



HANDBOOK ON

LIBERALISATION OF PROFESSIONAL SERVICES
THROUGH MUTUAL RECOGNITION IN ASEAN:

ARCHITECTURE SERVICES



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one identity
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ARCHITECTURE SERVICES

The ASEAN Secretariat
Jakarta

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DISCLAIMER

This publication was developed with the intention of facilitating the understanding of the liberalisation of professional services through mutual recognition agreements in ASEAN. The publication does not reflect the views of the Parties to the Agreement (ASEAN Member States), the ASEAN Secretariat or AADCP II. As a Handbook, it does not form part of the agreements and does not provide or intend to provide any legal interpretation of the agreements. Neither the ASEAN Secretariat nor AADCP II accepts any liability for any claims, loss or expenses that may arise from the use of information in this publication. To ease understanding, some examples have been provided but these are mere illustrations and do not provide judgment nor constitute commercial advice. Views or conclusions may have also been expressed but these should not be taken as legal or commercial advice

The information in this Handbook is as of 31 December 2014.

01.

INTRODUCTION

The Handbook “LIBERALISATION OF PROFESSIONAL SERVICES THROUGH MUTUAL RECOGNITION IN ASEAN: ARCHITECTURE SERVICES” is one of four Handbooks published by the ASEAN Secretariat to provide guidance on the liberalisation of professional services in ASEAN. Three other Handbooks in this series deal respectively with the engineering, accountancy and surveying professions.

The Handbook is an important tool to disseminate information and create greater understanding of the liberalisation of the trade in the architectural services within ASEAN.

Through the Handbook, ASEAN architecture professionals will be able to obtain information on how to qualify and practice as an architect, either as an employee, through collaborations or through the setting-up of commercial presence, in all ASEAN Member States (AMS).

The ability of architects to move beyond national borders within ASEAN will assist ASEAN to accelerate the objective of the ASEAN Economic Community (AEC) in 2015. Under the AEC, the ability of architects to provide services beyond national borders is facilitated by the ASEAN Framework Agreement on Trade in Services (AFAS) 1995¹ and the Mutual Recognition Agreement (MRA) on Architectural Services 2007. The MRA is one of the important tools to increase the level of liberalisation of cross-border trade in architectural services in ASEAN.

AFAS, which adopts the core structure and substantive provisions of the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO), defines cross-border trade in services as consisting of four modes of supply depending on the territorial presence of the supplier and the consumer at the time of the transaction.

Pursuant to Article I:2 of GATS, the four modes of supply of services featured under AFAS are:

- a. from the territory of one Member into the territory of any other Member (Mode 1 - Cross border trade);
- b. in the territory of one Member to the service consumer of any other Member (Mode 2 – Consumption abroad);
- c. by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3 - Commercial presence); and
- d. by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode 4 - Presence of natural persons).

¹ As the main legal document facilitating the liberalisation of trade in services among AMS, AFAS aims to (1) enhance cooperation in services among AMS; (2) improve the efficiency and competitiveness of ASEAN services industries, diversify production capacity and supply, and distribution of services; (3) eliminate substantial barriers to trade in services; and (4) liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken under the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO).

Box 1: Examples of Four Modes of Supply

Mode 1: Cross border

A user in country A receives services from abroad through its telecommunications or postal infrastructure. Such supplies may include consultancy or architectural services.

Mode 2: Consumption abroad

Nationals of country A go abroad as tourists, students, patients or clients to consume services delivered in country B.

Mode 3: Commercial presence

The service is provided within country A by a locally-established affiliate, subsidiary, or representative office of a foreign-owned company.

Mode 4: Movement of natural persons

A foreign national provides a service within country A on a temporary basis as an independent supplier (e.g., consultant) or employee of a service supplier (e.g. consultancy firm, construction company).

Commercial linkages may exist among all four modes of supply. For example, a foreign company established under mode 3 in country A may employ nationals from country B (mode 4) to export services cross-border into countries B, C etc.

Box 1: Four Modes of Services

To facilitate the movement of individual professional service providers (natural persons) from one AMS to another, AMS entered into the ASEAN Agreement of the Movement of Natural Persons (MNP Agreement) signed on 19 November 2012 in Cambodia.

The MNP Agreement covers temporary entry of skilled workers, professionals and executives. The scope of the MNP Agreement is limited to business visitors, intra-corporate transferees, and contractual service suppliers and is subject to the commitments made in the Schedule of Commitments of individual AMS. The MNP Agreement does not cover professional service providers who seek permanent access to the labour market of another AMS.

The Handbook is arranged in the following manner. Part 2 of the Handbook discusses the definition of mutual recognition and MRAs, models of mutual recognition and MRAs in several jurisdictions, and MRAs in architectural services at the international and regional levels.

Part 3 of the Handbook provides an overview of the requirements to qualify as an architect, to set-up an architecture practice and requirements for foreigners to qualify and practice as an architect in all AMS.

Part 4 analyses various issues surrounding the liberalisation of architectural services in ASEAN, with particular attention on the setting-up of architecture firms or commercial presence and employment and movement of foreign architects.

Part 5 of the Handbook provides several proposals for reform of the liberalisation of architectural services in ASEAN and offers a few concluding thoughts.

02.

MUTUAL RECOGNITION IN ARCHITECTURE PROFESSION

2.1. Defining MRAs

An important element of the liberalisation of architectural services is the ability of qualified architects from one jurisdiction (home country) to practice in another jurisdiction (host country). The ability to practice in different jurisdictions may be achieved through several means. These may include the unilateral recognition of qualifications and experience, the harmonisation of qualifications and the mutual recognition of qualifications and experience.

Mutual recognition agreements are contractual arrangements subject to which countries, standards agencies or professional organisations (e.g. licensing bodies) agree to recognise the equivalence of another country's technical regulations (or conformity assessment procedures)², sanitary or phytosanitary measures³ or, in the case of natural persons, their academic or professional qualifications such as the ASEAN Mutual Recognition Agreements on Engineering, Architecture or Accountancy services. Thus MRAs are trade-facilitative instruments negotiated and concluded - often in support of market access commitments - that reduce the costs and time that would otherwise be required to obtain product approvals or certification of professional qualifications.

As a practical matter, MRAs establish the conditions subject to which a body of foreign rules and requirements and the procedures for verifying compliance with them will be recognised as equivalent by the parties to the agreement, for the purpose of assuring market regulators and consumers in the importing (host) country that imported products or service suppliers from another MRA signatory are safe or meet accepted minimum expectations in terms of integrity and quality.

The exporters of such goods and services benefit from the conditional recognition such MRAs provide, while market regulators in the importing state essentially agree to forego any further testing or impose additional compliance requirements on the imported goods' or foreign service suppliers.

Put another way, MRAs are the means by which one derogates from the "when in Rome, do as the Romans" principle so that producers and service suppliers do not need to comply with the technical regulations and professional qualification requirements of the country to which they wish to export or provide their services respectively.⁴

With the long-established trend of a shift in the incidence of market access barriers from border measures (such as tariffs and quotas) to behind the border policies (particularly domestic regulation), mutual recognition is increasingly viewed as an important corollary to trade and investment liberalisation in the absence of regulatory harmonisation or marked regulatory convergence. In the wake both of the creation of the WTO's General Agreement on Trade in Services (GATS) and, more importantly still, the post-Uruguay Round explosion of preferential trade agreements concluded at the bilateral and regional levels, MRAs have become an established, albeit arguably still largely underused, instrument of market integration in today's trade policy landscape.

MRAs serve as a substitute for full-blown regulatory harmonisation, allowing for market access commitments to be operationalised for the covered goods and services while preserving "regulatory diversity" and allowing different governments to achieve various policy objectives in accordance

² See for example the Agreement between the European Community and the United States of America on the Mutual Recognition of Certificates of Conformity for Marine Equipment, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:150:0042:0086:EN:PDF> (visited on 15 March 2014).

³ See for example Art. 4.2 of the WTO Agreement on Sanitary and Phytosanitary Measures which states "Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary and phytosanitary measures".

⁴ Nicolaidis, K. A., & Shaffer, G. (2005). Managed Mutual Recognition Regimes: Governance Without Global Government. *Law and Contemporary Problems*, 3.

with their own priorities and policy objectives.⁵ Concluding an MRA does not necessarily imply that the regulations that apply to products or service suppliers (natural persons practicing regulated professions) are to be brought into explicit alignment either upon conclusion of the agreement or at any time in the future, but that instead, the products and service suppliers of the other party or parties to the MRA will be deemed equivalent to the goods or service suppliers of national (domestic) origin.

This section of the Handbook discusses the various issues that arise in connection with MRAs concluded for the purpose of facilitating the free movement of natural persons providing professional services. It also takes up a number of political economy considerations and domestic regulatory frameworks that inevitably create the need for a policy instrument able to fulfill the functions performed by MRAs.

2.1.1. Trade Barriers Affecting the Movement of Natural Persons

MRAs represent a means to reduce the cost of entry into foreign services markets by releasing foreign service suppliers from the - often onerous - burden of re-qualifying in the target market (by meeting additional educational or training requirements) as well as facilitating the means by which they can produce evidence confirming that they fulfill licensing and qualification requirements in the host country market. MRAs are thus a way to reduce transaction costs and represent a flanking measure necessary to operationalise market access commitments usually made in the context of a broader economic integration initiative or drive towards greater trade and investment liberalisation.

Access to many services markets, particularly for foreign service suppliers, is conditioned by policy interventions that are often taken by domestic regulators having little regard for - or even awareness of - the market access implications of their actions, particularly since such regulators will typically be motivated by a wholly different set of policy objectives than those pertaining to trade liberalisation.

In terms of measures impeding the ability of natural persons to provide their services abroad, some of the most common barriers are constituted by immigration or labour market restrictions or a failure by domestic regulatory bodies to recognise, in part or in full, the academic qualifications or professional accreditation of the foreign service supplier in question. Nationality or residency requirements may equally inhibit cross-border trade in professional services, as do measures that restrict the eligibility of service suppliers to contest public tenders (government procurement contracts)⁶. Many of these restrictions stem from concerns by market regulators to protect consumers or achieve other societal or ethical objectives, and will often be rooted in prevailing information asymmetries between suppliers and consumers.

2.1.2. Regulated Professions and Professional Licensing

The core concept underlying MRAs governing the movement of natural persons and their economic freedom to practice their professions (provide services) in a country other than the one in which they obtained their qualifications, is the concept of professional licensing.

⁵ Maur, J.-C., & Chauffour, J.-P. (2011). Beyond Market Access. In J.-C. Maur, & J.-P. Chauffour, *Preferential Trade Agreement Policies for Development: A Handbook* (pp. 17-36). The International Bank for Reconstruction and Development / The World Bank, 26.

⁶ Hurford, K. (2003). Going Global: The case for enhancing global trade in professional services. *Engineers Australia*, 13.

By the same token it is important to recall that not all professions are licensed or subject to regulatory oversight. The extent and societal implications of information asymmetries between service suppliers and consumers play an important role in determining whether a given profession is likely to be licensed or regulated; the idea being that for professions involving a high level of technical complexity, it is essential that some form of organisation operate to certify practitioners who meet minimum standards in terms of theoretical knowledge and practical expertise (the most obvious and commonly cited examples of which are the medical and legal professions), because left to themselves consumers would not otherwise be able to distinguish between good and bad practitioners and the cost (and time) involved in amassing the information required to make such a distinction would be excessive.⁷

Regulated professions are generally distinguished from other forms of professional activity in that they tend to be predicated on a very specific body of intellectual knowledge, usually obtained by means of completing a tertiary academic (or vocational) degree, which is then reinforced with one or more years of practical experience - often as a trainee and under the supervision of a more senior qualified professional - before one is finally certified to practice the profession independently and under one's own liability - i.e. essentially given a license to offer these services on one's own account.

Regulated professions generally have an established path to accreditation that all persons wishing to practice must complete, with admission to the profession (and thus such accreditation) generally administered by a licensing body or professional association to whom powers to regulate the profession have been delegated by the State in pursuit of a generally perceived public interest, or in order to maintain a given set of professional and ethical standards. The range of accredited professions was historically quite narrow, encompassing medicine and law in most countries. The range of regulated professions has grown in conjunction with the observable trends of increased labour-market complexity and specialisation.

There are also a limited number of professions that are generally accredited or regulated across a broad swathe of countries, in such fields as law, accountancy, engineering, surveying, health care, and architecture to name just a few, while other countries leave some professions unregulated where others have recently (i.e. in the last few decades) established licensing or at least regulatory oversight, such as for asset managers, social workers, urban planners or even taxi drivers.⁸ Boiled down to its essence, licensing a profession essentially limits access to anyone not duly authorised to practice it. This may have the effect of limiting supply and thereby lead to upward pressure on prices for the services in question. In turn, this may also create an interest by those already admitted to practice the profession in question to "capture" the licensing agency or process with a view to making admission relatively onerous for new entrants in order to further limit supply. It is precisely for this reason that professional licensing has come under increasing scrutiny when administered in a way that is potentially anti-competitive or protectionist.

The above discussion highlights some of the tensions that are inherent to the process of professional licensing and which involve a balancing act between achieving those

⁷ See in particular Mavroidis, P. C., & Marchetti, J. A. (2012). I now recognize you (and only you) as equal: an anatomy of (mutual) recognition agreements in the GATS. In I. Lianos, & O. Odudu, *Regulating Trade in Services in the EU and the WTO, Trust, Distrust and Economic Integration* (pp. 415-444). Cambridge University Press.

⁸ Some of these examples are taken from Mavroidis, P. C., & Marchetti, J. A. (2012). I now recognize you (and only you) as equal: an anatomy of (mutual) recognition agreements in the GATS. In I. Lianos, & O. Odudu, *Regulating Trade in Services in the EU and the WTO, Trust, Distrust and Economic Integration* (pp. 415-444). Cambridge University Press.

legitimate public policy objectives for which licensing was established and the desire to maintain competitive, open and affordable services markets. Looked at from a trade policy perspective, this is clearly an area where foreign service supply can play an important role, and where MRAs become key policy instruments, in resolving the above tensions.

