existing MRAs to the ASEAN labour market. AMS have together invested enormous time and resources to negotiate and sign these MRAs to ensure that the qualifications of these migrant workers are recognised in the region and not left to waste. Yet as this study shows, there are still no regulations providing preferential labour-market access to ASEAN nationals that fall under the MRAs. Although all AMS have permits that migrants could use under the MRA, no AMS gives preference to ASEAN nationals within these MRA occupations. Of the 27 permits in the review, only 14 are accessible to MRA related occupations, and many of these permits have additional restrictions that limit access to some professionals. These restrictions mean that not all occupations under the MRAs can actually use the various work permit systems.

There is a disjuncture here between the region’s aspiration towards mutual recognition of qualifications and the employment-permit systems currently operating in the region. Indeed, the key challenge for AMS is therefore to agree not just on how to best recognise the skills and qualifications of ASEAN migrants under the 8 MRA occupations, but specifically how to *make use* of their skills and qualifications *in practice* once they are recognised. Improving access to the ASEAN labour market is mutually beneficial, without this the full utilisation of the skills and qualifications of ASEAN migrants will be hindered. Many of these much-needed ASEAN professionals consequently end up leaving the region. The Organisation for Economic Cooperation and Development (OECD) reports that in 2020 an estimated 1.3 million college-educated

228 Le Kim Dzung, Migration Laws and Policies in Viet Nam, National Study Report, August 2020.

Southeast Asians have relocated to the high-income countries in North America and Europe, as well as to Japan, New Zealand and Australia.²²⁹

For the ASEAN region to compete effectively in an ever more skills-driven global economy and to counter the increasing skills dominance of regional powers like India and China, much can be gained if ASEAN policymakers develop and actively implement policies that deepen the region's commitment to building its human capital infrastructure. This means making better use of human capital that already lives within the region and creating conditions that will stem the outflow of the more talented citizens.²³⁰ This would require more effectively linking the region's mutual recognition goals with more practical – but economically vital – issues surrounding labour-market access.

Second, it is important to support an ASEAN-wide, periodic and systematic sharing of policy and regulatory changes affecting inbound migration into and within the region. This study clearly shows the progress already made in the overhaul of laws and regulatory frameworks that have facilitated a more effective management of immigration. Yet it has also identified the essential work that remains to be done. In addition, even newly formulated laws and regulations would need regular updating, adjustment, and calibration to be more responsive to the constantly changing labour market needs.

In the reshaping of these laws and regulations, there is significant value for AMS to learn from each other's experience of immigration policy and their regulations around labour-market access. To facilitate such learning, it is essential to gather comprehensive and regularly updated insights of the policies and regulations adopted by other AMS. Indeed, to achieve improved policy effectiveness and the promotion of mutual learning and, hence, regional coherence, it is vital to generate systematic and comparative insights into trends and patterns of immigration policymaking in the AMS. So far, there has been a dearth such crucial insight, because there was an absence of adequate data on policies and regulations as well as methodological instruments able to measure and compare such data.

This study seeks to provide such essential data and insights. Using unprecedented data and novel methodological strategies, it compared 25 employment permit channels in all AMS along 50 measures covering the entire migration cycle (entry, stay, incorporation, exit and enforcement). This combined provided the input for the ILMA labour access index methodology applied in this study. The breadth and the depth of this study is not only unparalleled in the ASEAN region, but it has also never been attempted in any other world region. This study can therefore serve as a fundamental benchmark against which future policy development can be assessed in individual AMS and throughout the ASEAN region, while also providing a showcase to other regions.

Indeed, the methodology deployed in this study provides a suitable point of reference and template for the constant monitoring, comparison, and analysis of immigration policy trends in AMS in the coming years. The ILMA index developed by MPA and presented as part of this study can also be systematically updated and thus could serve as a robust benchmark for analysing future labour migration policy trends within the ASEAN region. Moreover, it could also be used in comparison to other countries and world regions. This aspect is exceptionally important in the context of increasing competition for an expanding range of vital skills across the globe. The main advantage of the ILMA index is that it enhances the development of a truly *regional* view of immigration policies, because its indexing methodology enables both measuring and comparing the accessibility of labour markets across the full gamut of skill levels.

