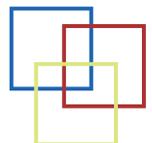




Business responsibility on preventing and addressing forced labour in Malaysia

A must-read guide for Malaysian employers



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Contents

| | |
|--|----|
| Introduction | 1 |
| Chapter 1 What is forced labour | 3 |
| Chapter 2 Why preventing forced labour makes business sense | 15 |
| Chapter 3 Relevant laws and policies on forced labour and related offenses | 27 |
| Chapter 4 Addressing the risks of forced labour in company operations | 32 |
| Chapter 5 Employers' actions against forced labour | 59 |
| | |
| Bibliography | 73 |
| | |
| Appendices | |
| I. International framework on forced labour and trafficking in persons | 77 |
| II. List of legislation related to forced labour, recruitment and employment of migrant workers in Malaysia | 80 |
| III. Tools and resources for businesses on forced labour | 81 |
| IV. Sample template of employment contract for migrant workers | 83 |
| V. Checklist for assessing compliance | 88 |

Introduction

Is this guide for you?

This guide is for you if you are any of the following:

- **You are an existing employer in Malaysia of one or more local or migrant worker.** You will learn **the definitions, concepts and national laws and policies related to forced labour** so you could fulfil your legal obligations and avoid the headache of any legal sanctions. **Tips and potential good practices on preventing forced labour practices** are provided. There is a chapter specific to **employment of migrant workers**.
- **You have a business - regardless of your current size - and you want to optimize your growth potential and become sustainable.** You will learn from **other companies' experiences how preventing forced labour makes business sense, protects and attracts investment, eases cross-border trading and promotes fair competition.**
- **If you are doing business with global brands,** you will benefit from understanding the **international standards** and **how to develop company policies** aligned with your buyer's sourcing policies.

| About this guide

This guide for employers, jointly developed by the Malaysian Employers Federation (MEF) and the International Labour Organization (ILO) through the project From Protocol to Practice: A Bridge to Global Action on Forced Labour, aims at providing practical guidance to employers on how to identify risks of forced labour in company recruitment, employment and sourcing practices, and how to effectively prevent and eliminate these risks. This reference guide is intended for company managers and staff responsible for human resources management, social and legal compliance issues at the enterprise level.

This guide is the product of desk research and field work in Malaysia including stakeholders consultation and the adaptation of available resources on forced labour, including Q&As on business and forced labour from the ILO Helpdesk for Business on International Labour Standards.

It was prepared by Miaw Tiang Tang, consultant and former ILO Senior Specialist on Employers' Activities, who has extensive experience working with employers in South-East Asia and the Pacific. Technical inputs have been provided by ILO Bridge project officials Oluremi Doherty, Jodelen Mitra, Hairudin Masnin and Aurelie Hauchere Vuong; the ILO Senior Specialist on Fundamental Principles and Rights at Work Bharati Pflug; and ACT/EMP Wade Bromley, Dong Eung Lee and Laura Greene.

This material was made possible through the collaboration and support of the Malaysian Employers Federation, in particular Datuk Shamsuddin Bardan, MV Gopal, Dr Michael Chiam, Goh Seng Wing, and other MEF Industrial Relations and MEF Academy practitioners.

NOTE ON TERMINOLOGIES USED IN THE GUIDE

Migrant worker: Refers to a person who moves from their home country to another country to pursue work and not to stay permanently. In Malaysia, migrant workers are referred to as *foreign workers*.

Undocumented migrant worker: Refers to a migrant worker who lacks the legal documentation required to work in the country in which he or she is not a national. In Malaysia, undocumented migrant workers are referred to as *illegal foreign workers*.

1

What is forced labour

Forced labour refers to any work or employment wherein the worker is compelled to work against her/his will and that she/he is unable to leave such an abusive situation because of direct or indirect threat or penalty by her/his recruiter or employer.

Coercion tactics include violence or threats of violence, or more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to authorities. Forced labour, modern slavery, debt bondage and human trafficking are closely related terms though not identical in a legal sense.

Forced labour constitutes a severe violation of human rights and restriction of human freedom.¹ The ILO Convention on Forced Labour, 1930 (No. 29) defined forced labour as:

“

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself (or herself) voluntarily.

”

¹ ILO. *A global alliance against forced labour*, Director General Report, 93rd Session, International Labour Conference (Geneva, 2005).

From the definition, forced labour is characterised by the presence of the following elements:

| | |
|----------------------------|--|
| All work or service | Includes all types of work, services and employment regardless of the industry, sector or occupation, and encompasses legal and formal employment as well as illegal and informal employment. |
| Any person | Refers to adults and children, regardless of the nationality including <i>undocumented</i> migrant workers. |
| Menace of penalty | Refers to threat of penal sanction or loss of rights or privileges, which include various forms of coercion, deception, violence, intimidation, retention of identity documents, confinement or non-payment of wages, as well as threat to denounce to authorities. |
| Involuntariness | Refers to the free and informed consent of a worker to enter or continue in an employment relationship at any time. Deception in recruitment or coercion in employment undermines and excludes the voluntary offer or consent of the victim. In the case of children, a child cannot be deemed to give consent. If child's parents are in forced labour and the child is working for the same employer, determination that the child is also in forced labour would be possible. |

Although there is no definition of forced labour in Malaysian legislation, forced labour, being a criminal offense is often prosecuted under the Anti-Trafficking in Persons and Smuggling of Migrants Act (ATIPSOM). Forced labour is a form of exploitation under this Act. Coercion is central for pursuing a trafficking case.

(To read more about ATIPSOM and other important legislation see Chapter 3 - Relevant laws and policies on forced labour and relevant offences. The law is currently being reviewed on how to better address forced labour issues.)



Q&A

If a worker has verbally or in writing provided her or his consent to work, can a forced labour situation still arise?

The formal consent of a worker does not always guarantee that the worker works out of free will. If the consent has been given under the threat of a penalty or violence, or induced by deceit, false promises or retention of their identity document, such practices may be considered forced labour as defined by the ILO Forced Labour Convention.



Not all labour violations are forced labour

Forced labour cannot be equated with payment below the minimum wage or poor working conditions which may constitute other labour law violations. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of alternative employment.

Forced labour has a certain degree of compulsion or threat of penalty and is a severe violation of human rights. Nevertheless, the best way to prevent forced labour is to avoid any labour violation because unaddressed labour violations often aggravate to forced labour. Enforcers would also look at the presence of other forced labour indicators when investigating any labour violation.



BOX 1: Examples of forced labour (Worker A) and labour law violation (Worker B)

- Worker A works 12 hours a day in a factory and is often forced to work on his rest day without overtime pay. His pay will be deducted if he refuses to work overtime. He is housed in the workers' quarter and his movement is monitored by his employer. His employer holds his passport and he still needs the permission of the employer to be able to access it.
- Worker B works in a construction site without proper safety equipment and earns less than the minimum wage. He wants to leave the job but feels obliged to keep working as he does not have other work opportunities and would not be able to sustain himself without a job.

Worker A is a victim of forced labour, as there are elements of coercion: retention of his passport, restriction of his movement and forced overtime. His employer has also violated the labour law: excessive working hours and non-payment for overtime.

Worker B is not a victim of forced labour, even though there are violations of labour law in particular below minimum wage pay and occupational safety and health violations. There is no element of coercion or deception, he chooses to remain at the workplace voluntarily and he is free to leave the job anytime without threat or penalty.

Forced labour is a global issue

Forced labour, modern slavery and human trafficking exist in all regions of the world and in many economic sectors. While it is a global problem, the Asia and Pacific region predominates in the numbers of victims of forced labour.



24.9 million people globally

According to global estimates of modern slavery, 24.9 million people were victims of forced labour in 2016 and out of these, 16 million victims of forced labour were in the private economy.²



Highest in Asia and the Pacific

The prevalence is highest in Asia and the Pacific, where 4 out of every 1,000 people in the Asia-Pacific region are trapped in jobs into which they were coerced or deceived and which they cannot leave.

The Malaysian situation

In Malaysia, forced labour allegations are generally linked to recruitment and employment of migrant workers or workers from rural areas. As of September 2018, there were about 1.89 million registered migrant workers³, constituting about 12 per cent of the total employment in the country.⁴

According to the 2016 ILO Review of Labour Migration Policy in Malaysia, the country plays host to the largest number of migrants in South-East Asia with a migrant workforce of 3-4 million people that contributes to about 20 - 30 per cent of the country's workforce. As much as half of this number are now thought to be undocumented and comprise migrant workers and domestic workers, stateless persons, refugees and asylum seekers and international students.