2.1.3 Trade Rules and MRAs

Rules governing MRAs are addressed by GATS Art. VII (Recognition), which sets out a number of substantive rights and obligations that WTO Members must follow when conferring recognition, whether such recognition is granted autonomously or arises in the context of reciprocal MRAs. One important dimension of Article VII is that it is situated in Part II of the GATS, entitled General Obligations and Disciplines. This means that the rights and obligations under Article VII apply to all WTO Members regardless of whether or not they have scheduled specific commitments in any given (professional) service sector. Equally important is the fact that Article VII constitutes an agreed exception from the GATS' most favored nation treatment principle (found in GATS Article II), such that WTO Members can engage in MRA activity on a selective basis and not extend recognition privileges to all other members immediately and unconditionally. One important obligation set forth in Article VII is found in paragraph 2, which requires a Member to afford adequate opportunity for (any) other interested WTO Members to negotiate accession to an existing MRA it has already concluded covering authorisation, licensing or certification of service suppliers, or to allow other WTO Members to negotiate similar MRAs with it. Such a form of open preferentialism sets Article VII apart from GATS Article V governing the establishment of preferential trade agreements and allowing Parties to them to withhold benefits from third countries.

GATS Article VII:4 sets out a number of procedural obligations requiring WTO Members to notify the Council for Trade in Services of existing recognition measures, of when they intend to initiate negotiations towards an MRA, or when they adopt new recognition measures or amend existing ones. These are important transparency obligations intended to afford broad access to all WTO Members interested in entering into such an MRA with a view towards multilateralising existing recognition arrangements to the greatest extent possible. Finally, Article VII:5 mandates WTO Members to work together towards the "establishment and adoption of international standards for the practice of relevant services trade and professions". To date, this has only been tackled at the WTO level in the area of accountancy services.⁹

The open nature of GATS Article VII has generated relatively little uptake among WTO Members who have preferred to conclude MRAs within the more fully hermetic confines of preferential trade agreements (such as ASEAN's AFAS) subject to the generally weaker disciplines of GATS Article V, thereby largely freeing them from the requirements set forth in Art. VII. In practice, most WTO Members that have entered into MRAs with preferential trade partners have notified such arrangements under GATS Art. V instead of GATS Art. VII. This has allowed them to avoid the requirement to first notify the MRA in question under GATS Art. VII and to subsequently afford other any interested WTO Member the chance to accede to such arrangements or negotiate similar MRAs with the Members in question.¹⁰

⁹ See http://www.wto.org/english/tratop_e/serv_e/accountancy_e/accountancy_e.htm (visited on 20 March 2014).

¹⁰ Some scholars have questioned the legality under WTO provisions of this approach. See in particular Mavroidis, P. C., & Marchetti, J. A. (2012). I now recognize you (and only you) as equal: an anatomy of (mutual) recognition agreements in the GATS. In I. Lianos, & O. Odudu, *Regulating Trade in Services in the EU and the WTO, Trust, Distrust and Economic Integration* (pp. 415-444). Cambridge University Press.

2.1.4. Multilateral Recognition Agreements and Preferential Trade Liberalisation

As noted above, a large number of MRAs have not been notified under GATS Art. VII but rather concluded under GATS Art. V on economic integration agreements. It is now commonplace that PTAs covering services feature substantive provisions embedding explicit MRA negotiating mandates across various professions.

PTAs take varying approaches to extending recognition to preferential trading partners. Some of the more ambitious arrangements, such as those between EU Member States or between Australia and New Zealand, contain legally enforceable obligations and provide for deep integration of each country's professional services and labour markets. Others contain little more than best endeavor clauses and an undertaking to conclude arrangements on a sectoral basis at an unspecified date in the future.¹¹

Much of the MRA-relevant treaty language found in PTAs tends to reiterate existing obligations of the contracting parties as WTO Members, such as the obligation not to accord recognition in a manner which would constitute a disguised restriction to trade. Also common are best-endeavour obligations aimed at getting the relevant professional associations and accreditation bodies in each contracting party to exchange information and cooperating with one another, since it is ultimately these bodies that will have to do the bulk of actual technical negotiations on what substantive criteria and procedural requirements will need to be met in order to grant recognition.

This is even truer in countries characterised by federal systems of governance, such as Canada or the United States, where the federal government negotiating trade treaties does not have competence over the regulation of professional services, hence needs to delegate such authority to provincial or state governments who in turn delegate it to professional licensing bodies.

Also common in many PTAs are guidelines or framework provisions that expound a certain number of basic principles that Parties to MRA negotiations should consider in the context of their recognition discussions. Such guidelines are meant to help licensing bodies in their MRA work and typically cover issues such as academic curriculum, training and experience requirements, licensing fees, continuing education requirements, language and other context-specific requirements, scope of practice limitations, bonding requirements for cross-border supply, temporary licensing regimes, ethics regimes, etc.

2.2. Negotiating a Mutual Recognition Agreement

Negotiating an MRA, regardless of the scope or the depth of the recognition envisaged, is always a time-consuming activity requiring a great deal of mutual information sharing, and probably months (or even years) of actual negotiations. For such negotiations to proceed, each party must have a domestic system in place for regulating the profession in question, which will normally be tasked with upholding quality standards, protecting consumers, and ensuring a sufficient number of licensed professionals are operating on the market at any given time (ensuring supply). Even where such domestic licensing systems are well established and operating at an advanced level, the job of actually comparing their compatibility, identifying possible lacunae and agreeing on ways to address such lacunae, is not likely to be a straightforward analytics exercise but will inevitably involve value judgments and subjective perceptions and evaluations of equivalency.

¹¹ See OECD. (2003). *Service Providers on the Move: Mutual Recognition Agreements*. Organization for Economic Cooperation and Development, Working Party of the Trade Committee. OECD.

When governments try to establish frameworks and guidelines for the negotiation of MRAs, they can often do little more than encourage the professional associations within their territories to enter into such talks and (hopefully) conclude the desired MRAs in a reasonable period of time. Governments have little leverage to force professional associations to comply, except the threat of withdrawing the statutory powers delegated to such bodies. It is ultimately up to the professional associations and their members to decide just how enthusiastically they wish to embrace such talks, and this will depend, more than any other factor, on the offensive and defensive interests of their members.

In professions with a high degree of international mobility and the prospect of employment opportunities overseas, members of professional associations may be more pro-active in seeking to open up potential export markets for their services by concluding MRAs that give them access to those markets. In professions where local members already feel besieged by competition or are well aware of unfavourable prevailing price differentials between their services and those of foreign suppliers, there is likely to be little enthusiasm for negotiating and concluding an MRA that will only exacerbate an already difficult situation for them.

Nevertheless, professional associations clearly have a lot of discretion and leeway in negotiating such agreements, particularly in formulating how incentives are calibrated for foreign entrants. Some market segments or regions of the host country in question may be of little interest to foreign suppliers, such that fears over the competitive threat posed by new entry may often prove excessive. What's more, because entry of foreign skilled professionals is always contingent on parallel (negotiated) decisions to grant temporary access to foreign professionals under Mode 4 commitments, host countries have important means at their disposal to regulate the actual level of foreign entry.

It is important to recall the fact that MRAs are inherently reciprocal in character, hence ultimately aim to promote and facilitate the circularity of two-way movement among communities of professionals, thereby allowing repeat interaction, the building of trust among regulatory agencies, affording enhanced scope for collaborative business ventures among private representatives (including professional associations) and partnerships between those institutions of higher learning that are responsible for training providers of professional services.

The existence of genuine market access opportunities abroad (or the scope of heightened inflows of foreign direct investment consecutive to a trade agreement) will often play a key role in determining how openly and enthusiastically professional licensing bodies embrace the chance to negotiate mutual recognition arrangements to the benefit of their own members, while on the other hand opening up new market access opportunities on their members' domestic market to competition from foreign service suppliers. This requires both an understanding of the potential gains and possible losses (cost-benefits analysis), as well as the ability to formulate negotiating positions that will ultimately translate into compromises that do justice to such an analysis. However, care is needed to temper oft-expressed fears over the potentially dislocating character of liberalised trade in professional services, as foreign professional service firms often resort to partnerships with local firms or professionals in navigating what can be for many of them uncharted territory. MRAs may thus just as well heighten competition as they may offer useful scope for deeper forms of business collaboration between professionals from partner countries.

MRAs can also be harnessed by policymakers as a useful tool to overcome supply-side constraints in domestic services markets where there is a perceivable shortage of trained and qualified professionals, and can be used to inject much-needed competition and innovation where such markets have otherwise become static or sluggish. MRAs can also be used as a public policy tool to address skills shortages that arise in the face of evolving demographic realities that are otherwise not being addressed by available domestic manpower, such as in the health care professions and the rapidly aging populations in more advanced industrial economies.

Because MRAs involve highly skilled activities, they can afford useful opportunities to each country's education authorities and to institutions of higher learning to collaborate in a range of higher education areas, from curriculum development to faculty and student exchanges as well as the establishment of joint degree programs and joint research endeavours. Such collaboration may also entice prominent foreign investors, who are often important conduits for foreign and local professional service supply, to invest in the creation of academic chairs in specific fields of professional practice.

Summing up, MRAs can generate several benefits to signatories: (i) they can provide enhanced access to the markets for professional services of Parties to the MRA; (ii) provide a way for the importing country to make better use of imported skills and increase its comparative advantage in certain professional fields; (iii) allow the various regulatory bodies involved in granting rights to practice on a case-by-case basis to save time and resources by working together and engaging in a more effective division of labour; and (iv) enhance mutual learning and the transmission of regulatory experience, thus raising professional standards as well as the level of access to professional services among Parties. The process leading to an MRA such as the discussion and negotiations can constitute a stimulus for internal regulatory reform and the necessary adaptation of the professions to changing economic, educational, technological and social circumstances.

2.3. Mutual Recognition Models

There are four main models of mutual recognition of qualifications of professional services: first is the EU Model; second is NAFTA Model; third is the GATS Model; and fourth is the Trans-Tasmanian Model.¹²

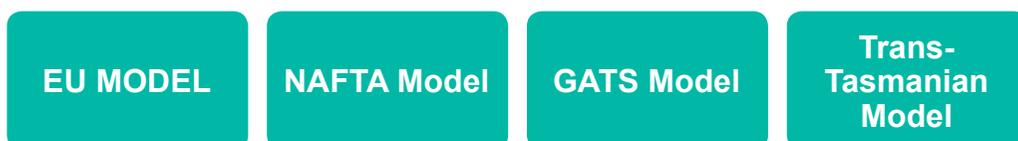


Figure 1: Models of MRAs

2.3.1. The EU Model

Under the EU model, the MRA normally provides a broad coverage through general recognition and the special recognition systems together with a strong enforcement system for non-compliance by the member states.

The main underlying principles governing the EU MRA is to further enhance participation of the EU's citizens under the freedom of establishment and freedom to provide services. Freedom of establishment relates to Mode 3 whereas freedom to provide services relates to Mode 1 and Mode 4.

Mutual recognition within the EU was first mentioned in the Treaty of Rome in relation to the professional services and the mutual recognition of diplomas in the common market. Article 3(c) of the Treaty of Rome states the need to "the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital" in order to assist in the creation of the Common Market.

¹² Eva Hartmann, The role of qualifications in the global migration regime University of Lausanne GARNET Working Paper No: 39/08 April 2008.

The European Court of Justice (ECJ) applied the mutual recognition principles in the recognition of equivalence in goods such as through the case of Cassis de Dijon and others.¹³ The EU Model may be categorised as managed recognition, which is to ensure that “regulatory competition did not lead to consumer confusion and general downgrading of standards.”¹⁴ Managed mutual recognition in the EU does not require extensive prior harmonisation of qualifications across borders. Instead, MRA can involve variations in scope, automaticity and reversibility of access to compensate for existing differences in the ways in which professions are regulated.

The main EU legislation on mutual recognition of qualifications is the Qualifications Directive,¹⁵ which came in force in 2007. The Qualification Directive’s main aims are to encourage free movement of skilled labour around Europe; and to rationalise, simplify, and improve the rules for the recognition of professional qualifications.

The Qualifications Directive streamlined 15 legal instruments which had been in operation since 1970s and covers over 800 professions across Europe, whilst some professions such as the legal profession remain outside its scope. This means that an EU citizen with a professional qualification from one Member State should be able to move and practice in another Member State with relatively little friction.

The Qualifications Directive introduces two levels of recognition system: automatic recognition and general recognition system. The Qualifications Directive allows automatic recognition of qualifications for sectorial professions. One of the shortcomings of the EU system is that the regulators are, in general circumstances, unable to test language competence, request transcripts of training or test knowledge of applicants trained within the EU or EEA, who meet EU requirements for direct entry to the register and check any professional experience since they originally qualified, regardless of how long ago they qualified.

At the same time, the EU recognises that there is still lack of awareness of enterprises and national authorities on the existence of the mutual recognition principle.¹⁶ The EU also recognises that there is a lack of dialogues between competent authorities in different member states. The mutual recognition system is also costing the EU and the competent authorities in certain areas such as information gathering costs, compliance costs and conformity assessment costs. It is also found that the mutual recognition sometime the costs of gaining access to the market of another Member State are nearly twice as high as for big companies as a share of total turnover.¹⁷

¹³ Case C-120/78, see also *German Beer Standards*, Case 178/84 (1988) 1 CMLR 780.

¹⁴ Kalypso Nicolaidis and Susanne Schmidt, Mutual Recognition ‘on trial’: the long road to services liberalisation,’ *Journal of European Public Policy* 14:5 August 2007: 717-734.

¹⁵ The Directive 2005/36/EC on recognition of professional qualifications was adopted on 7 September 2005, consolidating 15 Directives, 12 Main (Sectorial) Directives and three General System Directives into a single text.

¹⁶ European Commission, Executive Summary of Impact Assessment, Accompanying document to the Proposal for a Directive of the European Parliament and The Council of Ministers, 3052/95/EC, {COM(2007) 36 final.

¹⁷ European Commission, Executive Summary of Impact Assessment, Accompanying document to the Proposal for a Directive of the European Parliament and The Council of Ministers, 3052/95/EC, {COM(2007) 36 final.

2.3.2. NAFTA Model

Under the NAFTA Model, which is implemented in NAFTA countries and countries having PTAs with NAFTA countries, recognition is not included in the main agreement or framework but delegated to the various organisations or professional bodies.

NAFTA provides for the free movement of professional and business persons under the Mode 4. Under Chapter 16 of NAFTA, four categories of business persons and professional service providers, such as accountants, architect with credentials, land surveyors and engineers that meet the minimum standard set by NAFTA Countries can enter each member country temporarily to conduct business. The nationals of each country are required to comply with the applicable licensing or certification requirement regarding professions of the host country.