Clearly, there is a need for regular updating of information on national and regional policy trends. This is necessary because it is the central activity of governments to constantly change laws, regulations, and policy positions in response to economic, social, and political transformations. As of writing, for example, it is clear the COVID-19 pandemic will have a significant impact on future immigration rules not only in the ASEAN region but also in other world regions. As Yeoh and Lam highlight in their report in Singapore, for instance, the COVID-19 pandemic further underscores the global upsurge of competition for essential

229 Batalova, J., Shymonyak, A., & Sugiyarto, G. (15 April 2020). Firing Up Regional Brain Networks: The Promise of Brain Circulation in the ASEAN Economic Community. Retrieved 27 August 2020, from <https://www.adb.org/publications/regional-brain-networks-asean>

230 See Demetrios G. Papademetriou and Dovelyn Rannveig Mendoza, "SE Asia is wasting highly skilled talent," The Jakarta Post, 25 September 2015 <https://www.thejakartapost.com/news/2015/09/25/se-asia-wasting-highly-skilled-talent.html>

healthcare workers. They warn that the incentives to recruit and retain foreign healthcare workers has never been as pressing.²³¹ This statement is true not just for Singapore, but for other AMS and even all those beyond the region. There is an urgent need to recognise that this immediate and critical demand for healthcare workers does not exist in a vacuum. It is inextricably linked to the demand for many other vital occupations across all skills levels, including occupations in low-skilled work.

In order to develop periodic, regional sharing of policy and regulatory changes affecting inbound migration into the ASEAN, it would require the rolling out of a tracking methodology and the establishment of an annual reporting system. Such policy monitoring systems do exist elsewhere. The OECD, for instance, manages the Continuous Reporting System on Migration, better known under its French acronym, SOPEMI, (from *Système d'observation permanente des migrations*). Through the SOPEMI and publication of yearly *International Migration Outlook*, OECD member countries can share migration statistics and analyse policy developments. This improves their comparability as well as providing annual updates on changes to national laws and regulations. However, the OECD system does not include a systematic methodology for tracking policy trends. The ASEAN region could significantly improve on the SOPEMI approach by adopting and enhancing relevant data-gathering and analytical tools fully equipped to the unique ASEAN context.²³²

A **third** area of cooperation relates to the assessment of the effectiveness of regulations and sharing the results with other AMS to facilitate mutual learning. It is crucial to achieving better regional coherence and developing more sophisticated, efficient and effective immigration policies that are coherent with labour market dynamics and economic policies. As this study shows, for example, regulatory non-compliance is a challenge in many AMS. There are many factors that can explain non-compliance. An ASEAN-wide system of information and experience sharing, combined with monitoring & evaluation (M&E) and lessons learned can help AMS to constantly adjust, adopt and calibrate policies and programs in close alignment with labour market needs.

For instance, this study shows the significant resources invested into moving employment-permit application systems online, with some AMS at a more advanced stage than others. This exposes the clear need to reduce the digital gap in online administration systems among AMS. This study also shows how AMS opt for various configurations of migration measures in designing their own permit systems. Clearly, there is value in learning from the choices AMS have taken as each build a mix of physical infrastructure (such as online systems) and soft infrastructure (such as regulatory measures).

The **fourth** and final area of cooperation lies in strengthening regional policy coherence through an ASEAN-wide dialogue on specific migration measures. Here, particular emphasis should be on the following measures where the differences and gaps across AMS are the greatest:

- Financial capacity requirements, including wage thresholds.
- Sectoral and occupational requirements.
- Penalties for noncompliance including measures designating illegal residence as a criminal offence.
- Recognition of qualifications.
- Requirements on labour-market tests, quotas, levies and deposits.
- Initial length of stay of migrants.
- Family reunion.
- Periodic health checks.
- Portability of permits, particularly the ability to switch sectors, employers and occupations.
- Restrictions on the number of total years of stay.