² International Labour Organization (ILO); International Organization for Migration (IOM); Walk Free Foundation. *Global estimate of modern slavery: Forced labour and forced marriage* (Geneva, 2017).

³ Ministry of Home Affairs, 2018 as cited by Ng, MS. 2018. "No 3rd parties in recruitment". The Malaysia Reserve Online 30 Oct 2018.

⁴ The labour force statistics released by the Department of Statistics Malaysia on 9 Nov. 2018 indicated the employment figure 14.93 million as of September 2018.

Despite the existence of national laws prohibiting forced labour, the issue remains misunderstood, underestimated or ignored at large, especially among the informal, small and medium-sized enterprises (SMEs). There have been allegations of exploitations of migrant workers in Malaysia by the employers.

The Verite's 2014 report on migrant workers in the electronics sector suggested that as many as one in three migrant workers in Malaysia's electronics sector were working under conditions of forced labour which include: poor living conditions, unlawful passport retention, deceptive recruitment, huge debts, no freedom of movement and penalties for leaving a job before the contract ends.

The common allegations related to forced labour in Malaysia

- Deceptive recruitment practices.
- High recruitment fees resulting in debt bondage.
- Withholding of passport.
- Restriction of movement.
- No freedom to change employer or terminate contract.
- Withholding, delay or unlawful deduction of wages.
- Long working hours exceeding the maximum hours in the Employment Act 1955.
- Threat of reporting to authorities.
- Poor living conditions.

The policies and practices on recruitment and employment of migrant workers in Malaysia including heavy reliance on third-party agents, high recruitment fees and difficulty for migrant workers to change or leave their employers, create conditions for potential forced labour practices.

Factors that contribute to forced labour practices in Malaysia

- Lack of awareness about forced labour of workers and employers.
- Lack of knowledge of laws and policies.
- Fear of workers' abscondment lead to fear of losing money paid through high recruitment costs, and sometimes lead to passport retention.
- Notions of being the industrial norm.
- Deliberate act by errant employers.
- Misleading or inaccurate information provided to workers.
- Misguided by recruitment agents.
- Isolated location of employment.
- Lack of enforcement (especially estates).
- Limited number of prosecutions and convictions of forced labour offences.
- Limited access to grievance mechanisms.

“

While agreeing that forced labour practices should be eliminated, employers in Malaysia expressed their strong concern about rules, regulations and policies in recruitment and employment of migrant workers.

”

Issues and challenges of employers in Malaysia

Employers indicated that there is a shortage of middle- and low-skilled workers in Malaysia and they need enabling policies and an ecosystem to facilitate the recruitment of migrant workers to fulfil industry requirements. However, the tedious and lengthy approval process of securing government approval for recruitment of migrant workers is burdensome for employers. This is because of multiple ministries and agencies' involvement, frequent changes in Government policies, use of third party agents, high recruitment costs and high upfront levies among others have made it costly and complicated for employers, especially the informal and small businesses, to legally employ migrant workers.

Employers often incur losses due to workers' abscondment which not only results in the loss of recruitment costs and security bonds and fines but also affects business operations. Employers in Malaysia also expressed concern that the legally employed migrant workers are often wrongly detained by authorities.

In addition to the issues arising from recruitment and employment of migrant workers, various reports and media articles pointing to the forced labour situation in Malaysia has led to hostile perceptions and depicted businesses in a bad light. According to some employers, international buyers and leading brands are imposing various standards on Malaysian manufacturers and suppliers. Employers indicated that a company could be subjected to different standards and audits imposed by different buyers. They proposed a certified industry standard such as the Malaysian Sustainable Palm Oil (MSPO) certification scheme of the Malaysian Palm Oil Certification Council.



The employers also indicated that big companies may be able to cope and comply with buyers' requirements but informal and small enterprises would need support and guidance to enable compliance.

Chapter 4 Addressing the risks of forced labour in company operations can be used as a practical checklist for reviewing practices both in one's own company and its supplier companies. Government and industry associations, including the MEF could provide guidance and support including training and sharing of good practices to employers. The issue of high recruitment costs, complicated process in recruiting and employing migrant workers, including the issue of migrant workers running away was taken up by the Malaysian Employers Federation (MEF) in 2019 as part of the industry proposal for a holistic review of migrant workers management systems in Malaysia.

Why are external parties measuring our business practices based on international standards?

An international legal framework on social standards ensures a level playing field in the global economy. It helps governments and employers to avoid the temptation of lowering labour standards in the belief that this could give them a greater comparative advantage in international trade. In the long run such practices do not benefit anyone. Lowering labour standards can encourage the spread of low-wage, low-skill, and high-turnover industries and prevent a country from developing more stable high-skilled employment, while at the same time making it more difficult for trading partners to develop their economies upwards. Because international labour standards are minimum standards adopted by governments and the social partners, it is in everyone's interest to see these rules applied across the board, so that those who do not put them into practice do not undermine the efforts of those who do.⁵

⁵ *The benefits of international labour standards*, ILO, 2019, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm> [accessed 15 August 2019].

Indicators of forced labour⁶

Forced labour is when there are indicators of BOTH involuntariness and menace/threat of penalty. The indicators below represent the most common signs or “clues” that point to the possible existence of forced labour practices, but does not automatically say when a situation is forced labour or not, except in special circumstances.

As a business person, ensuring that your business does not practice any of this is the best way to prevent forced labour in your enterprise.



Abuse of vulnerability

Do not take advantage of a worker’s vulnerable position to coerce the worker to perform work she/he would otherwise not agree to. These vulnerabilities include:

- Worker not familiar with the neighbourhood.
- Worker does not speak the Malaysian language.
- Worker does not have a written contract in the language she/he understands.
- Worker is frequently transferred from one work place to another.
- Worker sleeps at the workplace and/or lives and works in the same place.



Deception

Do not make false promises about the nature and terms of employment to the worker. If you are recruiting through a third-party make sure the agency has provided complete truthful information to the worker before she/he signed the contract. Remember as well that the terms of the employment must comply with the national laws otherwise it will be nullified and the national law will still have to be followed. Also, if you are offering lower than the national minimum standard, this would be a violation of labour laws. The common deception includes:

- Deception in promised wages or working/living conditions.
- Worker was recruited for one job and has been employed in another job.
- Worker’s earnings are held by employer, and he or she has no direct access without employer’ approval.

⁶ ILO, *Indicators of forced labour*, Special Action Programme to Combat Forced Labour (Geneva, 2012).



Restriction of movement

Companies who restrict movement of workers raise suspicions of legal violations. Therefore **a good company who complies with national laws and employ good practices for human resource management have no reason of restricting their workers' movement.** Do not control workers' movement inside and outside the workplace, allow them to leave the premises freely.



Isolation

Ensure that your workers are able to access public locations and services and are not kept isolated by location, or by keeping them behind closed doors or by confiscating their mobile phones or other means of communication, preventing them from having contact with their families or seeking help.



Physical and sexual violence

Any kind of physical and sexual violence is not acceptable under any circumstances, it is a strong indicator of forced labour.



Intimidation and threats

Do not intimidate or threaten your workers when they complain about their conditions or wish to quit their jobs. Good practice would be to listen to the complaints and determine whether it is valid, or negotiate with the worker without resorting to threats and intimidation. Some threats include being reported to authorities for their undocumented status, as well as deportation. The courts evaluate the credibility and impact of the threats from the worker's perspective, taking into account individual beliefs, age, cultural background, social and economic status. For instance, an employer may threaten the worker but is actually bluffing, but if the worker thinks the threat is true then it may be a form of coercion leading to forced labour.



Retention of identity documents

Some Malaysian employers have shared that they keep their workers' passports for safekeeping and administrative purposes (ease of work permit renewal, etc.). According to the Passport Act of Malaysia, you are not allowed to keep your workers' passport. If the workers give their passports to you, they should decide freely, and not as dictated by anybody else, considering this option against keeping their own passport. Retention by the employer of identity documents or other valuable personal possessions is an element of forced labour if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss.



Withholding wages

Irregular or delayed payment of wages does not automatically imply a forced labour situation, but when wages are systematically and deliberately withheld as a means to compel the worker to remain, and deny him or her of the opportunity to change employer, this points to forced labour. Workers may be obliged to remain with an abusive employer while waiting for the wages that are owed to them.



Debt bondage

In Malaysia, migrant workers often work to pay off their incurred debt to come to Malaysia first, which could lead to wage advances or loans from the employer. To avoid being accused of debt bondage, if you have provided wage advances/loans to your worker, do not artificially inflate the amount of the debt, such as by adding exorbitant interest, deducting little or nothing from the debt despite the workers performed work, thereby increasing the amount of time that you are able to keep the worker in your employment. Provide a salary slip or receipts to workers showing the payments from work performed, details of deductions made.



Abusive working and living conditions

Bad working and living conditions alone do not prove the existence of forced labour. However, when workers continue to endure abusive working and living conditions which they would likely never freely accept, such as living in sub-standard quarters, deprived of essential necessities (e.g. water, sleep or medical care) or shows signs of malnutrition, or are paid below the national minimum wage, this is an alert that there may be other forms of coercion keeping the worker from leaving these abusive conditions.



Excessive overtime

As a rule of thumb, if workers have to work more overtime than is allowed under national law (see **Chapter 3** on national legislation for limits on overtime), and under some form of threat (e.g. of dismissal) or in order to earn at least the minimum wage, this amounts to forced labour. At the same time respect the breaks and days off that the law allows the workers to have. Under special circumstances, if you would need them to work on these occasions outside their regular working hours, do not put pressure on them to agree by making threats, such as that they won't be able to do overtime next time.



2

Why preventing forced labour makes business sense

Forced labour poses significant risks for employers and business owners especially those with complex supply chains and outsourcing operations.

It is thus important that businesses respect their legal obligations to eliminate forced labour in their operations as called for in the national laws and regulations as well as in the international standards.

Avoid lawsuits and risk of criminal prosecution

All employers and businesses in Malaysia have the legal obligations to comply with Malaysian laws and policies in running their operations. Forced labour is a serious criminal offence in Malaysia. Failing to eradicate forced labour practices can lead to imprisonment and fines. Article 6 of the Malaysian Federal Constitution prohibits slavery and all forms of forced labour. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) (Act 670 amended 2016) prohibits all forms of human trafficking and smuggling of people activities and prescribes punishment of up to 20 years imprisonment. Forced labour is considered a form of exploitation under trafficking in persons.

Section 374 of the Penal Code also provides that “whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.” Buying or disposing of any person as a slave (Section 370), habitual dealing in slaves (Section 371) and unlawful compulsory labour in Section 374 all refer to “any person” and not “citizen”.⁷

⁷ Refer to Chapter 3: Part C: Malaysian legal framework on forced labour and trafficking in persons for further details on Malaysia laws and regulations related to forced labour offences.

BOX 2: Migrant workers and forced labour

An owner of a vegetable-packing factory in Ipoh was being investigated and could be charged under Section 12 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM 2007 amended 2016) Act 670 for forced labour offences.

The employer withheld the migrant workers' salary for three months alleging that the salaries would only be paid if the workers decide to leave the company or when they return to their home country. The workers claimed that they were forced to work from 8am to midnight daily without an off day and were paid a daily wage of RM32, and that their salary would be deducted if they want to take a day off.

The Star Online 28 Aug 2018

Build reputation and brand image

Due to increased lobbying and media exposures consumers, buyers and the civil society are becoming more concerned about human rights abuses including forced labour. Company image and reputation can be adversely affected by allegations or findings of forced labour in its operation, and the reputational cost is high, reflected through a decline in sales and share prices, or even loss of business. According to the Human Rights Outlook 2016, the illegal and often abusive treatment of migrant workers into forced labour is one of the most pressing reputational risks for global corporations. It also predicted that a lack of information on labour practices deep within the supply chain, and inadequate oversight of suppliers are among the biggest threats to the brand reputation of global companies over the next year.⁸

Furthermore, reputational damage due to forced labour practices by a player in an industry can tarnish the reputation of an entire industry in a country. All suppliers have a stake even if they do not have forced labour practices in their own operations or supply chain.⁹

⁸ V. Maplecroft. 2016. *Human Rights Outlook 2016*. Available at: <https://www.maplecroft.com/portfolio/.../2016/.../human-rights-outlook-2016> [15 Aug. 2019].

⁹ ILO. *The cost of coercion*, International Labour Conference, 97th Session, Geneva, 2009.

BOX 3: Violation of certification standards

A leading Malaysian producer and trader of palm oil had its certification suspended by a certification body for violation of its palm oil sourcing standard in one of its subsidiaries' plantation estates.

Following the suspension of its sustainability certificate, some international consumer companies moved to cease trading with the company.

Even though the company did not disclose the cost of the suspension, its annual report indicated that a decline in volume in one of its businesses during that financial year was attributable to the suspension.

The company has since taken immediate actions and pledged to investigate the supply chain issues including on labour. The company announced three major labor policies, i.e. (i) committing to no longer charge recruitment fees to its workers, (ii) respect Freedom of Association and (iii) strive towards paying a living wage afterwards.

There are also benefits to having a good reputation. According to the Reputation Institute's 2009 Global Reputation Pulse, firms with strong positive reputations developed from well-articulated reputing strategies are better poised to improve including:

- Attract better talent;
- Be perceived as providing more value, which often allows them to charge a premium;
- Have customers who are more loyal; and
- Have higher market value as it is believed that such companies will deliver sustained earnings and future growth.¹⁰

Thus, stepping up action to meet global expectations on the elimination of forced labour is an essential part of company strategies in building brand image and minimizing reputational risks.

¹⁰ IFC and SAI. *Measure and improve your labour standards performance: Performance standard 2 handbook for labour and working conditions* (New York, 2010).

Managing risk in supply chain

Increased globalization has opened up economies, and supply chains are lengthening and growing across countries. Companies, especially the multinationals, have raised forced labour and other human rights abuses as significant issues within global supply chains, increasingly imposing demands and standards on their suppliers. In 2016, the Consumer Goods Forum (CGF) – a global industry network of CEOs and senior management of 400 major global brands declared its commitment to eradicating forced labour from its global supply chains, and recently at the Global Forum on Responsible Business and Recruitment in June 2018, the CGF issued the call to action to end forced and unethical recruitment practices.¹¹ This further demonstrates the commitment of the leading global businesses to strive to eradicate forced labour within their own operations and from the global supply chains. In addition, mandatory human rights due diligence on supply chains could soon become the norm for businesses operating globally.¹² The Human Rights Outlook 2017 identified mandatory reporting, disclosure and due diligence as among the top ten human rights issues for businesses in 2017.¹³

The US, UK and Australia have passed legislation which requires companies to disclose how they are addressing forced labour in supply chains. Thus, more companies will be obliged to publicly disclose how they and their supply chain respect human rights, and will only purchase from businesses that respect and can provide proof of specific criteria, including the non-use of forced labour.

Companies in Malaysia, especially those within the global supply chain are required to ensure that they are free from forced labour or any human rights violations. It is common for companies or suppliers to use sub-contractors to perform specific production functions or to provide additional capacity during peak periods.

However, monitoring labour practices of the suppliers and contractors, especially beyond second and third tier is a difficult challenge. It is thus important for companies to select suppliers or contractors who are also committed to human rights and prohibition of forced labour.

¹¹ Consumer Goods Forum (CGF): 2018. “*Call to action: Business leaders join forces to call for the end to forced labour and unethical recruitment*” (Singapore, 2018).

¹² W. Sanne, 2017, “*5 human right Issues for business in 2017*”, Global Trade Review.

¹³ V. Maplecroft, 2017. *Human Rights Outlook 2017*. Available at: <https://www.maplecroft.com/portfolio/.../2017/.../human-rights-outlook-2017> [15 Aug. 2019].

Meet buyers' expectations

Over the past decades, violations of human rights and labour standards have increased international attention. Global buyers, investors and consumers are increasingly concerned and aware of human rights abuses, and a workplace

BOX 4: Company's response to forced labour allegations

A report claimed to have found evidence that migrant workers in Malaysian factories making products for leading international electronic brands were being forced to work up to 14 hours a day without sufficient rest, had their passport confiscated, paid recruitment fees of up to £1,000, were deceived about the pay they would receive and were told to face large fines if they wanted to return home.

The international buyers immediately conducted investigations and indicated that they would take immediate action against suppliers found in violation of the regulations, including corrective action and suspension or termination of business.

One of the international buyers later terminated one of its labour supply companies in violation of the hiring process. The same company has since introduced guidelines in accordance with certification standards to protect human rights including forced labour or human trafficking of migrant workers among any of its suppliers. Under the guidelines, both the company and its suppliers are required to comply with all local labour laws, its Code of Conduct, and its Supplier Code of Conduct, and to eradicate activities that interfere with worker's rights.

that is free from forced labour has become a fundamental requirement. The revolution in technologies has facilitated the access and revelation of working conditions to buyers and consumers in value chains.

Global buyers and big brands are increasingly devising codes of conduct and sourcing policies on how their suppliers should treat their employees to ensure their products, including the supply chains, are free from forced labour and human rights abuses. See Appendix 3 for a list of selected companies' code of conduct and sourcing policies.



Companies and suppliers thus need to ensure there are no forced labour practices in their operations including that of their supply chains, as finding forced labour could lead to potential suspension or termination of supplier contracts with global buyers that value their reputation as responsible companies. Conversely, compliance with core labour standards, which include prohibition of forced labour, is an attractive attribute to global buyers and may lead to awarding of contracts and licenses by leading global brands.

Avoid risk of trade barriers

All World Trade Organization (WTO) member governments are committed to internationally recognized core standards — freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination). There have been increasing trade agreements and policies incorporating labour and social provisions, including prohibition of forced labour with which the countries need to comply to continue trade relations and enjoy certain trade advantages conferred. It is reported that over 80 per cent of trade agreements that came into force since 2013 contain labour provisions.¹⁴

While labour provisions found in some trade agreements are of a promotional nature and cooperation, there is increasing pressure on global trade to incorporate labour issues as conditional nature. In addition to the trade

¹⁴ILO: *Report on assessment of labour provisions in trade and investment arrangements* (Geneva, 2016).

agreements there are also other pressure points with potential impacts on Malaysian international trade. For example, Malaysia was downgraded to Tier 3 in the US Trafficking in Persons (TIP) Report 2014.¹⁵ Electronics and palm oil sectors in Malaysia have been cited as products that use forced labour in the USDOL list of goods, in addition to garments.¹⁶ These could have trade implications for Malaysian exports as those reports are taken seriously by trading partners.

BOX 5: Apple supplier code of conduct¹⁷

Prevention of involuntary labour and human trafficking

Supplier shall ensure that all work is voluntary. Supplier shall not withhold workers' original government-issued identification and travel documents. Supplier shall ensure that workers' contracts clearly convey the conditions of employment in a language understood by the workers. Supplier shall not impose unreasonable restrictions on movement within the workplace or upon entering or exiting company-provided facilities. Workers shall not be required to pay employers' or their agents' recruitment fees or other similar fees to obtain their employment. If such fees are found to have been paid by workers, such fees shall be repaid to the worker.

All forms of forced labour are prohibited in Apple's Supplier Code of Conduct. In 2008, Apple made payment of fees by supplier employees for receiving a job as a core violation of its Supplier Code of Conduct and limited permissible fees to one month's wages. In 2015, Apple went further on mandating that zero fees can be charged to supplier employees for recruitment opportunities, even if those fees fall within the legal limits of the supplier's operating country. A Notice of Probation will be sent by Apple to the violating suppliers with terms of reimbursement: to repay its employees within 30 days, or face losing Apple's business, and the reimbursement will be reviewed and approved by Apple.

¹⁵ Malaysia has since been upgraded to the Tier 2 Watch-list in the Trafficking in Persons (TIP) report 2015 and 2016, and further upgraded to the Tier 2 in TIP 2017 but dropped to Tier 2 Watch-list in TIP 2018.

¹⁶ The List of Goods Produced by Child Labour or Forced Labour is an annual publication issued by the U.S. Department of Labour, Bureau of International Labour Affairs. Garments, oil palm and electronics in Malaysia have been cited by the ILAB as sectors that involve forced labour in its production.

¹⁷ Apple supplier code of conduct, version: 4.5. January 2019.



Attract socially responsible investment

As in the case of trade agreements, there has been a growing reference to labour standards in international investment arrangements (IIAs). Respect of fundamental labour rights, including elimination of forced labour, can help companies attract socially responsible investment, access to international funding resources and build long-term business relationships with responsible buyers. Many international investors, including BlackRock, Inc., the world's largest investment management company, has announced that it will look at social aspects including labour standards in the supply chain in evaluating companies for investment purposes. The United Nations' Principles for responsible Investment (UNPRI)¹⁸ and Environmental, Social and Governance (ESG)¹⁹ criteria are examples of the initiatives used in investment analysis and decision making processes. Investors are increasingly concerned about labour standards of the entities they invest in, including their supply chains, allegations of forced labour and human trafficking thus can significantly threaten investor relations and jeopardize access to public funds. BlackRock presented findings demonstrating that corporations that consistently promoted workers' well-being and were concerned about their supply chain labour standards performed better in the market than those that did not.²¹

¹⁸ The UNPRI was initiated by an international network of investors who worked together to develop the six principles for responsible investment. <http://www.unpri.org/about-pri/the-six-principles/> [accessed 15 August 2019].

¹⁹ Environmental, Social and Governance (ESG) criteria is a set of standards for a company's operations that socially conscious investors use to screen potential investments.

<https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp> [accessed 15 August 2019].

BOX 6: Forced labour in the Malaysian electronic industry²⁰

The monitoring group Verité conducted a two-year investigation commissioned by the United States Department of Labor and found that one in three migrant workers or 32 per cent of the Malaysia electronic industry's nearly 200,000 migrant workers were employed in forced labour situations. A total of 501 migrant workers from nearly 200 Malaysian factories were interviewed. Among the finding of the 2014 report are as follows:

- 92 per cent of the migrant workers had paid recruitment fees that exceeded legal or industry standards, defined as more than one month's wages;
- 94 per cent of the migrants did not have their passports when Verité's investigators interviewed them, and 71 percent said it would be impossible or difficult to get their passports back when needed;
- 92 per cent reported feeling compelled to work overtime hours to pay off their debt;
- 43 per cent said there was no place where they could safely store their belongings;
- 62 per cent of migrant workers said they were unable to move around freely without their passports;
- 57 per cent said they could not leave their job before their contract was finished because they would be charged an illegally high fine, lose their passport or be denounced to the authorities; and
- 27 per cent of the migrant workers said they could not come and go freely from their housing.

The findings of the report has caught enormous attention especially among international buyers, customers or investors. In the same year, the US Trafficking in Person Report has downgraded Malaysia to Tier 3, the lowest tier of its ranking.

An ILO study found that 12 out of the 31 IIAs concluded in 2014 refer to the protection of labour rights, including ILO instruments.²² Empirical study also

²⁰ H. T. Warren, G. T. Lewis, J. F. Sullivan, *Eliminating forced labour from your company's supply chains: Lessons learnt from 2018 and the trends developing in 2019*, (New York, K & L Gates, 2019).

²¹ ILO: *Report on assessment of labour provisions in trade and investment arrangements* (Geneva, 2016).

²² Verite, *Forced labour in the production of electronics goods in Malaysia: A Comprehensive study of scope and characteristics*, (Bangkok, 2014).

suggests that the extent to which forced labour is used in a country and the flow of FDI are negatively associated.²³

Level the playing field and prevent unfair competition

Forced labour practices can affect the playing field when unscrupulous employers use forced or child labour to suppress labour costs to gain price advantage in the open market to the detriment of the law-abiding employers and enterprises in the same industry, who face unfair competition from those who operate outside the law. The ILO estimated forced labour in the private economy generates US\$ 150 billion in illegal profits per year, with the Asia-Pacific region as the highest at US\$ 51.8 billion annually.²⁴ This means employers who exact forced labour reap billions of dollars of unfair profits by exploiting their workforce. It is thus in the interest of law-abiding enterprises in the same industry to take action against these unlawful practices to level the playing field and prevent unfair competition from non-law-abiding enterprises.

Improve productivity and competitiveness

There has been discussion on whether enforcing labour standards including non-use of forced and child labour and compliance to laws and regulations would benefit firms, as implementation of enhanced labour standards will most certainly increase overhead costs and push up prices thereby disadvantaging firms' ability from competing favourably with other firms operating in territories where labour standards are not observed. A comparative cost-benefit analysis of implementing labour standards suggests that organizations benefit significantly by enforcing labour standards as this would translate into higher productivity and enhanced organizational competitiveness and survival as workers experience job satisfaction, safe and healthy working conditions and an environment which reduces rates of industrial accidents, medical costs and sick leaves. Furthermore, employers benefit from implementing enhanced labour standards through low employee turnover rates and improved cooperation and understanding between workers and their employers, resulting in a stable and positive labour relations environment that is devoid of unplanned work stoppages due to industrial actions and loss of production.²⁵

²³ Busse, M. and Braun, S. 2002. *Trade and investment effects of forced labour: An empirical assessment*, HWWA Discussion Paper Series 200. Hamburg, Hamburg Institute of International Economics.

²⁴ ILO. *Profits and poverty: The economics of forced labour* (Geneva, 2014).

²⁵ S. Michael O. 2014. "Compliance with Labour Rights and International Labour Standards: Implications for Workplace Productivity and Competitiveness." *In Mediterranean Journal of Social Sciences*, (2014, Vol. 5. No.9), pp. 89

The ILO Director General Guy Ryder spoke at The Consumer Goods Forum's Global Summit in Singapore in June 2018 indicating that businesses have a central role to play in fighting forced labour and emphasized that it is not just the right thing to do, but it makes economic sense too, as value chains that are free of forced labour are much more productive and sustainable than those that cut costs and whose workers toil in conditions akin to slavery.

Corporate social responsibility (CSR) and responsible business initiatives

The ILO has defined Corporate Social Responsibility (CSR) as a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law.²⁶

Despite being voluntary, most global brands and buyers now have adopted CSR codes in one form or another, and most of these codes include the protection of core labour standards including prohibition of forced labour through their supply chains, and are often embedding these demands in legal contracts as a condition of doing business and as a reason for terminating suppliers' contracts.

There are increasing business initiatives and calls for business action to end forced labour.

The ILO has recently launched the Global Business Network on Forced Labour comprised of companies, employer organizations, and business networks aimed at leveraging comparative advantages and collective action towards the elimination of forced labour and human trafficking.

²⁶ ILO. *InFocus initiative on corporate social responsibility (CSR)*, Governing Body, 295th Session, Geneva, 2006.

International and regional business initiatives against forced labour

- The UN Global Compact Human Rights and Business Dilemmas Forum https://hrbdf.org/themes_dilemmas/forced_labour
- Bali Process Government and Business Forum <https://www.baliprocess.net/bali-process-government-and-business-forum>
- The Consumer Goods Forum's Business Action Against Forced Labour <https://www.theconsumergoodsforum.com/.../key-projects/forced-labour>
- The Sedex Stakeholder Forum (SSF) <https://www.sedexglobal.com/about-us/what-is-sedex/>
- Responsible Business Alliance <http://www.responsiblebusiness.org/initiatives/trafficked-and-forced-labor/>
- Leadership Group for Responsible Recruitment <https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment>
- ILO Global Business Network on Forced Labour https://www.ilo.org/actemp/areas-of-work/WCMS_632434/lang--en/



3

Relevant laws and policies on forced labour and related offenses²⁷

The content of this section is based on the versions of the legislation as of 01 August 2019.

Federal Constitution

The Malaysian Constitution prohibits slavery and all forms of forced labour in Malaysia.²⁸ All persons, including foreigners and migrant workers, documented or undocumented, are entitled to constitutional rights in Malaysia.²⁹

²⁷ Refer to Appendix 2 for Malaysian laws and regulations related to forced labour and employment of migrant workers.

²⁸ Federal Constitution, amended to 2009, art. 6

²⁹ The Court in *Ali Salih Khalaf v Taj Mahal Hotel* [2014] 2 MELR 194 opined that all persons are equal before the law because Art 8(1) of the Federal Constitution uses the word “persons” and not “citizen”. The Court further held that refugees have a right of employment and can seek relief for unlawful dismissal under the Employment Act 1955 and Industrial Relations Act 1967 even in the absence of the recognition of the right to work.



■ Anti-Trafficking in Persons & Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM, Amendment 2010)

The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM Act) is the specific legislation that addresses human trafficking. This Act provides for criminal action to be instituted for involvement in trafficking of persons. Trafficking victims can become victims of forced labour when they are placed in exploitative work situations.

► Prohibition of forced labour and human trafficking under the Anti-Trafficking in Persons & Smuggling of Migrants Act 2007 (ATIPSOM)

Section 2 of the Act defines:

“trafficking in persons” -- as all actions involved in acquiring or maintaining the labour or service of a person through coercion, and includes the acts of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this act.

*“exploitation” -- as all forms of sexual exploitation, **forced labour or services**, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.*

Any person, who is found guilty of trafficking in persons for the purpose of exploitation, could be convicted to imprisonment of between 3 to 20 years, and liable to a fine.

■ Passports Act 1966 (Act 150)

A passport is a document issued by a sovereign nation in the name of its citizen. The Passports Act 1966 outlines that only those with lawful authority (an immigration officer, police officer or officer of customs) can hold the passport issued in the name of another person.

Passport retention is an offence under Section 12(1)(f), which states:

“

Any person who, without lawful authority, has in his possession any passport or travel document issued for the use of some person other than himself; ...shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit (RM10,000) or to imprisonment for a term not exceeding five (5) years or to both.

”

■ Penal Code (Act 574) and Criminal Procedure Code (Act 593)

The Penal Code defines criminal offences in Malaysia, and sets guidelines for punishment.³⁰ Sections 370 and 371 of the Penal Code define slavery as importing, exporting, buying or disposing of a slave. The maximum sentence for slavery is seven years and a fine. Habitually dealing or trafficking in slaves is punishable by up to 20 years imprisonment and a fine. Section 374 of the Penal Code also defines unlawful compulsory labour as compelling a person to work against their will, which is punishable by up to one year imprisonment, a fine, or both.

³⁰ Originally enacted in 1936 by the British for the Federated Malay States, in 1976 the government consolidated the separate laws of Peninsula Malaysia, Sabah and Sarawak into one national Penal Code.

Immigration Act 1959/63 (Act 155)

The Act penalises foreigners for illegal entry and overstay, and any person including Malaysians for harbouring illegal immigrants in the premises.

Thus any person including an employer could be charged for harbouring illegal immigrants in the premises under Section 55B, 56 (1)(d) of the Act, and could be subjected to a fine between RM10,000 to RM50,000 or imprisonment not exceeding 12 months or both for each illegal immigrant employed, and could also be subjected to whipping of up to six strokes if he is found employing more than five illegal immigrants at the same time.

Section 55E of the Act extends the liability to a company supervisor or manager who has direct interest or control in allowing illegal immigrants to enter or stay in the premises of the company, subjected to a fine of between RM5,000 and RM30,000 or imprisonment not exceeding 12 months or both for each illegal immigrant.

Employment Act 1955 (Act 265)

The Employment Act 1955 applies to all workers in Malaysia and it provides minimum protection to employees with regards to their terms and conditions of service consisting of working conditions, hours, wages, holidays, retrenchment benefits, etc.

Private Employment Agencies (Amendment) Act 2017

The amendment that took effect from 1 February 2018 expands the enforcement provisions on private employment agencies to include recruitment of migrant workers, including migrant domestic maids, in addition to placement of Malaysian workers in local or overseas positions. Key features of the amendment include the consideration of past convictions on trafficking in persons or forced labour for granting of licenses, as well as revocation and suspension of a license if they have a history of detention in relation to trafficking in persons or forced labour. Allowable placement fees imposed on migrant workers are capped to not more than one month of basic wages.



Occupational Health and Safety Act 1994

The Act provides for securing the safety, health and welfare of persons at work and to protect others from unsafe work practices. It applies to all sectors including domestic workers.

Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446 - Amended in July 2019)

The amendment expanded the coverage of Act 446, which previously applied only to estate employees, to other employment sectors but applicable only to Peninsular Malaysia and Labuan. The act imposes the duty on an employer and a centralized accommodation provider to provide decent and adequate amenities to employees, and duty in respect of health and safety of employees who are provided with accommodation.

Employers Undertaking

The Ministry of Human Resources has made it compulsory for employers who have been granted a certificate to hire migrant workers to sign the Employers Undertaking, a pledge by employers to adhere with certain conditions e.g. pay full levy cost in employing migrant workers, pay wages accordingly, not to withhold passport, etc.

4

Addressing the risks of forced labour in company operations

Prevention and responding to risks of forced labour in company operations requires due diligence by businesses.

This chapter provides practical guidelines on how to address, prevent and eliminate risks of forced labour in pre-employment, during employment and post-employment practices, with focus on recruitment and employment of migrant workers.

A. Pre-employment

Many challenges in managing migrant workers stem from issues that arise even before the employment, particularly during the recruitment phase. The movement of a worker from a source country to a workplace in Malaysia can be a complex process involving many actors including recruitment agents and government officials of both source and host countries before reaching the employer. Forced labour could emerge as a consequence of deceptive or coercive recruitment practices. Government and employers, thus, should have clearly defined and transparent procedures for managing recruitment of migrant workers.



Employers could choose to involve their human resources staff in the recruitment of migrant workers in the source country which minimize the role of external agents, thereby helping control costs and minimizes the risks of deception practices. Alternatively, employers may choose to engage a recruitment agency for the entire process of recruitment. The following recruitment guidelines for employers describe some measures to eliminate deception and coercion in the recruitment practices.

Recruiting migrant workers through recruitment or employment agencies

If an employer decides to engage a recruitment or employment agency, the employer must conduct pre-selection due diligence and regular audits of recruitment agencies or other sub-agents involved in recruitment and placement of migrant workers in both the source country and Malaysia, for the following purpose:

To learn and assess the policies and practices of the agencies.

To ensure the agencies do not have any record of fraudulent or deceptive practices.

To use only licenced recruitment agencies that observe laws and regulations and standards of ethical practice, e.g. members of national or international employment agency associations that have good reputations or are certified by recognized certification bodies on fair recruitment.

To ensure the migrant workers have proper documentation and have completed all legal procedures in source countries.

To ensure the terms of the contract issued to the workers accurately reflect the terms and conditions of the actual work and in the language understood by the workers.

To ensure all workers are treated fairly in the recruitment process, without holding up of documentation by the recruitment agency.

To ensure that the agency does not charge or impose fees to the workers, in compliance with the General Principles and Operational Guidelines on Fair Recruitment, which international buyers also adhere to.

For reference, please download and read general principles and operational guidelines for fair recruitment from the ILO website.



To ensure workers meet the selection criteria of employers e.g. have the required skills and portfolio.

To ensure the workers were provided with appropriate pre-departure orientation including information about Malaysia, their rights and how to access remedy.

Recruitment fees

Do not charge any fee or cost for recruitment directly or indirectly to the worker. All costs associated with recruitment including the work permit, migrant workers' levy, medical, air ticket, agency fee and related documentation other than obtaining a passport should be borne by the employer.

Fair recruitment practices

Always provide comprehensive and truthful information about the nature of the job and conditions of work.

Hold periodic training for managers, supervisors and workers on good recruitment practices.



Pre-departure and post-arrival orientation³¹

Prior to departure in the country of origin, the workers should be briefed about Malaysia, workplace condition, the contract and terms and conditions of employment, accommodation, rights and responsibilities, and job skills required.

Upon arrival, the employer should check if the migrant workers have received orientation or training from the recruitment agency before departure from source country, and provide migrant workers with post-arrival orientation on any of the topics not addressed during pre-departure orientation.

Post arrival orientation should take place upon arrival of the workers, before formally beginning work, and must be delivered in a language that the migrant workers understand.

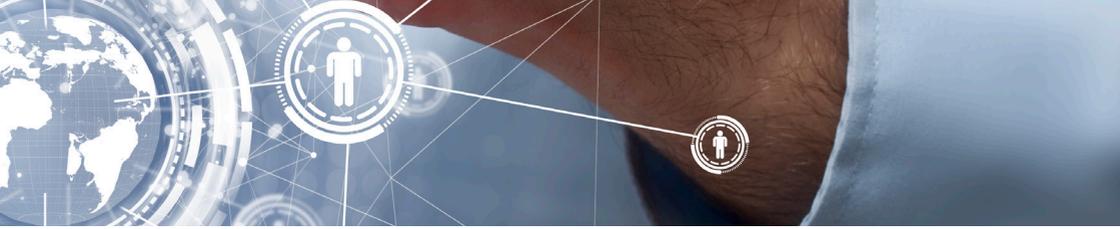
Migrant workers should also receive a workers handbook and any factory regulations in a language they understand.

Signs, symbols, and other indicators related to health and safety hazards in the workplace should be marked so that migrant workers can understand them.

Migrant workers should be paid their regular wage for time spent in orientation training.

Employers are encouraged to employ an on-site migrant workers coordinator conversant in both the languages of the migrant workers and the management.

³¹ Adapted from BSR: *Good practice guide: Global migration*, 2010



Basic contents of pre-departure and post-arrival orientation

Pre-departure

- Basic information about the host country Malaysia.
- The job and the workplace including policies and practices.
- Accommodation arrangements, living conditions and health services.
- Travel and repatriation arrangements.
- Terms and conditions of employment.
- Visa, work permit, and medical examination requirements.
- Workers' rights, responsibilities and grievance procedures.
- Source country Embassy or Consulate information.
- The contract process.

Post-arrival

- Malaysian culture and common practices.
- Basic local language skills.
- Company's expectations.
- Workers' rights, responsibilities and opportunities.
- Applicable laws and regulations.
- Finance – how the salary is paid and remittances services.
- Keeping of personal documents and valuables.
- Working hours and production requirements.
- Workplace policies, rules and regulations.
- Basic job training.
- Occupational health and safety.
- Grievance channels and processes.
- Health information.
- Medical examination.

Fair and transparent contracts

Provide written contracts of employment to all workers in a language that they can easily understand.

Ensure that employment contracts clearly indicate workers' wages, working hours, rest day and other terms and conditions of work in accordance to Employment Act 1955.

Ensure migrant workers are treated fairly and equally as local workers and have the same terms and conditions of employment.

Fair and transparent contract

A fair and transparent contract should contain the following information:³²

- Worker's full name, date and place of birth, and passport number or equivalent identification.
- Worker emergency contact information.
- Contract duration and conditions of renewal.
- Nature of the work and the place it is to be performed.
- The occupational category in which the worker is placed.
- Clearly defined regular, overtime, and holiday wage rates, including maximum allowable overtime hours consistent with Malaysian laws and company's code of conduct.
- How and when the salary would be paid.
- Regular working hours, overtime hours, rest days, holidays, and an estimate of the minimum net pay a worker can expect to receive per month.
- Bonuses, indemnities, and allowances, if any, and other non-cash compensation and work-related benefits including medical benefits, sick-leave, emergency, and annual leave, etc. *(continued in the next page)*

³² Adapted from BSR: *Good practice guide: Global migration*, 2010.

(Fair and transparent contract... continued from previous page)

- Authorized deductions in accordance to the Employment Act and other applicable laws and regulations.
- Accommodation, including any applicable costs.
- No terms barring workers' rights to join a union, organize or engage in collective bargaining, subject to applicable laws and regulations.
- As applicable, a clear breakdown of costs the worker is responsible for versus what the employer is responsible for - costs associated with travel, medical, travel documentation, and other associated items.
- The grounds on which a contract may be prematurely terminated.

Refer to Appendix 4 for a sample of an employment contract for migrant workers.



Q&A

A migrant works without having yet signed his contract, or is working with a contract but without understanding the contract because she/he cannot read or cannot understand the language in which the contract is written. To what extent can this situation be considered as forced labour?

All workers should have written contracts, in a language that they can easily understand, specifying their rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour. This will ensure that they give their informed consent prior to accepting the job. Without understanding the contract, the involuntary nature of work could lead to the worker being a victim of forced labour.

B. During employment

Once workers have entered into employment, forced labour practices may emerge if coercive practices are used. The following fair employment guidelines describe how to eliminate risks of forced labour in employment practices.



Wage payments

Pay wages regularly and directly to the workers' bank account.³³

Comply with national minimum wage requirements.

Create a standardised wage system and pay slip that provides workers with clear and transparent information on wages i.e. hours worked, wage rates, overtime, and any lawful deductions.

Keep accurate records of wage payments and calculations.

Pay wages not later than the seventh day of the last day of the wage period, and avoid non-payment or delayed payment that may have the effect of binding workers to employment. When a delay is unavoidable, the permission of the Director General of Labour must be obtained.³⁴

Wage deductions and in-kind payments

In the case of loans or advances, both the employer and worker should have a clear documented agreement about the terms of payment freely accepted by both parties. All payments have to be reflected and the worker should have the payment receipts. Deductions in wage payments for wage advances and loans to employees shall not be used as a means to bind workers to employment.

No deduction from wages shall be made with the aim of indebting a worker and binding him or her to employment. Only deductions authorised by laws are permissible.³⁵

³³ Section 18, 19 and 25 of Employment Act 1955.

³⁴ Section 19 of Employment Act 1955.

³⁵ Section 24 of Employment Act 1955.

Any legally authorised and permissible deduction (refer to Part IV - Deductions of Wages of Employment Act) shall not exceed 50 per cent of the monthly wages of the employee, and the employee shall be informed the details of the deductions.

Payments-in-kind in any form including goods or services, accommodation, vouchers or coupons shall not be used as payment of wages. Workers shall not be compelled to purchase goods or services from any particular store or service provider assigned by employers.



Q&A

How should we deal with the situation where the employer withholds part of the migrant worker's salary as a deposit when she/he wants to return to her/his home country to protect the employer who has paid the annual levy for the migrant worker?

Deciding whether work is performed voluntarily often involves looking at external and indirect pressures. Withholding part of a worker's salary as a deposit would constitute such a pressure to compel the worker to return and stay with the job.

Loans and advance payments to employees

Workers shall not be held in debt bondage or forced to work to pay off an actually incurred or inherited debt.

Be cautious about providing wage advances and loans to employees. Any advance provided to workers, shall be in accordance with the Employment Act 1955, and make sure they do not put workers in a situation where they feel forced to work to repay the loan.³⁶



Under what conditions is it ok to require a deposit from the worker for uniforms?

Deposits of a reasonable amount do not constitute forced labour if it does not deter workers from leaving. The workers should be informed of the conditions for return of the deposit including the uniform be returned in reasonable condition, etc.

Can an employer deduct the final salary of a migrant worker to compensate for the high recruitment cost incurred when the migrant worker decide to leave the employment or change employer prior to the completion of terms of the employment contract?

Employers should not deduct the migrant worker's salary to compensate for the recruitment cost incurred should the worker decide to leave the employment prior to the completion of the term of the contract. The only deduction which may be permissible are those that are provided in Malaysian laws.

³⁶ Section 22, Limitation on advances and Section 27, Interest on advances forbidden.

Working hours, rest day, holiday and leave entitlement

Workers must not be forced to work overtime above the limits stipulated in the Employment Act and the Employment (Limitations on Overtime Work) Regulations, and under the menace of a penalty, for example the threat of dismissal:

- The total working hours, including overtime, shall not exceed 12 hours in one day.³⁷
- Number of over time working hours shall not exceed 104 hours in one month (Employment Limitations on Overtime Work Regulations).

Never use threats or sanctions to make workers work more overtime hours than allowed by the law.

Make sure the workers are given appropriate rest time and weekly rest days at least in accordance to the Employment Act 1955.³⁸

Make sure the workers are entitled to paid holiday, annual leave and sick leave in accordance to company regulations or at least as provided under the Employment Act 1955.³⁹

If workers are required to work overtime, work on rest day or public holiday, make sure they are paid accordingly, and not less than the provision in Employment Act 1955.

Make information about working hours, overtime, rest day and other conditions of work available to human resource personnel, supervisory staff and workers clarifying what are and are not allowed under the law.

Distribute copies of company policies and make sure everyone concerned understands the relevant provisions.

Identify and reward good practice.

³⁷ Section 60A (7): Except in the circumstances described in paragraph (2)(a),(b), (c), (d) and (e), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.

³⁸ Section 60A (1): An employee shall not be required to work for more than 5 consecutive hours without a minimum of 30 minutes break. Section 59: All employees shall be allowed a rest day in each week of work.



Q&A

Is compulsory overtime required to meet production deadlines considered forced labour?

The imposition of overtime does not constitute forced labour if it is within the limits permitted by the Employment Act 1955 or the applicable collective agreements. Forced labour would occur if workers are required to work overtime beyond the limits allowed by the Employment Act 1955, i.e. more than four hours a day or 104 hours a month, with the threat of a penalty, irrespective of the reasons for such overtime.

The workers may in theory be able to refuse overtime, however, if the workers' vulnerability is exploited, i.e. they have no choice but are obliged to do so in order to earn the minimum wage or to keep their jobs for fear of dismissal, or both, it could become forced labour practice.

If factory rules and regulations contain a mandatory overtime policy, what are the circumstances under which this would or would not be considered forced labour?

A factory's overtime policy should comply with national law and applicable collective agreements. The obligation to do overtime work is not considered forced labour if it stays within the limits permitted by national legislation or specified in relevant collective agreements. Forced labour occurs if overtime exceeds the weekly or monthly limits allowed by law and is made compulsory by threats of a penalty, irrespective of the reasons for such overtime.

³⁹ All employees shall be entitled to at least: Section 60D: 11 paid gazetted public holidays; Section 60E: 8 to 16 days paid annual leave depending on years of service; Section 60F: 14 – 22 days of paid medical leave and up to 60 days if hospitalised.

Disciplinary and grievances measures

Establish a strict policy on preventing violence, harassment, abuse and coercion, and train all relevant personnel on their respective roles and responsibilities under the policy.

Disciplinary measures should not include sanctions that result in an obligation to work.

Establish a formal mechanism for migrant workers to lodge complaints and seek remedy without fear including mechanisms to report violations anonymously, taking into consideration language and cultural barriers.

Employer should not deny migrant workers the rights to join a union of their choice.



Q&A

Training bond

If a company requires an employee to work for a specified period of time to recoup the costs associated with training, is this considered forced labour?

Companies sometimes make significant investments to improve the skills or knowledge of their staff, particularly when the training is only available overseas. They may then conclude an agreement with the trainee to work for the company for a certain period of time, so as to recoup the cost of investment. Several factors should be taken into account to determine whether a situation amounts to forced labour, for example:

- The length of the period the worker-trainee has agreed to stay with the company following the training;
- The period needed to recoup the costs, and whether this is reasonable considering the duration and cost of training; and
- Whether the worker-trainee may resign if he or she reimburses part of the costs of the training.

Rules and penalty

A factory fines workers for taking unapproved leave or for not meeting minimum quality standards. Does this constitute forced labour practice?

Fines for violations of facility rules such as quality standards and unexcused absences are not an issue of forced labour as they do not relate to whether a worker is being coerced into working, although they may raise other issues including protection of wages.

Passports and personal possessions

Do not force or oblige workers to surrender their passport or personal documents. Such practices are prohibited under the Passport Act 1966 as indicated in Chapter 3. This is also an indicator of forced labour.

Employers should retain only copies of a worker's passport and work visas or permits in the worker's file, and workers should keep the originals.

Employers should provide a safe place where workers could, on their own volition, keep their passport, personal documents and valuable items. An example of this is a safe or a secure cabinet with a lock or access code that workers can access anytime, without the necessity of asking permission from another person.

If migrant workers specifically request the employer to keep their documents for safekeeping, the employer should develop relevant written procedures and designate a focal person to ensure that workers have access to the documents without restrictions.

Employer should inform workers of these procedures and the name of the focal person during post-arrival orientation or before the procedures are enacted. Again, workers should not be required to give their passports to this focal person or any other person.



Q&A

What should we do if the immigration authority is withholding the passports of our migrant workers for extended periods of time?

Depriving workers of their passports or identity documents restricts their freedom of movement and consequently increases their risk of becoming victims of forced labour. Therefore, the confiscation of passports or other identity documents of migrant workers is considered to constitute an abusive practice, whether undertaken by an employer, recruitment agency or the government. You should check with the Authority to have the passports returned.



Q&A

An employer stores the passports of the migrant workers, the workers have access to their passports but only when accompanied by a company representative, as the employer indicates that they are responsible for the workers and they would be penalised and incur a loss if the migrant workers absconded. Is this practice in line with international labour standards?

As a basic principle, documents should stay in the possession of the migrant worker. The employer should only store the passports or travel documents for reasons of safekeeping, and only upon request and genuine consent of the worker. If the employer is holding the workers' identity documents, the workers must have access to the documents at any time and for whatever reason, and there should be no constraints on the ability of the workers to leave the company. The fact that migrant workers requesting their passports should be accompanied by a company representative raises questions about the actual possibility of the worker to access his or her passport in practice.

Freedom of movement

If accommodation is provided, make sure the workers' movement is not restricted outside working hours.

Any form of coercion shall not be used to physically confine or imprison workers at the workplace or dormitory.

Do not lock the doors to the workplace (even during work hours) or dorms to prevent workers from leaving, do not use penalties to enforce a curfew, and do not hire security guards to restrict workers' movement.⁴⁰



Q&A

Is it OK to lock workers inside premises for the night to ensure that they are not stealing or does this constitute forced labour?

Workers should not be locked in premises as this restricts their movement. If coupled with other means of coercion (e.g. threat or use of force), this situation may lead to forced labour. Furthermore, it is contrary to occupational health and safety principles. If there is an accident it may raise civil liability for personal injury. Locking workers in the premises may also constitute a criminal offence or civil tort of false imprisonment. While it is legitimate for a company to take steps to secure its property, alternative means should be explored.

⁴⁰ Better Work. *Legal brief underlying Better Work's compliance assessment tool: forced labour*, 2013.



Q&A

Is hiring of security personnel and locking of doors at the workplace to prevent theft and protect security of workers considered forced labour?