Under NAFTA, professionals are exempt from the job validation process normally imposed on those seeking work. The professional must be a recognised professional, must meet the educational requirements of the occupation, have a pre-arranged employment or contractual agreement with an entity located in the host country; and meet the host country's requirements for temporary entry.

2.3.3. GATS Model

Under the GATS Model the recognition mechanism is delegated to the relevant professional bodies and the countries to adopt. As discussed above, GATS addresses MRA in Article VII, which provides for the right to recognise the education or experience obtained, requirements met, or licences or certifications granted in WTO members. Recognition can be accorded autonomously or can be based upon an agreement or arrangements between members.

Under Article VII.3 of GATS, a Member State must not accord recognition in a manner which constitutes a means of discrimination between the parties of such an agreement when applying its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services. This means that a Member State will have to apply the same standards to professional service providers from all Member States.

In the event that a Member State enters into an MRA with another Member State, the Member States must afford adequate opportunity for other interested Member States to accede to the MRA or to negotiate comparable ones. Where Member States accord recognition autonomously, they are requested to afford adequate opportunity for any other Member States to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Member's territory should be recognised.

Article VI.6 requires Member States to provide adequate procedures to verify the competence of professionals of other Member State where they have undertaken specific commitments regarding professional services. Article VI.3 requires WTO members to ensure that competent authorities consider the application of a foreign service-provider seeking authorisation within a reasonable time. At the request of the applicant, the competent authorities shall provide information on the status of the application without undue delay. In addition, WTO Member States are required to make remedy available against the decision of their competent authorities.

2.3.4. Trans-Tasmanian Mutual Recognition Agreement

The Trans-Tasmanian Mutual Recognition Agreement or TTMRA was signed between Australia and New Zealand in 1992 and came into effect in 1997. TTMRA requires professionals to pass an 'equivalence test', without the need to spell out common standards and requirements for training.¹⁸

TTMRA contains provisions enabling registration authorities to impose conditions on registration to achieve equivalence between occupations. The relevant registration authority determines what conditions should be imposed based on its assessment of whether the activities authorised to be carried out under registration in the respective jurisdictions are substantially the same. These conditions may comprise the limiting of activities authorised by registration subject to the completion of further relevant training.

TTMRA covers, among others, all registrable occupations, except medicine, which is subject to a different type of arrangement. TTMRA provides that a person registered to practice an occupation in Australia is entitled to practice an equivalent occupation in New Zealand, and vice versa, without the need for further testing or examination but subject to the need to notify the local registration authority.

Under the Australian Mutual Recognition Act, registration is defined as “... *the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation.*”¹⁹

To apply for registration under TTMRA, individuals must forward written details of their registration in their home jurisdiction to the registration board in the second jurisdiction and sign a consent form enabling the registration board to undertake reasonable investigations relating to their application. The notice must be accompanied by a person's registration papers or include a copy and a statement certifying that the papers are authentic. The statements and other information contained in the notice must also be verified by statutory declaration.

Registration authorities have one month from the date of lodgement of the notice to formally grant, postpone or refuse registration, failing which the person is entitled to immediate registration. When granted, registration takes effect from the date of lodgement of the notice.

A registration authority may impose similar conditions on registration to any that already apply to a person's original registration or which are necessary to achieve equivalence between occupations. Individuals should be advised in writing if conditions on registration are to be imposed. The registration authority is required to advise the person of his or her right to appeal to the relevant Tribunal against the decision. The person may also seek a statement setting out the registration authority's reasons in full.

If a person's initial registration is cancelled, suspended or subject to a condition on disciplinary grounds, or as a result of or in anticipation of criminal, civil or disciplinary proceedings,

¹⁸ Kalypso Nicolaidis and Susanne Schmidt, 'Mutual Recognition 'on trial': the long road to services liberalisation,' *Journal of European Public Policy* 14:5 August 2007: 717-734.

¹⁹ Mutual Recognition Act 1992, s. 4.1.

then the person's registration under the TTMRA is affected in the same way. However, a registration body may reinstate any cancelled or suspended registration or waive any conditions if it thinks it appropriate in the circumstances.

2.3.5. International MRA for Architecture

A number of MRAs have been established between professional or industry associations in architectural services. The arrangements often entails international standards, which are non-binding and considered "good practice" for education and professional skills, guidelines for assessing professional capabilities and competence guidelines for members.

In architecture, the International Union of Architects (UIA) produces the Accord on Recommended International Standards of Professionalism in Architectural Practice which was unanimously approved in 1999. This accord serves as a non-binding framework for mutual recognition agreements between associations of architects. It provides for guidance on the recognition of an academic diploma, waiving examinations, adaptation periods or tests, the issue and registration of a practicing certificate for cross-border work and on establishment practice, and also on membership of the local order and use of titles.

Regional or national associations representing architects also established many recognition arrangements between themselves. For example, The Commonwealth Association of Architects (CAA) has established many recognition arrangements between institutes in the Commonwealth countries, based on the inscription and accreditation of the architectural training provided in specific educational institutions. The CAA has periodically published a List of Schools of Architecture whose qualifications it considered, after inspection, to be a sufficient standard to recommend to national authorities that they be accepted for recognition as meeting the academic requirements appropriate for registration, accreditation, or acceptance as an architect.

Another example of MRA involves the Inter-recognition Agreement between the Committee of Canadian Architectural Councils (CCAC) and the National Council of Architectural Registration Boards (NCARB), which permits Canadian and US architects whose provinces/states are signatory to the Agreement to be eligible to be licensed in another jurisdiction that is also a signatory.

In addition, APEC has also introduced the APEC Architect Project that is intended to facilitate the provision of the architectural services between participating economies. The project will allow senior architects from participating economies to access cross border registration procedure. The APEC Architect project is an initiative of the APEC Human Resources Development Working Group (HRDWG), one of a number of sectorial groups established to implement APEC programs. The project was endorsed by the HRDWG at its year 2000 meeting in Brunei as a direct response to the Group's strategic priority of facilitating mobility of qualified persons by developing a means for the mutual recognition of skills and qualifications.

APEC architects framework is more concerned with the setting of commercial presence (mode 3) and the temporary movement of natural persons (mode 4).

The aim of the APEC Architect framework is to establish a mechanism to facilitate the mobility of architects for the provision of architectural services throughout the APEC region by reducing current barriers to the export of professional services. Its central function is to maintain a Register of APEC Architects who have fulfilled common elements of the

education and training requirements for professional recognition in participating economies and are currently registered / licensed as architects, and who have a proven record of professional experience as registered practitioners.

Through the identification of these common aspects of professional recognition, reinforced by a period of professional experience, registration as an APEC Architect defines a level of competence that will satisfy designated registration criteria in other participating economies without further assessment. A host economy may additionally adopt special requirements for the recognition of APEC Architects to address aspects of professional practice specific to that economy such requirements however must be fully transparent.

Overall responsibility for operation of the APEC Architect Register rests with a Central Council composed of nominees of independent Monitoring Committees established for this purpose in each participating economy, and authorised by the Central Council to carry out its functions. Policies governing the operation of the APEC Architect Register and strategies adopted for its implementation are determined jointly by the representatives of participating economies appointed to the Central Council.

The APEC Architect Register is divided into sections, each administered by the Monitoring Committee of a participating economy, for the enrolment of architects registered/licensed in that economy who meet APEC Architect criteria. Monitoring Committees are responsible for the management of their respective sections of the Register on behalf of the Central Council.

An APEC Architect is a person who is registered, licensed or otherwise professionally recognised as an architect in a participating economy, and whose name is enrolled on a section of the APEC Architect Register maintained by that economy. APEC Architects are bound by host economy codes of professional conduct to protect public health, safety and welfare.

The criteria adopted by the Central Council for admission to the APEC Architect Register, and use of the description 'APEC Architect', are based on identification of a common sequence and elements in the education, training and assessment of architects as qualified to provide professional architectural services in the home economy. These consist of:

- i. an accreditation or recognition procedure for education programs in architecture;
- ii. a minimum period of post-graduate practical experience, with specified requisites;
- iii. fulfillment of registration, licensing or other requirements for full professional recognition,
- iv. a minimum period of professional practice as a registered or licensed architect, with specified requisites.

Architects deemed by the Central Council to fulfil these requirements are eligible for registration as an APEC Architect. To retain their registration, APEC Architects must comply with obligations imposed by their home economies for maintaining professional competence and observing codes of professional conduct. Host economies may choose to impose special requirements for the recognition of APEC Architects for practice in their economies, but any such requirements must be fully transparent.

2.4. Mutual Recognition of Architects in ASEAN

2.4.1. AFAS Provisions

Mutual recognition of qualifications for professional service providers is addressed in Article V.1 of AFAS, which acknowledges the rights of the AMS to recognise the education or experience obtained, requirements met, or licences or certifications granted in an AMS without obliging it to extend the recognition to other AMS. AFAS also provides a framework for the member states to negotiate mutual recognition agreements.

ASEAN Heads of Governments agreed, at the 11th ASEAN Summit, with the decision in the 37th Meeting of ASEAN Economic Ministers (“AEM”) to accelerate the liberalisation of ASEAN trade in services, by bringing forward its implementation from 2020 to 2015. The liberalisation is intended to improve the efficiency and competitiveness, diversity, production capacity, and supply and distribution of services of their services suppliers within and outside ASEAN, beyond those undertaken by AMS under the GATS with the aim to realising a free trade area in services.

The decision of the Declaration of ASEAN Concord II (Bali Concord II) adopted at the Ninth ASEAN Summit on 7th October 2003 in Bali, Indonesia, called for the completion of MRAs for qualifications in major professional services by 2008 to facilitate free movement of professionals, skilled labour and talents in ASEAN.

To achieve the AEC, the Summit adopted the Recommendations of the High Level Task Force on ASEAN Economic Integration (“HLTF”) which outlined a number of measures for trade in services, including:

- a. Set clear targets and schedules of liberalisation towards achieving free flow of trade in services earlier than 2020, with accelerated liberalisation of priority sectors by 2010.
- b. Accelerate liberalisation in specific sectors earlier than end-date through the application of ASEAN-X formula.
- c. Complete MRA for major professional services by 2008.

The existence and implementation of the MRAs would enable professional service providers who are registered or certified in signatory AMS to be equally recognised in other signatory AMS, hence facilitating the flow of professional services providers within ASEAN.

The ASEAN Coordinating Committee on Services (CCS) then established an Ad-Hoc Expert Group on Mutual Recognition Arrangements with the objective of realising framework agreements on mutual recognition for identified priority professional services. CCS decided to adopt the sectorial approach in developing mutual recognition arrangements for the identified professional services in ASEAN.

2.4.2. ASEAN MRA for Architecture

The ASEAN Coordinating Committee on Services (CCS) established an Ad-Hoc Expert Group on Mutual Recognition Arrangements with the objective of realising framework agreements on mutual recognition for identified priority professional services. CCS decided to adopt the sectorial approach in developing mutual recognition arrangements for the identified professional services in ASEAN.

For architectural services, the various steps taken including the establishment of the ASEAN Architect Council (AAC); the establishment of AAC secretariat; and the operation/action of AAC.

The contents of the MRA on architectural services include the definition of the architect, registered Foreign Architect (RFA), and the Professional Regulatory Authority (PRA). ASEAN Architect (AA) is defined as *“a citizen of ASEAN member states that has been tested and feasible determined technically, morally, and legally by the PRA as an architect of his/her country.”* RFA is defined as *“ASEAN’s architect that has been authorized by the PRA countries destination to work, either working alone or in collaboration with local architects of the country.”*

The AAC is established to monitor and implement the ASEAN MRA on Architecture. Among the objectives of the AAC are:

- a. To exchange information in order to promote adoption of best practices on standards of architectural education, professional practice and qualifications;
- b. To conform to the spirit of ASEAN co-operations based on fair distribution of resources and benefits through collaborative researches; and
- c. To encourage, facilitate and establish mutual recognition of architects and set up standards and commitment of technological transfer among AMS.

In order to become an ASEAN Architect, an architect:

- a. Must have completed an accredited architectural degree recognised by the professional architectural accreditation body whether in the country of origin or host country or assessed and recognised as having the equivalent of such a degree. The education for architects should be no less than five (5) years duration delivered on a full time basis in an accredited program and in an accredited/ validated university in the Country of Origin while allowing flexibility for equivalency. The system has already been adopted in most, if not all, AMS;
- b. Must possess a current and valid professional registration or licensing certificate to practise architecture in the country of origin issued either by the PRA of the AMS and in accordance with its policy on registration/licensing/certification of the practice of architecture or the Monitoring Committee pursuant to the local system;
- c. Must have acquired practical and diversified experience of not less than ten (10) years of continuous practice of architecture after graduation, of which at least five (5) years shall be after licensure/ registration and at least two (2) years of which shall be in responsible charge of significant architectural works;
- d. Must have complied with the Continuing Professional Development (CPD) policy of the country of origin at a satisfactory level;
- e. Must have obtained certification from the PRA of the country of origin with no record of serious violation on technical, professional or ethical standards, local and international, for the practice of architecture; and
- f. Must have complied with any other requirements agreed upon by the AAC is eligible to apply to the AAC to be registered as an AA under the ASEAN Architect Register (AAR).

03.

**QUALIFYING AND PRACTICING
AS AN ARCHITECT IN
ASEAN MEMBER STATES**

3.1. Introduction

Chapter 2 above discusses the definition, concept and design of mutual recognition in architectural services in ASEAN and other parts of the world. Mutual recognition, as explained, is an approach where one country recognises the qualifications and experiences required in another country as equivalent to those imposed in the former.

The Chapter discusses the qualifications and experience required in all AMS for architectural professionals. In addition, the Chapter also provides an overview of the requirements to set-up architecture practice in AMS, and the requirements for foreign architects to practice in the relevant AMS.

3.2. Brunei Darussalam

3.2.1. Laws and Regulations

At the time of writing, there is no effective domestic regulation governing the architecture profession in Brunei. Although Brunei has already enacted the Board of Architect, Professional Engineers and Quantity Surveyor Order 2011, the Order has yet to be enforced.

The Order will be enforced once the relevant regulations are approved the relevant authority. Pending the enforcement of the Order through new regulations, registration of architects is conducted administratively by Board of Architect, Professional Engineers and Quantity Surveyor.

Under the administrative process, an applicant has to submit a form for registration, enclosing among others:

- a. Registration fees;
- b. Certified True Copies of the academic certificates;
- c. Certified True Copies of the Company and Business Names Registration;
- d. Employer's Credential letter;
- e. Professional Indemnity Insurance;
- f. Current "Chartered Member" of a Professional Institution accepted and recognised by the Government of Brunei Darussalam; and
- g. Current Corporate Member a professional association.

Foreign applicants must also enclose valid employment pass or work permit, proof of continuous residency in Brunei working in the architectural sector for a minimum of 1 year (new applicant) or proof of residency of at least 90 days in a calendar year and a brief schedule of overseas trips and days residing in Brunei Darussalam (for renewal applicants).

Under the Order, "architectural services" includes *selling or supplying for gain or reward any architectural plan, drawing, tracing or the like for use in the construction, enlargement or alteration of any building or part thereof.*

The licensing body is the Board of Architect, Professional Engineers and Quantity Surveyor. The Board is set up by the Order in September 2012 and falls under the jurisdiction of the Ministry of Development, Brunei Darussalam.

In relation to architects, the functions of the Board include:

- a. to keep and maintain a register of architects, a register of the architectural practitioners and a register of licensees;
- b. to hold or arrange for the holding of such examinations as the Board considers necessary for the purpose of enabling persons to qualify for registration;
- c. to approve or reject applications either fully or conditionally for registration;
- d. to cancel, remove or reinstate any registration;
- e. to recommend the scale of fees to be charged by architects for architectural services rendered;
- f. to establish, maintain and develop standards of professional conduct and ethics of the architectural professions;
- g. to promote learning and education in connection with architectural profession;
- h. to hear and determine disputes relating to professional conduct or ethics of registered architects or to appoint a committee or arbitrator to hear and determine those disputes;
- i. to appoint arbitrators for the purpose of hearing and determining disputes between registered architects or licensed corporations or partnerships and other persons; and
- j. to license corporations or multi-discipline partnerships which intend to supply architectural services in Brunei Darussalam.

The Order allows only the following persons to draw or prepare any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part thereof in Brunei Darussalam:

- a. A registered architect with a practicing certificate;
- b. An architect under the direction or supervision of a registered architect with a valid practicing certificate; or
- c. A person authorised by the Board to work in collaboration (but without a right to any independent practice) with a registered architect who has in force a practising certificate authorising the registered architect to engage in that architectural service.

The Order also allows only a registered architect with a valid practicing certificate to sign and submit to a public authority any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part thereof in Brunei Darussalam; or any report, certificate or other document relating to the construction, enlargement or alteration of any building or part thereof which is required by any written law to be signed by an architect.

Only a registered architect or a person who has been authorised to work in collaboration with a registered architect are allowed to use the word "architect" or any other derivatives in connection with his business designation; the abbreviation "Ar." or "Arch." as a title before his name; or any word, name or designation that might lead to the belief that he is a registered architect.

The Order only allows the following persons to advertise or to hold himself out as a person who is authorised to supply architectural services in Brunei Darussalam:

- a. a registered architect who has in force a practising certificate;
- b. a licensed body corporate;
- c. a licensed partnership;
- d. a licensed limited liability partnership; or
- e. a partnership consisting wholly of registered architects.

3.2.2. Professional Association

The main professional association for architects in Brunei Darussalam is the Pertubuhan Ukur, Jurutera dan Arkitek Brunei Darussalam (PUJA). Corporate Members consist of Honorary Fellow; Life Fellows; Fellows; and Members. Non- Corporate Members consist of Graduates; Associates; and Students.

3.2.3. Qualifying as an Architect

The Order states that the following persons may be entitled to be registered as an architect in Brunei Darussalam:

- a. any person who is a Corporate member of an institution recognised by the Board. One of the recognised organisations is PUJA;
- b. any person who holds any degree, diploma or any other qualification which the Board may approve for the purpose of entitling him to be a registered architect; or
- c. any person who satisfies the Board that he is otherwise qualified by having proper and recognised training in architecture and who passes such examinations as may be required by the Board.

The Board imposes a minimum requirement of not less than 2 years of such practical experience in architectural work as may be prescribed or approved by the Board (including practical experience in architectural work in Brunei Darussalam for a continuous period of at least one year).

A registered architect may also apply to become a specialist architect under the Order. A specialist architect is defined as:

- a. a registered architect who has sat and passed such examination as may be prescribed by the Board, or holds such postgraduate degrees or qualifications or has gained such special knowledge in a specialised branch of architecture as may be approved by the Board;
- b. has such experience in that specialised branch of architecture may be required by the Board; and
- c. has fulfilled such further conditions as may be specified by the Board, may apply to the Board to be registered as a specialist architect.

3.2.4. Setting-up an Architecture Practice

The Order provides that an architect may supply or offer to supply architectural services in Brunei Darussalam if the person is:

- a. a registered architect who has in force a practicing certificate and either as a sole proprietor or as a partner in a licensed partnership or a partnership consisting wholly of registered architects who each has in force a practicing certificate;
- b. an allied professional as a partner in a licensed partnership; or
- c. a licensed body corporate or limited liability partnership (LLP).

Under the Order, the Board may also grant to a body corporate a licence to supply a multi-disciplinary services of architectural, professional engineering or quantity surveying services in Brunei Darussalam if -

- a. the memorandum of association of that body corporate provides that a primary object of that body corporate is to supply architectural, professional engineering or quantity surveying services;

- b. the paid-up capital of the body corporate is not less than the amount prescribed by the Minister by notification in the Gazette;
- c. the articles of association of the body corporate provide that at least a prescribed number or proportion of its directors shall be registered architects, registered professional engineers or registered quantity surveyors each of whom have in force a practicing certificate;
- d. the business of the body corporate, so far as it relates to the supply of architectural, professional engineering or quantity surveying services, will be under the control and management of a director of the body corporate who is a registered architect, a registered professional engineer or a registered quantity surveyor who has in force a practicing certificate; and is authorised under a resolution of the board of directors of that body corporate to make all final architectural, professional engineering or quantity surveying decisions on its behalf with respect to the requirements of this Order, the rules or any other law relating to the supply of architectural, professional engineering or quantity surveying services by it; and the body corporate is insured against professional liability in accordance with section 30 and the rules.

A partnership not consisting wholly of registered architects may also be licensed to supply architectural services in Brunei Darussalam if -

- a. the partnership is one in which only registered architects and allied professionals, who each has in force a practicing certificate, have a beneficial interest in the capital assets and profits of the partnership
- b. the business of the partnership, so far as it relates to the supply of architectural services in Brunei Darussalam, will be under the control and management of a partner who is a registered architect and has in force a practising certificate.

In the alternative, a practice may also be in the form of limited liability partnership. To qualify for the limited liability partnership practice:

- a. the statement lodged by the partners of the limited liability partnership with the Registrar of Limited Liability Partnerships under the Limited Liability Partnerships Order, 2010 (S 117110) provides that a primary nature of the business of the limited liability partnership is to supply architectural services;
- b. the partners in the limited liability partnership consist only of persons who satisfy such requirements as the Board may determine;
- c. at least one of the partners of the limited liability partnership is registered architect who has in force a practicing certificate;
- d. the business of the limited liability partnership, so far as it relates to architectural services in Brunei Darussalam, will be under the control and management of a partner who is a registered architect who has in force a practicing certificate; is authorised under a resolution of the partners of the limited liability partnership to make all final architectural decisions on behalf of the limited liability partnership with respect to the requirements of this Order, the rules or any other law relating to the supply of architectural services by the limited liability partnership; and the limited liability partnership is insured against professional liability in accordance with section 30 and the rules.

In any architecture practice, Brunei's commitment under AFAS states that not less than 50% equity should be held by Brunei Citizens.

Foreign nationals are required to obtain an Employment Visa in order to take up employment in Brunei Darussalam. The Department of Immigration and National Registration, Brunei Darussalam will issue an Employment Pass, which enables foreign nationals to work in Brunei Darussalam. The application for an Employment Visa may be lodged either by the sponsor or employer to the Department of Immigration and National Registration in Brunei Darussalam.

3.3. Cambodia

3.3.1. Laws and Regulations

The architecture profession in Cambodia is regulated by the Board of Architects Cambodia (BAC) which was set up on 26th December 2011 by Royal-Decree No. NS/RKT/0908/1055.

The BAC falls under the jurisdiction of the Ministry of Land Management, Urban Planning and Construction, which used to be the regulators for the architecture profession, where it implemented Sub-Decree No. 62 on the Organization and Functioning of the Ministry of Land Management, Urban Planning and Construction; Declaration No. 75 on the Management System of Consulting and Construction Firms; and Declaration No. 192 on the Management of Individual Professional providing Architectural Design.

As a new regulator, the BAC has issued Decision No. 002 BAC on Code of Architects Ethics of The Board of Architects Cambodia; Decision No. 003 BAC on Registration Terms and Conditions and Fixed Levies of The Board of Architects Cambodia; Decision No. 005 BAC on Registration Procedures at The Board of Architects Cambodia; and Decision No. 274 D/BAC on Establishment for the Evaluation and Monitoring Committee of the Professional Architectural Qualification.

3.3.2. Professional Association

Cambodia is in the process of establishing a professional association for the architecture profession, to be known as the Cambodian Society of Architects (CSA). CSA will enhance the architecture profession in the society by organising and uniting the Cambodian Architects to promote the Cambodian cultures, architectural aesthetic, scientific, technologies and practical efficiency of the profession both in practice and in education. The BAC architects, registered architects and graduates holding Degree of architecture from recognised universities will be accepted as members of CSA.

3.3.3. Qualifying as an Architect

There are three categories of architects in Cambodia:

1. Architect which refers to a graduate who has completed a degree in architecture with legal recognition.
2. Registered Architect which refers to a Cambodian and foreign architect registered with BAC but has not fulfilled the terms and conditions to become a BAC architect.
3. BAC architect which refers to a Cambodian and foreign architect registered with BAC and has fulfilled the terms and conditions of the BAC Council in compliance with Cambodian laws and regulations

Architects who wish to be listed in the Register of the BAC are required to comply with certain conditions. The candidate must be a graduate from an accredited architectural institution or equivalent academic institution in the Kingdom of Cambodia or a foreign country. The candidate needs to be free of any violation of technical professional or ethical standards for architecture practice either in Cambodia or abroad. The candidate must indicate that the person agrees to be bound by the code of professional conduct and ethics of the BAC. Upon successful application, the candidate will be registered as a registered architect.

To become a BAC architect, a registered architect has to provide an employment history which utilises architectural skills or similar skills from the date of graduation, with at least 1 year working experience for a holder of a Doctoral degree; 2 years for a holder of a Master's degree; or 3 years for those with Architecture Degree or Bachelor of Architecture or similar degrees. The registered architect must have also passed an examination and evaluation set by the Architectural Professional Qualification Evaluation and Observation Committee. The candidate must not have any record of violation for technical professional or ethical standards either locally or internationally. The candidate will have to agree to be bound by code of professional conduct and ethics of the BAC.

3.3.4. Setting-up an Architecture Practice

A firm of architects requires registration with the Ministry of Commerce, the Ministry of Economy and Finance, and the Ministry of Land Management, Urban Planning and Construction. There are three (3) categories of architectural firms in the Kingdom of Cambodia:

Category1: Enterprises and the firms that have

1. At least 3 architects with practical work experiences in architecture of more than 5 years each.
2. At least 5 engineers with practical work experiences in various engineering fields of at least 5 years each.
3. One (1) Building engineer or civil engineer or architect who has practical work experience in the field of Minimum 7 years as technical director in the enterprise or the company.
4. Appropriate number of technical staffs.
5. Previous completed projects with total projects worth of at least 800,000,000 Riel (US\$ 200,000).
6. Capital investment of at least 200,000,000 Riel (US\$ 50,000) legally recognised by the Bank.

Category2: Enterprises and companies that have

1. At least 2 architects with practical work experiences in architecture of more than 4 years each.
2. At least 4 engineers with practical work experiences in various engineering fields of at least 4 years each.
3. One (1) Building engineer or civil engineer or architect who has practical work experience in the field of Minimum 6 years as technical director in the enterprise or the company.
4. Appropriate number of technical staffs.
5. Previous completed projects with total projects worth of at least 200,000,000 Riel (US\$ 50,000).
6. Capital investment of at least 80,000,000 Riel (US\$ 20,000) legally recognised by the Bank.

Category 3: Enterprises and companies that have

1. At least 2 architects with practical work experiences in architecture of more than 3 years each.
2. At least 3 engineers with practical work experiences in various engineering fields of at least 3 years each.
3. One (1) Building engineer or civil engineer or architect who has practical work experience in the field of Minimum 5 years as technical director in the enterprise or the company.
4. Appropriate number of technical staffs.
5. Capital investment of at least 20,000,000 Riel (US\$ 5,000) legally recognised by the Bank.

Free Lance Architect (Individual Architect):

1. Level 1- Architects who have minimum 7 years working experience with recognition by the government.
2. Level 2- Architects who have minimum 4 years working experience.
3. Level 3- Architects who have minimum 1 years working experience.

Enterprise and architectural firms may be promoted to upper categories after receiving an official tax certificate.

A Foreign Architect who is a legally registered architect approved by the Professional Regulatory Authority in his/her original country and wishes to provide services in architecture in Cambodia must register with the BAC. Upon registration, the Foreign Architect shall provide architectural services only in the areas of competence as may be recognised and approved by the BAC. The Foreign Architect shall also be bound by the Codes of professional conduct in accordance with the policy on ethics and conduct of the BAC; and prevailing Cambodian laws and regulations in which the firm is permitted to work.

A Foreign Architecture Firm with a branch office in Cambodia must also have a valid registration and licence from the country of origin.

3.4. Indonesia

3.4.1. Laws and Regulations

The Construction Services Development Board (CSDB) or *Lembaga Pengembangan Jasa Konstruksi* (LPJK) is the Professional Regulatory Authority for the architecture profession in Indonesia. There is no special law for the architecture profession in Indonesia.

LPJK is a statutory body under the Construction Services Act No 18 Year 1999 and Government Regulations No. 28 Year 2000 (and its revision) that issues and administers registration of professionals in the construction services including architects.²⁰

Based on the law and regulations, to practice architecture in Indonesia an architect must hold a professional certificate (*Sertifikat Keahlian/ SKA*). To be registered by LPJK an architect shall obtain a recommendation in the form of a competence certificate from any Professional Certification Unit (*Unit Sertifikasi Tenaga Kerja - USTK*) licensed by the LPJK.

²⁰ Architects practicing in Indonesia are also required to observe other laws including Act No. 9 Year 1992 on Immigration; Act No. 18 Year 1999 on Construction Services; Act No. 20 Year 2000 on National Education System; Act No. 13 Year 2002 on Manpower; Act No. 28 Year 2007 on Taxation; 3rd revision of Act No. 6 Year 1983 Tax Provision & Procedures; Government Regulation No. 28 Year 2000; Government Regulation No. 4 Year 2010; Government Regulation No. 92 Year 2010 on Society Efforts & Roles in Construction Services; Government Regulation No. 29 Year 2000; Government Regulation No. 59 Year 2010 on Construction Services Practice; Government Regulation No. 30 Year 2000 on Construction Services Development; Government Regulation No. 23 Year 2004 on Indonesian Professional Certification Authority – IPCA / BNSP; CSDB Decision Letter No. 7 Year 2012 on Licencing Committee and Licencing Procedure; CSDB Decision Letter No. 9 Year 2012 on Establishment of Certification Unit for Manpower; CSDB Decision Letter No. 4 Year 2011 on Procedure for Re-registration, Validity Extension and New Application of Construction Professional Certificate; CSDB Decision Letter No. 4 Year 2013 on First Amendment of LPJK Regulation No. 4 Year 2011 on Procedure for Re-registration, Validity Extension and New Application of Construction Professional Certificate; CSDB Decision Letter No. 6 Year 2013 on Second Amendment of LPJK Regulation No. 4/ 2011 on Procedure for Re-registration, Validity Extension and New Application of Construction Professional Certificate; LPJK Regulation No. 1 Year 2014 on Third Amendment of LPJK Regulation No. 4/ 2011 on Procedure for Re-registration, Validity Extension and New Application of Construction Professional Certificate; LPJK Regulation No. 8 Year 2014 on Fourth Amendment of LPJK Regulation No. 4/ 2011 on Procedure for Re-registration, Validity Extension and New Application of Construction Professional Certificate; and City / District Government Regulations on Licensing for Construction Services Business.

To be able to sign architecture documents and gain building permits, an architect must hold an Architect's License. The license is issued by the Provincial or Local Government to the certified local architect.

In addition to LPJK as the professional regulatory authority, there are two important Councils governing the architecture profession in Indonesia, namely:

Dewan Keprofesian Arsitek (Architects' Profession Council) which organises architect certification/registration program, establishment of professional practice regulations, information; and

Dewan Kehormatan (Architect's Council of Ethics) which review, update and upgrade the code of conduct, guarding the integrity of the architects' profession, monitoring the professional practice in general and sanctioning the malpractice.

3.4.2. Professional Associations

The main professional association are the *Ikatan Arsitek Indonesia* – IAI representing the practicing architects which was founded in 1959 and *Perhimpunan Ahli Teknik Indonesia* – PATI.

3.4.3. Qualifying as an Architect

There are three layers of architects in the architecture profession in Indonesia namely Junior Architects (*Arsitek Muda*), Intermediate Architect (*Arsitek Madya*) and Senior Architect (*Arsitek Utama*).

Those seeking to be registered as Junior Architects or Intermediate Architects are required to have a minimum professional experience, to sit for competent assessment and to attend Continuing Professional Development (CPD) programs. The registration is valid for 3 years and is renewable for every 3 years.

The candidates seeking registration for Junior or Intermediate Architect are required to have the following core competencies:

- a. design of buildings and structures;
- b. site planning and facilities programming;
- c. drafting of technical documentation related to the design;
- d. control of construction costs;
- e. supervision and co-ordination of inter-disciplinary designs (architecture-civil/structure-mechanical-electrical-plumbing,etc); and
- f. urban design and development process.

In addition, Junior Architects must have a minimum 4 years education of Bachelor in Architecture degree and another 1 year of Professional Education Diploma or 2 year of Masters in Architecture degree. The candidate must have attended 2 years minimum internship, completed 3 projects and must have complied with the Code of Ethics and Professional Conducts and to attend 2 different classes of the professional workshops.

To become Intermediate Architects applicants must have completed 6 projects and a minimum of 5 years of experience and to attend 4 different classes of the professional workshops.

To become Senior Architects or *Arsitek Utama* candidates must have worked on 10 projects, with a minimum of 12 years of experience and to attend 6 different classes of the professional workshops.

Architects who have to renew their registration shall have obtained a minimum number of Professional Development Unit (PDU) under Continuing Professional Development Program. The total PDU requirement each year is determined by CSDB / LPJK which will be accumulated for 3 years.

3.4.4. Setting-up an Architecture Practice

Architecture practices in Indonesia can be in the form of sole proprietorship, partnership or through a corporate body.

Foreign architects may hold equity stake in an Indonesian architect firm of not be more than 49% of the total equity. However, the Human Resource Director and the Finance Director in the firm must not be foreigners.

Applications by ASEAN Architects from another participating AMS to work as a registered foreign architect in Indonesia shall be submitted to the LPJK.

Unless approved by LPJK a Registered Foreign Architect (RFA), including an ASEAN Architect will not be eligible to work in independent practice to certify or be responsible for architectural works which is required by any written law to be signed by an Architect.

An application as an approved architect from the LPJK must be accompanied by an approved working visa from the immigration, a recommendation letter from a local company, curriculum vitae and certificate of competency from the relevant architect authority from the applicant's home country. Besides that the foreign architect shall also be a member of Architects Association in Indonesia.

An RFA shall provide architectural services only in the areas of competence as may be recognised and approved by the LPJK at provincial capital.

An RFA may also be required to be subject to further requirement such as:

- a. understanding the general principles behind applicable codes of practice and laws in Indonesia;
- b. demonstrating a capacity to apply such principles safely and efficiently; and
- c. being familiar with other special requirements operating within Indonesia.

3.5. Lao PDR

3.5.1. Laws and Regulations

In Lao PDR, the Council of Sciences and Technology (CST) of the Ministry of Public Works and Transports (MPWT) is the Professional Regulatory Authority (PRA) for the architecture profession. The CST is a statutory body established by a decision of the Minister of PWT to administer and monitor the implementation of policies, strategies and law enforcement in the fields of public works and transport and undertake accreditation of architects and engineers.

At the time of writing, Lao PDR does not have any laws relating to architecture profession or architecture professional in the country. The CST and the PWT have been drafting various laws to be tabled to the National Assembly.

3.5.2. Professional Association

The main professional association is the Association of Lao Architects and Civil Engineers (ALACE). There are 3 (three) categories of ALACE membership, full members; supporting members; and honorary members.

3.5.3. Qualifying as an Architect

In order to work as an architect, a person must have a minimum of 5 years of graduate study and 2 years of work experience. Although there is no post-graduate architectural curriculum at the moment, the requirement for the membership of ALACE should be the basis for core competencies for the architecture practice in Lao PDR.

To become a full member of ALACE, the applicant must be a Lao citizen or a foreigner who has taken up permanent residence in Lao PDR, holding at least a bachelor degree in architecture or civil engineering, and be a practising professional of architecture or civil engineering.

Any person who meets the qualifications as set out above and desires to be admitted as a member of ALACE must personally submit an application to the Executive Board of ALACE with the following documents: Application form; Curriculum Vitae; Certificates / References; Summary list of previous experience; Copy of degree certificate (for Full Members) or copy of business license and business registration (for Supporting Members); and Membership fees.

3.5.4. Setting-up an Architecture Practice

Architects who are interested in setting-up a practice is required to comply with the Enterprise Registration law as administered by the Ministry of Industry and Commerce of Lao PDR.

At the moment, architecture practice in Lao PDR is open to foreign architects. However, a registered foreign architect shall not be eligible to work in independent practice in the Lao PDR, unless specifically permitted by the Professional Regulatory Authority.

A registered foreign architect is only allowed to provide architectural services in the areas of competence as may be recognised and approved by the Lao professional regulatory authority. The architect shall also be bound by codes of professional conduct and ethics established and enforced by Lao PDR.

Foreign architects working in Lao PDR shall also be subject to the law on Promotion and Management of Foreign Investment in the Lao PDR and the regulations on immigration. However, foreign enterprises have the right to employ skilled and expert foreign personnel when necessary and with the approval of the competent authority of the Government of the Lao PDR.

3.6. Malaysia

3.6.1. Laws and Regulations

The domestic regulations governing the architecture profession in Malaysia are the Architects Act 1967 and the Architects Rules 1996. The Act has recently been amended and passed by the Parliament in 2014. The Professional Regulatory Authority (PRA) for the architecture profession is the Board of Architects of Malaysia (BAM). The functions of the Board are provided under the Section 4(1) of the aforesaid Act which includes the following:

- a. Registration of Architects, Graduate Architects, Interior Designers Graduate Interior Designers, Architectural Technologist, Inspector of Works and Building Draughtsmen;
- b. Registration of architectural consultancy practices;
- c. Regulation of their conduct and ethics;
- d. Conducting examinations for admission to the profession;
- e. Accreditation of architectural and interior design education programmes;
- f. Hear and determine disputes relating to conduct of the members;
- g. Development and Promotion of the profession; and
- h. Representing the architectural profession in any matter at local and international levels.

3.6.2. Professional Associations

Pertubuhan Akitek Malaysia (PAM) or the Malaysian Institute of Architects is the professional association representing the architecture professionals in Malaysia.

The Institute provides a framework for its members to operate effectively: to practice the business of architecture within the regulation and code of conduct of the Architects Act and Rules. The primary objectives of the Institute are:

- a. To promote and enlarge knowledge, study and practice of architecture;
- b. To provide a central organisation for architecture;
- c. To assist and advise Governments, local authorities, or other private or public bodies;
- d. To promote friendly interaction and discourse amongst Architects;
- e. To obtain and disseminate among the Members, information on matters affecting the profession; and
- f. To preserve and to maintain the integrity and status of the profession.

3.6.3. Qualifying as an Architect

Under the law, any persons may apply to become an architect. The person must hold qualification which is recognised by the Board of Architects Malaysia (BAM).

The duration of education and training for architects is structured into three (3) consecutive stages namely LAM Part I and LAM Part II, to be delivered in five (5) years of formal education, followed by a professional examination of LAM Part III to be obtained after two (2) years of approved practical experience.

Graduate Architect

Any person who holds the qualification recognised by BAM shall be entitled on application to be registered as a Graduate Architect.

BAM accredits academic qualifications that are (five) 5 years of full time on campus courses. BAM maintains a list of recognised architectural programs, which refer to the full time

program conducted by the university or institution concerned and the list is made available at the BAM website.

An architectural graduate with qualification which is not recognised by the Board shall be required to sit the Part I and II Qualifying Examination conducted by the Architectural Examination Council of Malaysia.

Part I and Part II Examinations:

Applicants must possess architectural qualifications and submit the evidence of the qualifications. Foreign applicants intending to obtain Part I and/or Part II Examination recognition may also apply subject to existing conditions imposed by the Board.

An architectural graduate with qualification which is not in the Board's list of recognised programme shall be required to appear for the Part I and/or Part II Examination.

The Examination consists of:

Stage 1 - Review of school syllabus, course content and academic transcripts.

Stage 2 - Review of candidate's course work portfolio and Oral Examination

Stage 3 - Integrated Design Project (IDP) if required, upon failing Stage 2.

A candidate who fails to meet the minimum requirement at Stage 1 stipulated shall not be allowed to proceed with the Examination. A candidate who passes the Stage 1 and Stage 2 Examination is deemed to have passed the Part I and/or Part II Qualifying Examination.

A candidate who is unsuccessful at Stage 2 is deemed not to have fully satisfied the requirements of the Examination and shall be required to appear for the Stage 3 Examination. A candidate who has successfully completed the Stage 3 Examination is deemed to have passed the Part I and/or Part II Qualifying Examination.

A candidate who is unsuccessful at the Stage 3 Examination may apply to re-sit the Examination up to a maximum of three (3) times. The candidate may apply to re-sit the Examination by submitting evidence of two (2) years of working experience with architectural firm.

Applicants are required to submit the following with their applications:

For Stage 1:

- a. a certified true copy of identity card or passport, academic certificates and examination transcripts;
- b. the Syllabus and Curriculum of the applicant's course in the School from which the applicant qualified; and
- c. the prescribed examination fee.

For Stage 2:

After having cleared Stage 1, applicants are required to submit full portfolio of their works in the School of Architecture listed as per Proforma supplied. The portfolio shall be in its original form. Photographs, reproduction or reduction to reasonable size shall only be accepted at the absolute discretion of the Panel. Digital copies are not acceptable.

Application for registration must be submitted in the prescribed together with the following

1. 2 copies of recent photographs;
2. A copy of the SPM and STPM certificate or the equivalent;
3. A copy of the Diploma or Degree;

4. Examination transcripts for each year of study;
5. A copy of the Part I and II Examination Certificate, where relevant; and
6. Registration fee.

All documents submitted must be certified as true copies by a Professional Architect registered with the Board.

Architects

Any persons with qualifications approved by BAM may apply for registration as Architects; provided that he is a registered Graduate Architect; has obtained the practical experience as prescribed by BAM; has passed the Part III Professional Examination; and is a Corporate Member of the Malaysian Institute of Architects (PAM).

Part III Examination involves:

- a. submission of application and relevant documentation
- b. submission of the Practical Experience Log Book and the Professional Experience Evaluation Report. Under the provisions of Section 10(1)(b) of the Architects Act 1967, a registered Architect shall be required to obtain such practical experience as may be prescribed by the Board of Architects Malaysia. Under rule 26(1) of the Architects Rules 1996, a registered Architect is required to complete the relevant practical experience before he/she can be considered to sit for the Part III Professional Examination. Such practical experience is as indicated in the log book.

The minimum period of practical working experience required is two (2) years (104 weeks) which must be obtained subsequent to registration as an Architect with the Board of Architects, Malaysia. The stipulated period is to be completed by 1st March, the closing date for the Examination of each year.