Regional policy coherence could also be strengthened by enhancing coordination and policy finetuning with regards to measures even where the differences across AMS are quite small. There are many opportunities for AMS to close the few remaining gaps and aim for universal application of these migration measures in the region:

231 Brenda S.A. Yeoh and Theodora Lam, Migration Laws and Policies in Singapore, National Study Report, August 2020.

232 For more information on SOPEMI, see <https://bluehub.jrc.ec.europa.eu/catalogues/info/dataset/sopemi>

- Gender requirements.
- Equal access to join and form trade unions.
- Right to marry citizens.
- Access to healthcare and disability benefits.
- Renewal of permits.
- Access to public educational institutions.
- Access to adequate or reasonable accommodation.

Investing in the ASEAN Community

Improved regional cooperation in these four areas will make a vital contribution to ASEAN's ambitious trajectory towards fuller regional integration as envisioned by the creation of the ASEAN Community. The vision AMS have forged for the ASEAN region up to 2025 is clear: an “integrated, peaceful and stable community” that is “rules-based, people-oriented and people-centred” where people “enjoy human rights and fundamental freedoms, higher quality of life” along with a “sense of togetherness and common identity.”²³³ This vision cannot be achieved without fully addressing the challenges as well as the opportunities interconnected with the movement of low and high-skilled labour within the region.

Indeed, the ASEAN Community Vision 2025, which is a historic milestone document for the region, specifically mentions migrant workers as a part of its vision of an “inclusive community.” AMS have agreed to realise this “inclusive community that promotes high quality of life, equitable access to opportunities for all and promotes and protects human rights of women, children, youth, the elderly/older persons, persons with disabilities, migrant workers, and vulnerable and marginalised groups.” This historic document also mentions “deeper integration in trade in services” and a “more seamless movement” of “skilled labour and businesspersons” as important undertakings to achieve.²³⁴

The ASEAN community has already shown tremendous progress especially on the economic front. The total combined GDP of the AMS was valued at US\$3.2 trillion in 2019, positioning ASEAN as the fifth largest economy in the world. Only the United States (US\$21.4 trillion), China (US\$14.4 trillion), Japan (US\$5.1 trillion), and Germany (US\$3.9 trillion) had larger GDPs.²³⁵ Over the last decade, ASEAN's economy grew steadily, with Vietnam, Myanmar, Cambodia, and Lao PDR recording the highest GDP growth. As AMS confronts COVID-19, the Asian Development Bank estimates that GDP growth in the ASEAN region will drop to 1.0% in 2020, yet it expects the region to recover in 2021 with 4.7% growth. This is a testament to the region's resilience and the strong foundation on which the ASEAN is built.²³⁶

Growing labour migration has been both an essential component and cause of increased prosperity and coherence in the region. The importance of migration for the ASEAN has only increased as exemplified by the significant growth in emigration from and immigration towards most countries in the region. This remarkable surge of migration results from, and further boosts processes of rapid economic development and regional integration and is reflected in the increasingly vital demand for migrant labour in all AMS economies. With a dynamic market of more than 600 million consumers, a young and vibrant population, and one of the fastest growing regional economic groupings in the world, the ASEAN region only stands to gain from adopting a more coherent approach to facilitating mobility and drawing out and benefitting from the entry of migrant workers and their much-needed skills.

233 See ASEAN Community Vision 2025 Available for download at <https://www.asean.org/wp-content/uploads/images/2015/November/aec-page/ASEAN-Community-Vision-2025.pdf>

234 Ibid.

235 ASEAN Secretariat, ASEAN Key Figures 2020 (Jakarta: ASEAN Secretariat 2020) https://www.aseanstats.org/wp-content/uploads/2020/11/ASEAN_Key_Figures_2020.pdf

236 Asian Development Bank, Asian Development Outlook (ADO) 2020: What Drives Innovation in Asia? (Manila: ADB, 2020) <https://www.adb.org/sites/default/files/publication/575626/ado2020.pdf>

8. ANNEXES

8.1. National Study Reports

- 8.1.1. National Study Report: Brunei Darussalam
- 8.1.2. National Study Report Cambodia
- 8.1.3. National Study Report Indonesia
- 8.1.4. National Study Report Lao People's Democratic Republic
- 8.1.5. National Study Report Malaysia
- 8.1.6. National Study Report Myanmar
- 8.1.7. National Study Report The Philippines
- 8.1.8. National Study Report Singapore
- 8.1.9. National Study Report Thailand
- 8.1.10. National Study Report Viet Nam



Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI)