

AEC Update: Outdated Legislation Hinders the Free Flow of Labour

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We are approaching the halfway mark of 2015, and many in the international business community — particularly those with investments in Southeast Asia — have questions about the current status of the Asean Economic Community (AEC).

The AEC originally was scheduled to take effect on Jan 1 of this year, but member states pushed back the deadline to Dec 31, as many needed more time to prepare. With only half a year to go, this article will focus on Thailand's laws and regulations and how they match up with the provisions of the AEC.

The overall goal of the AEC is to establish a single market in Southeast Asia. To accomplish this objective, Section 9 of the AEC Blueprint is aimed at establishing a free flow of goods, services, investment and skilled labour and a freer flow of capital.

Thailand has already made great strides in implementing some of these aims. To facilitate the free flow of goods, for example, the country has effectively eliminated or significantly reduced most tariffs and non-tariff barriers, with some exceptions based on national security and human, animal, plant and environmental safety. Thailand, along with five other Asean members — Brunei, Indonesia, Malaysia, the Philippines and Singapore — has also established its own National Single Window to expedite customs clearance and reduce bureaucracy.

As for the free flow of labour, over the past 10 years Asean has made numerous attempts to liberalise the skilled-labour sector. As a result, there are now mutual recognition arrangements (MRAs) in place for the following professions: accounting, architecture, medical profession, dentistry, engineering, nursing, surveying and tourism.

These MRAs will, in theory, provide unifying qualifications and allow local professionals to seek employment within the region. It should be noted, however, that some of these professions including tour guiding and architecture are subject to restrictions in Thailand. By royal decree, Thailand has 39 "protected professions" that foreigners are not allowed to engage in, so certain local laws must be amended to comply with these MRAs. There are currently no plans to introduce MRAs for freelance work or work carried out by independent practitioners.

Streamlining the process for skilled professionals within Asean to obtain visas and work permits is another major factor in promoting the free flow of labour. Foreign workers in Thailand, however, are still subject to the Alien Working Act of 2008, under which any foreign national wishing to work in Thailand — with the word "work" being very broadly defined so as to include even volunteer or charity work, with or without remuneration — must file an application to obtain a work permit.

Foreign nationals living and working in Thailand are all too familiar with the administrative hassles involved in obtaining a work permit. Therefore, exemptions that facilitate obtaining work permits should be included in the Alien Working Act for those professions that fall within the scope of MRAs in order for Thailand to fulfil its AEC obligations. Alternatively, new policies that introduce special documentation allowing other Asean nationals to work in Thailand legally could be brought into effect.

Yet another obstacle that should be lifted involves the local licensing requirements for professionals. Most of the tests to obtain a licence to practise one's profession in Thailand are still given only in the Thai language. This is obviously quite a hurdle for those who do not speak Thai. Tests should be offered in English as well.

The UN Population Division estimates Asean currently has 633 million people living in the region. This number is forecast to reach nearly 700 million by 2025, making it the third-largest workforce in all of Asia, behind India and China. Development within the region is contingent on this massive workforce being able to cross borders more freely.

Changes need to be made to outdated legislation. This, however, will depend on Thailand addressing the conformity of its laws and regulations to the provisions of the AEC, which will require much-needed cooperation between the country's various government agencies.