- i. At least one and a half (1½) years of these two years of practical working experience shall be in an architect's office, of which one (1) year shall be obtained in Malaysia in an Architect's office which is registered with the Board of Architects Malaysia.
- ii. Periods of practical working experience in an Architect's office of less than one (1) year duration at any one time will not be counted towards the total period of practical working experience.
- iii. Post-graduate research in a relevant area related to the built environment of up to a year's duration acceptable to the Examination Council may also be counted towards the required practical experience, provided that such experience is substantively supervised by at least an associate professor of a recognised university or institute of higher learning. Additionally such research must be principally authored by the applicant and recognised by the university as a substantive research document. Post-graduate research conducted on a commercial basis shall not be regarded as part of the practical experience unless prior approval had been obtained from the Examination Council.
- iv. The applicant who, after having registered as a Graduate Architect, has further completed not less than two (2) years of full time teaching in a university or an architectural educational institution in Malaysia together with not less than a total of two thousand three hundred and seventy (2370) hours of acceptable continuous part-time practical experience in an Architect's office which is registered with the Board of Architects Malaysia, may also qualify for the required practical experience.
- v. Practical experience in offices as defined in BAM's Practical Experience Log Book, other than an architect's office will be counted towards the required practical experience up to six (6) months subject to further compliance of certain conditions. The experience so obtained in those offices by the applicant must cover a reasonable range of professional activities to be carefully described under BAM's

- Practical Experience Log Book or if more written space is required, in a separate accompanying report. Such experience must be under the supervision of an in-house Architect, Engineer, Quantity Surveyor or Town Planner who is registered with the respective Boards. In the case of those working with building manufacturers, supervisors must be allied professionals registered with the respective Boards.
- c. an oral examination. The Oral Examination will be held after submission of the applicant's Log Book and before the Written Examination. The Oral Examination will test the applicant's proficiency in professional practice. If the applicant fails the Oral Examination, he will not be permitted to sit for the Written Examination and a portion of his examination fee will be refunded.
 - d. a written examination. Among the subjects for the written examinations are:
 - i. Professional Legislation and Professional Bodies;
 - ii. Professional Architect's Role in Society;
 - iii. Professional Architect's Practice;
 - iv. Building Legislations and Regulations; and
 - v. Building Contract Administration.

Application for registration must be submitted in the prescribed Form B together with the following:

1. 2 copies of recent photographs;
2. Original Certificate of Registration as a registered Graduate Architect;
3. Corporate Membership certificate of PAM;
4. Copy of the Part III Professional Examination Certificate; and
5. Registration fee.

3.6.4. Setting-up an Architecture Practice

Architectural services must be authenticated by a licensed architect in Malaysia. Architectural services may be supplied only by natural person.

Architectural practices may take place in the form of -

- a. Sole proprietorship;
- b. Partnership;
- c. Body Corporate (Architectural); or
- d. Body Corporate (Multi-disciplinary).

The requirements for architectural body corporates are:

- a. The board of directors shall be Architects;
- b. The body corporate shall have a minimum paid-up capital of RM 50,000; and
- c. The shares shall be held by members of the board of directors solely or with any other persons.

The requirements for the multi-disciplinary body corporate include:

- a. The board of directors shall comprise Architects, Professional Engineers and/or registered Quantity Surveyors;
- b. The shares shall be held by persons mentioned in paragraph 1 and any of the following persons and/or bodies corporate where the Architects, Professional Engineers, registered Quantity Surveyors, bodies corporate providing architectural consultancy services, bodies corporate providing professional engineering services and/or bodies corporate practising as consulting Quantity Surveyors hold a minimum combined share of 70% of the overall equity of that body corporate, of which the Architects and/or bodies corporate providing architectural consultancy services hold a minimum share of 10%;

- c. Any other persons, including persons belonging to a profession allied to architecture, engineering or quantity surveying, being a profession approved in writing by the board regulating the profession of architecture, engineering or quantity surveying, respectively, hold a maximum share of 30% of the overall equity of the body corporate; and
- d. The multi-disciplinary body corporate shall have a minimum paid-up capital of RM150,000.

For multi-disciplinary practices, Malaysia only allows foreign equity up to a maximum of 30 per cent for any persons including joint ventures by professionals.

Under the existing Act, Registered Foreign Architects (RFA) who is a consultant to a project, wholly financed by a foreign government, or implemented under a bilateral arrangement between governments may register annual basis and may be renewed. The Professional Visit Pass is issued to foreigners employed by an overseas company but working with a company established in Malaysia. This pass is normally appropriate for technical experts and trainees. The Professional Pass is normally valid for short periods of around six months.

An employment pass applies to those seeking to work in Malaysia and who have specific skills, generally in technical or managerial positions. It is usually issued for a minimum period of two years.

3.7. Myanmar

3.7.1. Laws and Regulations

The Union Parliament of Myanmar passed Myanmar Architect Council Law (The Union Parliament Law No. (39)), governing the architecture profession on 30th September 2014. The statutory authority governing architectural profession in Myanmar is the Ministry of Construction, with Board of Architects (Myanmar) formed by notification 175/2013, to act as an authorised agency on its behalf. The Board of Architects will be dissolved as soon as the Architect Council, consisting of 12 appointed and 21 elected Council members, is formed.

3.7.2. Professional Association

The professional association for architecture profession in Myanmar is the Association of Myanmar Architects (AMA). AMA was formed in 2001 with around 1000 members by the end of 2013. A professional regulatory committee (PRC) was formed in 2005 consisting of patron architects, architects from government agencies, practicing architects and architects from the academic field.

The PRCs main task was to oversee the overall practice of architecture in Myanmar and to approve ethics and codes of professional conduct, preparing references and benchmarking professionals. The PRC was replaced by the Monitoring Committee (Architecture) formed on the 3rd of November, 2012.

3.7.3. Qualifying as an Architect

To qualify as a professional architect in Myanmar, an applicant will have to complete at least a five year full time architectural education and 2 years of practical work after registration

as an architectural graduate, with the Board of Architects. At present there are 7 schools of architecture including 2 centres of excellence, one in Yangon and another in Mandalay. The licensed architect with an experience of 5 years and who has participated in continuous professional development (CPD) is entitled to apply for a senior licensed architect status.

3.7.4. Setting-up an Architecture Practice

Those who would like to set up a private architecture practice will have to register the entity with the Ministry of Economy and Planning. The entity needs at least 2 registered architects on the board or the partnership. There are 33 registered architectural firms in Myanmar, mostly based in Yangon and Mandalay, some with branches in Nay Pi Taw.

There is no procedure for registration of foreign architects and foreign firm at the moment. However, under the Myanmar's AFAS Schedule of Commitment, it is stated that commercial presence of foreign suppliers and/or providers are permitted in accordance with the Union of Myanmar Foreign Investment Law 1988 and the Myanmar Companies Act 1914.

3.8. The Philippines

3.8.1. Laws and Regulations

The main law governing the architecture profession in the Philippines is the Republic Act No. 9266, the Architecture Act of 2004. The Professional Regulatory Authority is the Professional Regulatory Board of Architecture ("the Board") under the Professional Regulation Commission.

The role of the Board includes prescribing and adopting rules and regulations to carry out law; supervising, registering and licensing the practice of Architecture; and issuing, suspending and revoking Certificate of Registration for practice of Architecture. The Board is also responsible to hear and decide administrative cases involving violations of the law; and to prescribe guidelines for continuing professional development / education including preparing test questions for licensure examinations. The Board may also approve, issue, limit or cancel Temporary Special Permit to foreign architects who wish to practice in the Philippines.

Architecture practice in the Philippines covers the following:

- a. Planning and architectural designing
- b. Structure and building design;
- c. Environmental consideration;
- d. Site and physical planning;
- e. Space planning;
- f. General architectural planning
- g. Architectural Interiors
- h. Structural conceptualization;
- i. Green building index;
- j. Renovation, enlargement and alteration;
- k. Heritage, restoration and conservation;
- l. Construction and project management;
- m. Economic and promotional services;

- n. Consultancy and pre-design services and
- o. Architecture Education.

3.8.2. Professional Associations

The professional association for the architects in the Philippines which is duly accredited by the Professional Regulation Commission is the United Architects of the Philippines (UAP).

3.8.3. Qualifying as an Architect

Local graduates must possess a minimum of:

1. A degree of Bachelor of Science in Architecture of 5 years duration;
2. 2 years of diversified training and experience evidenced from the prescribed log book;
3. Passed the written Board examination administered by the Professional Regulatory Board of Architecture (PRBoA).

All applicants for registration for the practice of architecture shall be required to undergo a licensure examination to be given by the Board. Certificate of Registration and Professional Identification Card shall be issued to successful examinees. PRC I.D is renewable every 3 years.

The Architecture Licensure Examination generally covers areas where candidates are expected to have knowledge, understanding, and competencies when they start to practice the architectural profession. The general coverage of the examination is divided into three major areas with their corresponding weights as follows:

- a. History and theory of architecture; principles of planning; architectural practice;
- b. Utilities, Structural conceptualization ; building materials and technology; and
- c. Architectural design and site planning.

The following persons are allowed to apply for the examination:

- a. A Filipino citizen or a citizen of a foreign country qualified to take the examination as provided for in the Act.
- b. Foreign citizens may be allowed to take licensure exam only if the country of the foreign citizens admits Filipinos to practise the same profession without restriction or allows Filipinos to practise after passing the exam on equal terms with the foreign citizens, including mutual recognition of degrees/diplomas;
- c. Of good moral character;
- d. A holder of a degree of Bachelor of Science in Architecture conferred by a school, college, or institute duly recognised and/or accredited by the Commission on Higher Education (CHED) and in addition has a specific record of at least two (2) years or equivalent of diversified architectural experience duly certified by a registered/licensed architect. However, an applicant holding a Master's Degree in Architecture from a school, college, university or institute recognised by the Government shall be credited one (1) year in his/her practical experience; and
- e. Has not been convicted of any criminal offense involving moral turpitude.

3.8.4. Setting-up and Architecture Practice

A firm, company, partnership, corporation, association may be registered for architectural practice provided:

- a. Only Filipino citizens who are registered and licensed Architects may, among themselves, or with allied technical professionals, form or obtain registration as firm, company, partnership, association, corporation for architectural practice;
- b. At least 75% of owners or share-holders, incorporators, directors, executive officers are registered and licensed architects;
- c. Individual members of firm, partnership, association, corporation are responsible for individual or collective acts as an entity; and
- d. Such firm, partnership, association or corporation shall be registered with Securities and Exchange Commission and Professional Regulatory Board of Architecture (PRBoA).

Upon recommendation of the PRBoA, the PRC may approve registration of and authorise issuance of certificate of registration, license and professional identification card with or without examination to a foreigner who is registered under the laws of his country and whose certificate of registration issued therein has not been suspended or revoked.

The requirements for registration or licensing in said foreign country are substantially the same as those required or contemplated by laws of the Philippines and that the laws of such foreign country allow citizens of the Philippines to practice the profession on the same basis and grant the same privileges as those enjoyed by subjects or citizens of such foreign country.

At the same time, Professional Regulation Commission may, upon recommendation of the Board of Architecture authorise the issuance of a certification/ license or special temporary permit to:

- a. Foreign professionals who desire to practise their professions in the country under reciprocity and other international agreements;
- b. Consultants in foreign funded, joint-venture or foreign assisted projects of the Governments; and
- c. Employees of Philippine, foreign private firms, institutions pursuant to law. The agencies, organisations or individuals whether public or private, who secure the services of a foreign professional for reasons aforementioned shall be responsible for securing a special permit from the PRC.

Foreign architects are able to practise based on reciprocal arrangements.

3.9. Singapore

3.9.1. Laws and Regulations

The Domestic Regulations are the Architects Act 1991, the Architect Rules 1991 and the Architects (Professional Conduct and Ethics) Rules. The licensing body is the Board of Architects, Singapore. Among the functions of the Board of Architects Singapore are:

- a. to keep and maintain a register of architects, a register of practitioners and a register of licensees;
- b. to hold or arrange for the holding of such examinations as the Board considers necessary for the purpose of enabling persons to qualify for registration under this Act;
- c. to establish, maintain and develop standards of professional conduct and ethics of the architectural profession;
- d. to promote learning and education in connection with architecture, either alone or in conjunction with any other professional body;
- e. to hear and determine disputes relating to professional conduct or ethics of registered architects or to appoint a committee or arbitrator to hear and determine those disputes;

- f. to appoint arbitrators for the purpose of hearing and determining disputes between registered architects or licensed corporations or partnerships and other persons;
- g. to license corporations or multidiscipline partnerships which intend to supply architectural services in Singapore; and
- h. generally to do all such acts, matters and things as are necessary to be carried out under the provisions of this Act.

3.9.2. Professional Association

The professional association for architects in Singapore is the Singapore Institute of Architects.

3.9.3. Qualifying as an Architect

To register as an architect in Singapore, one has to have:

- a. An approved qualification in architecture;
- b. An appropriate practical experience in architectural work; and
- c. The applicant is a fit and proper person.

The Board accredits academic qualifications that are 5 years of full time on campus courses. The Board maintains the list of national and overseas courses recognised for the purpose of registration with the Board including the degree of Bachelor of Architecture or Master of Architecture from the National University of Singapore.

No person shall be entitled to registration unless he satisfies the Board as to any of the following:

- a. he has such practical experience in architectural work for not less than 24 months consisting of such practical experience in architectural work in Singapore for a continuous period of at least 12 months, and has passed such professional practice examination as may be prescribed or approved by the Board;
- b. he has such practical experience in architectural work for not less than 5 years as may be recognised by the Board, which shall include such prescribed practical experience in architectural work in Singapore for not less than two years comprising a continuous period of at least 12 months gained within the 5 years immediately preceding the date of his application for registration under the Act; or
- c. he has such practical experience in architectural work for not less than 10 years as may be recognised by the Board.

The following three categories of applicants with more than 10 years of practical experience as may be recognised by the Board, can also apply to the Board for registration:

- a. Applicants who have won commendations/ awards/ honours from recognised professional bodies in their own countries whose architectural degrees qualifications are recognised by the Board.
- b. Applicants who have won commendations/ awards/ honours at international level.
- c. Applicants who have personally executed architectural work of high design merit.

The examination process involves:

1. Case Study & Log Book Review;
2. Written Paper 1 – Law & The Architect (Multiple Choice Questions and Structured Questions);

3. Written Paper 2 – Professional Practice (Multiple Choice Questions and Structured Questions); and
4. Oral interview Examination.

3.9.4. Setting-up an Architecture Practice

Architecture practice in Singapore may take place in the form of:

- a. Limited Corporation. The law requires that at least 51% of its directors shall be registered architects or allied professionals who each has in force a valid practising certificate; the business of the corporation, so far as it relates to such architectural services in Singapore, will be under the control and management of a director of the corporation who is a registered architect who has in force a valid practising certificate.
- b. Unlimited Corporations. The law requires that at least 51% of its directors shall be registered architects or allied professionals who each has in force a valid practising certificate; and the business of the corporation, so far as it relates to architectural services in Singapore, will be under the control and management of a director of the corporation who is a registered architect who has in force a valid practising certificate.
- c. Partnership. Under this form of business operation, the beneficial interest in the capital assets and profits of the partnership must be held by registered architects or allied professionals who each has in force a valid practicing certificate, the business of the partnership, so far as it relates to architectural services in Singapore, will be under the control and management of a partner who is a registered architect who has in force a valid practising certificate.
- d. Limited liability partnership (LLP). Under this format, the law requires that at least one of the partners of the LLP is a registered architect who has in force a valid practising certificate; the business of the LLP, so far as it relates to architectural services in Singapore, will be under the control and management of a partner who is a registered architect who has in force a valid practising certificate.

Foreign companies must register with the BOA if they want to offer architectural services in Singapore. The company must have simple majority directors who are registered architects with the BOA. Foreign architects are not allowed to be referred to as Architect unless they are registered with the BOA. Otherwise these companies are to be referred as Design Consultancy companies.

Foreign citizens require employment pass or Personalised Employment Pass (PEP) in order to work in Singapore. The PEP is a new scheme to encourage global talent to work in Singapore, which is not tied to any employer and granted based on the applicant's individual merits. PEP holder may remain in Singapore for up to six months to explore new employment opportunities, without having to re-apply for a new pass when changing jobs.

To apply for an Employment Pass, a local sponsor who is usually the employer is required. There are three types of Employment Passes (P1, P2 and Q1). The P Pass is for foreigners seeking professional, managerial or executive and specialist jobs.

3.10. Thailand

3.10.1. Laws and Regulations

The domestic law governing the architecture profession in Thailand is the Architect Act B.E.2543. Architect profession in Thailand is governed by the Architect Council of Thailand,

(ACT) which comes under the purview of the Ministry of the Interior. ACT is responsible for the issuance of rules and regulations and providing licences for the 4 types of architecture. Among ACT's other functions are:

- a. to promote the education, research and practising of the architectural profession;
- b. to promote harmony and conciliation among its members;
- c. to promote the welfare of and to honour the members;
- d. to control the behaviour and operation of persons practising the controlled architectural profession in compliance with the standards and etiquette of the architectural profession;
- e. to support, advise, disseminate and service academic subjects for the people and other organisations in connect with architectural science and technology;
- f. to provide consultation or advise for the government relating to architectural and technological problems and policies;
- g. to act as a representative of persons practicing the architectural profession in Thailand; and
- h. to perform any other activity as prescribed in the Ministerial Regulations.

The architecture profession in Thailand includes architecture; urban design; landscape architecture; and interior architecture.

3.10.2. Professional Associations

The architect profession has a professional association, which is called the Association of Siamese Architects.

3.10.3. Qualifying as an Architect

It is provided in the Architects Council of Thailand Act 2000 that, *“No one shall practice the controlled architectural profession or represent himself in any manner to mislead another into understanding him as able to practice any field of the controlled architectural profession unless he is licensed to practice such field granted by the Council of Architects (ACT).”*

There are 4 levels of architects in Thailand, namely: Charter Architects; Professional Architects; Associate Architects; and Corporate Architects.

To qualify as an Associate Architect, an applicant must have a 5 year degree programme where the applicant is not required to have any prior experience in architecture. An applicant with a 4 year degree programme is required to have 1 year experience prior to applying to become an associate architect and an applicant with a 4 year degree programme in the related field of architecture as approved by the Council will be required to have a 2 years' experience prior to applying to become an associate architect.

The Council also accepts application from those with a diploma in the related field of architecture as approved by the Council who will be required to have a 3 years' experience prior to applying to become an associate architect. Those with a certificate in the related field of architecture as approved by the Council may also apply but will be required to have a 4 years' experience prior to applying to become an associate architect.

All candidates will have to sit for an official examination as set by the Council. Applicants are to be examined on the following topics:

- a. knowledge of liberal arts;
- b. knowledge of professional practice;
- c. planning capability;
- d. analysed capability;
- e. attitude;
- f. sustainable development;
- g. communication ability; and
- h. knowledge of constraint.

Applicants will also be asked to conduct self-assessment report of curriculum and direct assessment by Site Visit.

Professional Architect

To become a Professional Architect, an applicant must have at least 2 years' experience as an Associate Architect and must have at least 300 points of continued professional development and pass 4 official examination subjects.

Chartered Architect

To become a Chartered Architect, an applicant must have at least 7 years practical experience as a professional architect and must have accumulated at least 700 points of continued professional development and pass 4 official examination subjects.

3.10.4. Setting-up an Architecture Practice

Architects may practice in the sole proprietorship, partnership or corporate body (limited liability company). Any practice must have a 51% minimum of the Thai interest in the equity. The firm must have the approval from the Ministry of Commerce.

For a body corporate and partnership:

- a. At least half of its directors, or its managing director must be a person of Thai Nationality and obtain a licence from the Architects Council;
- b. The managing partner or manager must be the person of Thai nationality, and
- c. At least half of its partner(s) or its managing partner must be the person of Thai nationality and obtain a licence from the Architects Council.

As it is a legal requirement that only Thai National are allowed to practise architecture in Thailand, foreign architects including ASEAN Architects must work with the local architects.

Any foreign architect wishing to work or practice in Thailand must apply for a Non-Immigrant Visa. Various categories of the Non-Immigrant Visa are currently provided to meet the needs and qualifications of individual business persons. These include business visa Category "B", business-approved visa Category "B-A" and investment and business visa Category "IB". Holder of this type of visa wishing to work in Thailand must be granted a work permit before starting work.

3.11. Viet Nam

3.11.1. Laws and Regulations

The architecture profession in Viet Nam is governed by the Ministry of Construction. Some operating implementations are decentralised and regulated through Provincial Departments for Construction and their respective Provincial Consulting Committees.

The practice of Architecture is regulated by the Construction Law No. 50/2014/QH13 dated 18th of Jun, 2014 and related Decrees, Decisions, Circulars guiding the implementation of the Construction Law.

3.11.2. Professional Association

The main architecture professional association is Viet Nam Association of Architects (VAA) that was established in 1948. There were 4,100 registered architects in 2011. A Vietnamese Architect who wishes to become a member of VAA must have at least five years of practice experience or three years of excellent/outstanding achievements in creation and contributing to the architectural field. The applicant must also have a good record in creation, training, scientific research and construction management. Before being accepted into membership, the application will have to be approved by a local sub-association.

The Vietnamese in other professional who have made contributions to the achievements of Vietnamese Architecture can be invited as “honorary members” by Central Executive Board.

3.11.3. Qualifying as an Architect

There are three basic qualification requirements for registration as a professional architect namely completion of a degree in planning or architecture at a recognised Vietnamese or foreign university or other competent body; acquisition of practical experience of not less than 5 years after graduation; and participation in planning and/or architectural design work of not less than 5 projects.

Provincial Departments for Construction are statutory bodies responsible for conducting professional assessment. The detailed process of professional assessment is implemented by Provincial Consulting Committees set up by the respective Provincial Departments for Construction. Applications will be assessed on a case-by case basis and candidates do not require sitting for an examination.

For those applying for renewal of licence, the applicants are required to submit an application form to a Provincial Department for Construction together with all supporting documents including the registered licence of professional architect (current or expired) and record of working experience since grant of previous license. The applicant must also have a record of good conduct by not having any record of professional negligence.

3.11.4. Setting-up an Architecture Practice

An architect may practice through state-owned corporation, private corporation, limited corporation, stock corporation, partnership, incorporation or co-operatives. Domestic firms are required to apply to Provincial Department for Planning and Investment for Business

Registration. The leader/executive manager of the firm is required to have professional practising certificate. The law does not impose any requirement for minimum capital.

Although local consulting firms are not required to apply for a Contractor Licence, they are required to have adequate qualification in accordance with the type and scale of the project and the type of services undertaken. Their qualification should be specified in their Business Registration.

Foreign Professional Architects may practise in Viet Nam, either as a 100% foreign owned capital or foreign joint-venture, which must be established as a limited company. A firm with of 100% foreign owned capital or joint-venture consulting firm is required to obtain Investment Licence, which is equivalent to Business Registration, under the Law for foreign investment in Viet Nam granted by the Ministry for Planning and Investment or relevant Provincial People's Committee. According to the Labour Law only those foreign professionals whose skills and expertise not available in Viet Nam can be employed to work in Viet Nam.

Foreign consulting firms which are nominated or selected through bidding process to provide professional services on a project basis in Viet Nam are required to apply to the Ministry of Construction or a relevant Provincial Department for a Contractor License. Basic requirements for the Contractor Licence are:

- a. Being nominated or selected contractor of a construction project;
- b. Having a contract to provide professional services for that project;
- c. Having adequate ability to provide those professional services to the project; and
- d. Having a joint-operation with a Vietnamese consulting firm or employing a Vietnamese consulting firm as a sub-contractor.

Foreigners wishing to work in Viet Nam must be at least 18 years old and of good health. A foreign worker with a valid work permit may also apply for a Temporary Residence Card for a period of up to three years. The application must be submitted to the Provincial Immigration Department, and may include supporting documents such as, a housing lease contract and an employer's certificate of incorporation.

04.

**ANALYSIS OF THE QUALIFYING
AND PRACTICE REQUIREMENTS**

4.1. Introduction

Chapter 3 shows that each AMS has different requirements and conditions to qualify as architects; different conditions for setting-up an architecture practice; different requirement for employments of foreign architect and different education systems. The Chapter will discuss in detail the differences and gaps in the qualifying system for the architecture profession in ASEAN. The Chapter will also explore whether there is any gender bias in the architecture qualification and practice requirements in ASEAN.

4.2. Education and professional qualification system

In relation to education in architecture, our field work and survey found that:

- a. All of the AMS, with the exception of Brunei offer tertiary education in architecture. Although Brunei does not offer any tertiary education at local educational institutions, it adopts RIBA qualifications as the benchmark.
- b. All AMS that offer tertiary education in architecture normally require a minimum period of study of not less than 5 years which is consistent with the requirement under the MRA on architecture.
- c. All AMS with the exception of Viet Nam require a specific study in architecture prior to being able to pursue professional architecture qualification.

The differences and similarities in the education and professional qualification system is shown in Table 1 below.

Brunei Darussalam	<p>Universities in Brunei Darussalam do not offer any course in architecture. Thus students in architecture in Brunei Darussalam will have to study architecture in other countries. Brunei Darussalam benchmarked its competencies against the Royal Institute of British Architects (RIBA) and will only accept qualifications equivalent to the ones issued by RIBA.</p> <p>The profession is governed by the Constitution of Brunei Darussalam, Architects, Professional Engineers and Quantity Surveyors Order 2011. Brunei Darussalam is in the process of promulgating a new rule to govern the Architect, Professional Engineers and Quantity Surveyors.</p>
Cambodia	<p>Architecture studies at degree and graduate levels are offered at Cambodian universities and accredited by the Board of Architects of Cambodia (BAC).</p>
Indonesia	<p>There are many universities offering architecture studies in Indonesia and the students must attend school at the accredited course and at the accredited university by the National University Accreditation Board (Badan Akreditasi Nasional Pendidikan Tinggi/ BAN-PT) in order to become a graduate junior architect.</p>
Lao PDR	<p>The National University of Laos conducts a program leading to the degree in architecture at the Faculty of Architecture. This is a 5 year program that meets the requirement imposed by the Public Works Department as the professional regulatory authority.</p>

Malaysia	In Malaysia, the BOAM only recognises full time degrees from selected accredited universities and imposes an elaborate professional examination prior to issuing professional qualification. The professional association, PAM conducts professional continuous development programs.
Myanmar	It is not known to what extent universities Myanmar meet the core competencies set by the Association of Myanmar Architects (AMA). AMA has an education committee that provides monitoring on education requirement and at the same time conduct professional development programs.
The Philippines	Universities in the Philippines are required to offer a 5 year degree in architecture in order to qualify their students for the licensure examinations. Some universities do offer post graduate program/masteral degree that exempt one year from the two (2) year diversified architectural experience requirement of the PRC.
Singapore	In Singapore, the Board of Architects only recognise full time degrees from selected accredited universities and impose an elaborate professional examination prior to issuing professional qualification. The professional association, PAM conducts professional continuous development programs.
Thailand	The Architect Council of Thailand (ACT) together with the Council of Dean of Architecture Schools in Thailand work together to design architecture courses in Thailand. The cooperation is to ensure that courses meet the core competencies set by the ACT.
Viet Nam	There are several universities offering architecture degree such as the Hanoi University of Architect, the Ho Chi Minh City University of Architect. These courses will have to meet the requirement imposed by the Ministry of Constructions.

Table 1: Educational Requirements

4.3. Gaps and shortfalls in the qualification system

This section examines gaps and shortfalls in the professional administration and qualification systems in the architecture profession in AMS. Discussions will focus on the gaps and shortfalls in the regulatory authorities, graduate requirement, entrance examinations and the minimum professional experience.

1. Authority

Most of the AMS have specialised professional regulatory authority governing architecture profession. Cambodia, Malaysia, The Philippines, Singapore and Thailand have specialised Boards or Council of Architects.

On the other hand, architecture profession in Brunei is governed by fused authority, the Board of Architect, Professional Engineers and Quantity Surveyors that also govern the

engineering and quantity surveying. Myanmar, Laos and Viet Nam do not have any special authority whereas in Indonesia, architecture comes under the purview of the LPJK that governs all professionals involved in construction related activities.

2. Graduate Requirement

All AMS require a minimum university education requirement and most require a 5 year formal higher education. However there are differences in how this is implemented at the national level. Brunei for example only requires an applicant to be a corporate member or have a recognised degree in architecture and the authority uses the Royal Institute of British Architect (RIBA) as the benchmark. Thus, it is assumed it must be a 5 year study.

However, Cambodia requires a suitable degree in architecture and Indonesia allows a 4 year degree and 1 year Masters. Lao PDR, Myanmar, the Philippines and Viet Nam impose a minimum of 5 year degree. Malaysia and Singapore require a minimum of 5 year degree which must be full time and taken at the main campus of the relevant recognised institutions.

3. Minimum Professional Experience

Generally AMS imposes a 2 year experience requirement. Brunei's Board requires a 2 years minimum experience with 1 year in Brunei. Indonesia requires 2 year experience and 3 completed projects before an applicant being able to sit for the junior architect (Arsitek Pratama or Arsitek Muda) examination. To qualify for the Intermediate Architect (Arsitek Madya) one requires a minimum of 5 year experience and 6 projects. And to become the senior architect (Arsitek Utama) the applicant must have at least 10 year experience with 10 projects.

Lao PDR, Myanmar and the Philippines require 2 year work experience. Malaysia also requires a 2 year experience of which 1 ½ years in an architect's office and 1 year is in Malaysia. Malaysia also accepts certain amount of experience in research and teaching. Singapore imposes a minimum of 24 months experience, out of which 12 month is gained in Singapore. In Thailand, applicants for associate architects with a minimum of a 5 year degree do not require any experience. However, there is a minimum experience requirement for those with a less than 5 year degrees, as discussed above. In Viet Nam, those seeking to be registered as a professional architect are required to have a minimum experience with a minimum of 5 completed projects.

4. Professional Entrance Assessment

At this stage our field work shows that, where available, different AMS has different entrance examination procedures. Malaysia, the Philippines, Singapore and Thailand provide for a structured and comprehensive professional entrance examination. The subjects of the examination may vary according to the national needs.

At the moment Indonesia implements a portfolio assessment for architectural graduates who want to become a practicing architects either arsitek utama, arsitek madya or arsitek muda in accordance with certain criteria. The applicants should prepare essays regarding their projects and where necessary they will also be for an interview by the assessors whenever it is considered necessary. In the near future an examination type of assessment will be applied in order to make a more objective assessment.

Lao PDR and Viet Nam does not have any professional examination curriculum at the moment. At this stage Myanmar also does not impose any professional examination but requires architects to attend a minimum hour of CPD programs.

Although Brunei has yet to impose any professional entrance examination the country will impose an examination requirement once the rules and regulations are in place. Cambodia's Board also imposes entrance examination but it is not clear on how the examination is to be conducted and the core subjects of the examination.

4.4. Equal Opportunities

The result of our survey and field works find that no ASEAN Member States' professional education and qualification system systematically discriminates against any gender or any race or ethnic group. The membership of the professional organisations is open to all races and genders and no AMS have any measures that discriminate any gender or race from entering the profession.

The composition is shown in the Table 2 below:

Brunei Darussalam	There are 44 registered architects, out of which 3 were female. 7 women out of 55 PUJA members
Cambodia	No data
Indonesia	10% women
Lao PDR	No data
Malaysia	1,844 professional architects & 1,732 graduate architects (as at 2013). No data on women in the practice.
Myanmar	10% women
The Philippines	18% women
Singapore	50% women
Thailand	30% are women
Viet Nam	No data

Table 2: Gender Composition in the Architecture Profession in ASEAN

4.5. Issues Affecting Liberalisation of Architecture Services

Based on the aforementioned discussion and analysis, ASEAN and AMS will need to address several issues in order to ensure success in the liberalisation of the architectural services.

a. Relationship between MRA, Commercial Presence and Movement of Natural Persons

In the context of professional service providers in ASEAN, MRA enables the qualifications of services suppliers recognised by the relevant authorities in their home country to be mutually recognised by other signatory AMS. This promotes the flow of professional services providers within ASEAN, in accordance with relevant domestic rules and regulations. In addition, simple, harmonised and standardised trade instruments including MRAs are expected to reduce transaction costs. However, based on the survey, especially the AMS Schedules of Commitments under AFAS, AMS need to address issues relating to commercial presence (Mode 3) such as equity ownership and board of director requirement and cross-border movement of the professional engineers under Mode 4.

In an ideal liberalisation scenario, recognised providers of architectural services should be able to move between AMS under Modes 3 and 4. The increase in commercial presence under Mode 3 and the movement of natural persons under Mode 4 in architectural services may result in an increase in intra-ASEAN investment in services, which will enhance ASEAN's attractiveness as an investment destination. An increase in intra-ASEAN investment in professional services may in turn lead to higher investment by professional service providers from outside ASEAN as a result of increased professionalism and confidence in the transparency and good governance attributes of the rules relating to professional service providers in ASEAN.

At the same time, an increased liberalisation under Mode 4 will allow greater mobility of architects to work across ASEAN. This will assist ASEAN to deploy talents within the region and will assist AMS who need the talents to recruit architects from neighbouring AMS. The result is intra-ASEAN co-operation which provides greater access to engineering expertise.

ASEAN Member States are generally well-disposed towards liberalisation of trade in services under Modes 1 (cross-border supply) and 2 (consumption abroad). However, AMS are more cautious with regard to commercial presence under Mode 3 and the temporary movement of natural persons under Mode 4. In commercial presence or Mode 3, many AMS require commercial entities of professional service providers to have a minimum of 51% shares owned by the national or permanent resident of the Member State.

At the same time, there is a need to have a minimum number of members of the board or executive committee members, who must be registered professionals in the AMS concerned. Many of the laws, rules and regulations in AMS do not provide clear guidance on the rights of architects to provide services under Mode 4, and this lack of clarity may play to the disadvantage of foreign professional service providers and deter use of agreed MRAs.

On the other hand, many of the regulators and members of the professional service providers met during the field work welcome working together with their counterparts from other ASEAN Member States. Such co-operation and collaboration lead to liberalisation in Mode 1 and Mode 4, but will have less liberalising effect on commercial presence (mode 3).

Collaborations through Mode 4 should be encouraged as the MRA on Architecture works as a provider of quality assurance that the professional counterparts will have mutually recognised qualification and quality in education and experience. For example, an ASEAN Architect would provide an assurance that a particular person has the qualification, quality and experience in providing the required service, most probably through collaboration, co-operation or joint ventures between the relevant service providers in the AMS.

b. Difference in MNP Commitments under the MNP Agreement

Movement of natural persons under Mode 4 could be facilitated under the MNP Agreement. For the time being, although a foreign engineering service provider may participate in the equity of a firm, this does not automatically entitle the equity holder to obtain the necessary immigration clearance to work in the host AMS.

However, at the time of writing, the MNP agreement only deals with business travellers and intra-corporate transferees, leaving those who seek employment having to go through the normal immigration and work permit process.

In addition, business travellers and intra-corporate transferees will have to understand different levels of commitment made by AMS under the MNP Agreement. For example, Brunei allows entry for intra-corporate transferees but is limited to a three year period that may be extended for up to two additional years for a total term not to exceed 5 years. There is no special commitment for the architecture profession.

In Cambodia, intra-corporate transferees are required to obtain temporary residency and work permit. Such permits are issued for 2 years and may be renewed annually up to a maximum of total 5 years. Lao PDR on the other hand imposes labour quota, where a firm may employ foreign architects but not more than 20% of the total staff. An establishment may request for a higher quota.

In Indonesia, intra-corporate transferee namely Executive, Manager and Specialist may be granted stays for up to 2 years which can be extended for a maximum of 2 times, with each extension being up to 2 years. Any foreign natural persons supplying services are subject to charges levied by the Government. Economic needs test applies to temporary stay of manager and specialist.

Malaysia allows intra-corporate transferee executives, specialists and experts a stay of not more than 10 years. Special provision applies to architectural services. Architectural service firms are allowed to engage 2 specialists/experts per country and registration with the Board of Architect Malaysia. The specialists/ experts are required to have temporary registration on annual basis subject to renewal. The specialists/ experts are required to sit for the qualifying examination which is in English language to determine the competence and ability to supply the services for the purposes of registration with the professional bodies.

Myanmar allows foreigners at the management level and technical experts in architectural services to stay up to one year and may be extendable there on subject to the approval of concerned agencies.

The Philippines normally allow 1 year renewable permit for intra-corporate transferees (executives, managers and specialists). Foreign architects are allowed to practice in the Philippines and take licensure examinations if the foreign country where the architect is a citizen admits Filipinos to practice same profession without restriction or allows to practice it after the examinations on equal terms with foreign citizens including unconditional recognition of degrees or diplomas.

Singapore generally allows intra-corporate transferees to stay to a two year period that may be extended for up to three additional years each time for a total term not exceeding eight years. Thailand allows intra-corporate transferees temporary stay which limited to a one year period and may be extended for a further three terms of not more than one year each. Both Singapore and Thailand do not provide any sectoral commitment.

For intra-corporate transferees, managers, executives and specialists, Viet Nam grants entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam. Viet Nam imposes conditions that at least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise. Viet Nam does not make any specific commitments in the fields of architecture.

c. Different Level of Development/ Readiness

One of the issues in the liberalisation of trade in services in ASEAN is the different level of development between different member states which may affect the potential uptake in the mutual recognition and the readiness of the professional service providers in undertaking cross border services.

It could be argued that the architectural service providers in the more advanced ASEAN member states will have a higher state of readiness and development to move into other AMS and thus will seek mutual recognition for their qualifications as compared to the professional service providers from the less advanced ASEAN member states. Based on the field work and the desktop survey, we found that the newer AMS such as Cambodia, Viet Nam and Lao PDR are in the midst of updating their domestic regulations in various professions including in architecture.

05.

**PRACTICAL
RECOMMENDATIONS
AND CONCLUSIONS**

5.1. Practical Recommendations

Based on the abovementioned discussion, we make the following recommendations:

- a. ASEAN and AMS will need to find the best model to further enhance the movement of professional service providers within ASEAN. This Handbook discussed four different models of mutual recognition and the best practices could be compared with the practices in the EU/TTMRA and NAFTA models. The EU Model, on which the TTMRA is modelled, may not be suitable for ASEAN due to the disparity and gap in the economic readiness and the competency levels of professionals across ASEAN. The TTMRA involves Australia and New Zealand, two countries sharing much the same heritage, culture, language and educational systems. The EU also involves legally binding provisions in a closely integrated market where the twin freedoms of establishment and of service provision are enshrined in a treaty that is subject to the binding decisions of a supranational court of justice.
- b. ASEAN Member States are arguably closer to the model developed by Parties to the NAFTA, which groups together countries that display greater contextual heterogeneity. The NAFTA-type MRA model is already reflected in the ASEAN MRAs which adopt a sectoral approach rather than the generic approach pursued in the EU. In emulating the NAFTA model, AMS will have to allow recognised professionals to obtain work visas so long as they can first land a service contract in another AMS or work via an established presence in another AMS and possess recognised qualifications. This means that the recognition of qualifications would lead to freedom of movement under the MNP Agreement if one can find a temporary work contract in another ASEAN Member State. Thus, visa and temporary work-related arrangements should be automatic and not a hindrance to the movement of natural persons under Mode 4.
- c. To encourage intra-ASEAN investment, the provision of the professional services under more subsectors could be linked to the liberalisation of investment under the ASEAN Comprehensive Investment Agreement (ACIA). ACIA liberalises investment in five sectors and the incidental services related to the five sectors namely manufacturing, agriculture, fishery, forestry, mining and quarrying. Thus, architectural professionals should be allowed to have higher degree of freedom in terms of ownership and other guarantees offered by ACIA under Mode 3 in order to enhance cross-border trade in services within ASEAN.
- d. Liberalisation efforts under AFAS, through the MRA and under the ACIA should be further encouraged. Member States should further liberalise Mode 3 participation by liberalising, either through ACIA, AFAS or through autonomous liberalisation, to enhance intra-ASEAN joint ventures, merger and acquisition and commercial collaboration. Most AMS encourage collaborations but this could be enhanced by creating ASEAN-wide firms consist of ASEAN professional service providers, owned by ASEAN professional service providers. This could be in the form of single profession or multi-practice firm.
- e. The foreign ownership of the professional firms in the ASEAN Member States should be re-classified in order to enhance Mode 3 investment and Mode 4 movement. There could be another category of ownership or equity categorised as “ASEAN citizens” where the firms could have a higher percentage of ASEAN citizen equity in the firms as compared to non-ASEAN ownership.
- f. ASEAN and AMS may want to work on the harmonisation in some areas where possible such as the curriculum, work experience, basic training requirement, requirement for commercial presence for professional service providers and the harmonisation of the immigration rules in issuing work permits for professional service providers.
- g. The more developed AMS may want to deliver technical assistance to other AMS that require such assistance in the field of domestic regulations and providing proper curriculum for some of the professional services.

- h. The various professional services regulators and the professional associations within ASEAN and AMS may want to consider enhanced collaboration among their members. A closer collaboration may lead to a higher degree of liberalisation in the future.

Based on the above discussion, we could conclude that AMS are working towards a higher level of integration and liberalisation of the trade in professional services in the 4 professions. This is evidenced by the fact that AMS are increasing the level of transparency in the domestic regulations affecting architectural professions. Member states like Brunei Darussalam, Cambodia, Lao PDR, Myanmar and Viet Nam are in the process of preparing and adopting new domestic regulations in the architectural field.

A higher level of integration and liberalisation may also be achieved through closer collaborations between the AMS, especially in encouraging collaborations among the relevant professionals through Mode 1 and Mode 4. At the same time, AMS should also be encouraged to increase the participation of intra-ASEAN market access and investment in the professional services through Mode 3. An improvement in the Mode 3 and Mode 4 market access will enhance the availability of technology, expertise and capital among ASEAN professionals in order to allow them to compete with other professionals from other parts of the world such as those from Australia, China, New Zealand, the United States and the European Union.

Thus, the drive and the passion showed by the various professions to achieve the higher level of integration and liberalisation in ASEAN will assist ASEAN and the AMS to achieve the ASEAN Economic Community status in 2015, which could be the beginning of a more meaningful ASEAN-wide economic integration.

Abbreviations

Abbreviation	Full Name
AA	ASEAN Architect
AAC	The ASEAN Architect Council
AAR	The ASEAN Architect Register
ACPE	ASEAN Chartered Professional Engineer
AEC	ASEAN Economic Community
AFAS	ASEAN Framework Agreement on Trade in Services
AICPA	American Institute of Certified Public Accountants
AMS	ASEAN Member State
ASEAN	The Association of Southeast Asian Nations
AQF	Australian Qualification Frameworks
CAA	The Commonwealth Association of Architects
CCAC	The Committee of Canadian Architectural Councils
CCS	Coordinating Committee on Services of ASEAN
EC	The European Community
EU	The European Union
FIG	International Federation of Surveyors
GATS	General Agreement on Trade in Services of the WTO
IFAC	International Federation of Accountants
ISAR	International Standards of Accounting and Reporting
MRA	Mutual Recognition Agreements
NASBA	National Association of State Boards of Accountancy, USA
NCRAB	The National Council of Architectural Registration Boards, USA
PE	Professional Engineers
PRA	Professional Regulatory Authority
TTMRA	Trans Tasmanian Mutual Recognition Agreement
UIA	Union of International Architects
UK	United Kingdom of Great Britain and Northern Ireland
UNCTAD	United Nations Conference on Trade and Development
USA	The United States of America
WTI	World Trade Institute, University of Bern
WTO	World Trade Organisation



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