As with the retention of personal documents, locking of doors can be considered an indication of forced labour. It restricts workers' freedom of movement and raises questions about the voluntary nature of employment. However, as forced labour is characterised by the threat of a penalty and concerns work or service that is undertaken involuntarily, thus if there is no threat of a penalty and work is undertaken voluntarily, then there is no forced labour. Similarly, posting security guards at factory exits for security reasons is not to be considered forced labour. However, the inappropriate use of security personnel could be an indication of forced labour and should therefore be avoided and treated with caution.

An employee works on an offshore site (e.g. oil platform). The work contract mentions a length of stay without possibilities of early departures. The worker wants to leave his job but cannot technically leave the site. There is no threat of penalty, the worker has accepted the contract voluntarily but there is an obvious restriction of movement. To what extent can it be considered as forced labour?

There is a valid technical reason for limiting movement for a reasonable period. As long as the worker is fully informed in advance of this condition of the contract, and he has entered the contract voluntarily, there is no element of forced labour for not being to leave the site/job for a reasonable period of time.

Accommodation and health

If the accommodation is provided by employers, the employers should ensure that the dormitories are clean, safe, and provide reasonable living space.

Employers should provide workers information about accommodation, any cost involved and transport options to and from the factory prior to the workers' departure from the source country.

Employers should develop rules and regulations of the accommodation provided, and migrant workers should be able to choose whether to live in the accommodation provided, or not.

Employers should ensure that migrant workers receive proper medical attention in the event of illness.

Workers retention

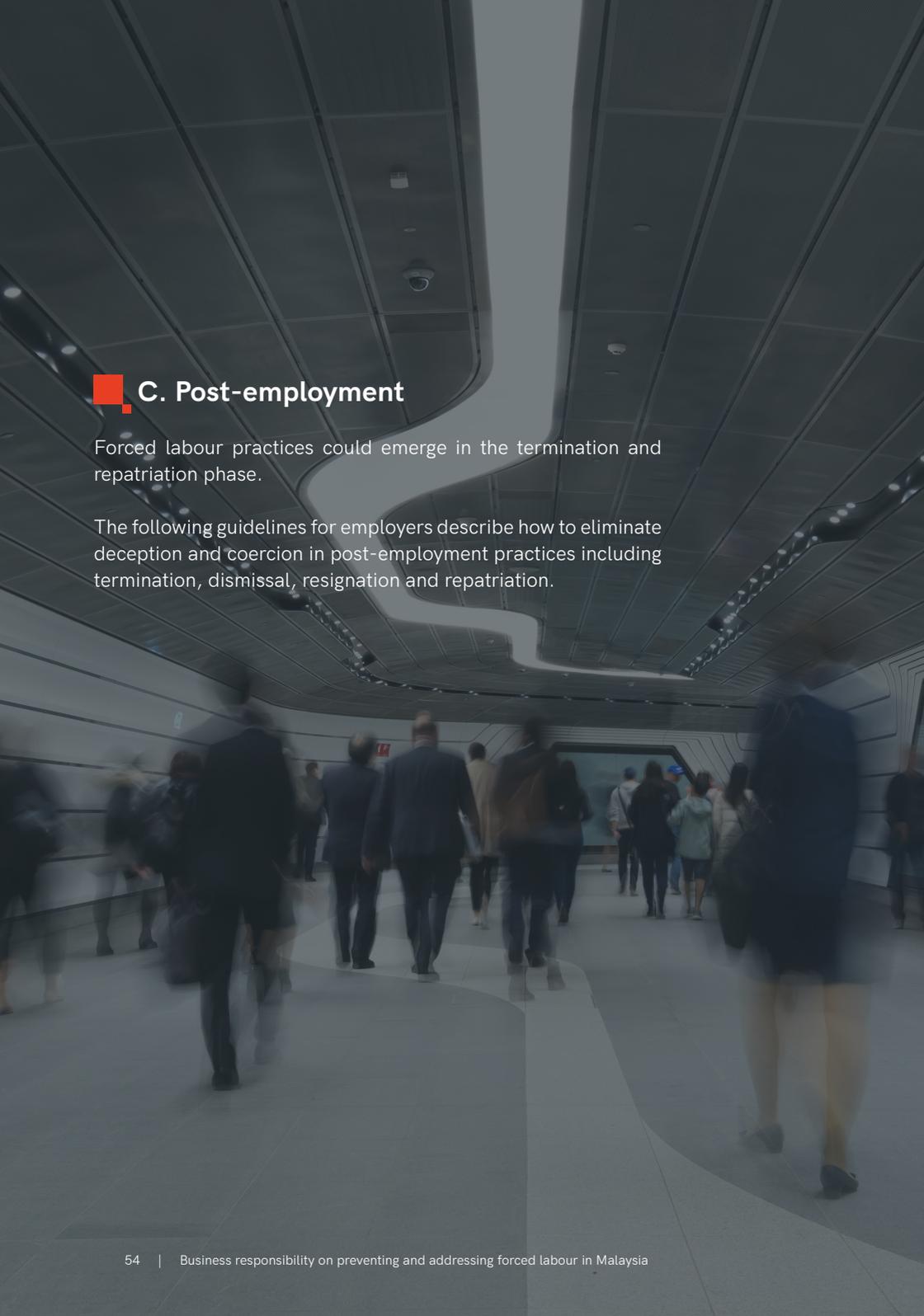
Instead of imposing restrictions to prevent workers from leaving or running away, the best practice would be a proactive workers retention strategy - creating a fair and happy workplace with trust and respect, clear expectations and good communication. Employers are encouraged to engage with workers to understand their needs and wants, minimise misunderstandings and address concerns with specific response. This can be started with a good post-arrival and workplace induction programme and implemented through on-going workers engagement and communication programme.

BOX 9: High employee retention with improved welfare and trust

A leading Asian agri-business group operating in Sabah has decided to return passports to workers despite the initial concern that the workers would abscond — a typical problem faced by oil palm plantations. It installed easy-to-access lockers at its offices to store individual worker's passports. Workers can go to the passport room to retrieve their passports, using their own assigned keys.

The passport initiative has resulted in a higher level of trust between the company and workers. The company has a high employee retention rate because the company provides proper housing and medical benefits as well as fair pay to its workers, and is continuing to make progress on ensuring comfortable housing and education for children of migrant workers.

The company's action showed that positive steps towards human rights and labour rights improvements, has actually improved worker retention. 

A blurred, low-angle shot of a modern, brightly lit hallway with a curved ceiling and recessed lighting. A large group of people in business attire is walking away from the camera, creating a sense of movement and a busy corporate environment.

C. Post-employment

Forced labour practices could emerge in the termination and repatriation phase.

The following guidelines for employers describe how to eliminate deception and coercion in post-employment practices including termination, dismissal, resignation and repatriation.

Termination of employment

Migrant workers should have the same right to termination of the contract as local workers in accordance with the Employment Act 1955 or the terms and conditions as stipulated in the contract. However, the employment of migrant workers in Malaysia is also governed by the Immigration Act, that they must have a valid permit issued by the immigration department to stay in Malaysia, the employment contract of migrant workers usually is a fixed term contract and subject to the duration of the visa/ permit.

As employers usually incur high costs in the recruitment of migrant workers, they would expect the workers to honour the duration of the contract, usually between two to three years. On the other hand, the migrant workers may also incur expenses in gaining employment in Malaysia, some safeguards should be in place to protect both the interest of employers and workers. In addition to the standard notice of termination by either party in accordance to the Employment Act or the terms and conditions of the contract, they should also clear provisions for premature termination by either party and penalty or compensation, if applicable, to ensure fairness for both parties.

(a) Summary dismissal by employers

- Employers may terminate the contract prematurely without notice or compensation e.g. for gross misconduct as stipulated in the Employment Act or in accordance to the employers' disciplinary procedures, e.g. migrant workers absconded, illegality or committed criminal offence.

(b) Premature termination by workers for cause

- Workers may terminate the contract prematurely without notice or penalty in the event of harassment,

abuse or other serious violation of the worker's rights by the employers, including failure to pay wages, or the contractual terms and conditions of employment have changed from the terms and conditions originally agreed upon in the signed contract, without the prior consent of the worker.

- Workers should be able to terminate the contract prematurely in the event of serious ill health (as certified by an independent doctor), and in accordance with the Employment Act, employers' terms and conditions or other applicable laws and regulations.
- Workers should be able to terminate the contract of employment prematurely due to extenuating circumstances such as the death or serious illness of a family member or other family emergency (with satisfactory proof to be provided to employers).

(c) Premature termination by workers without cause

- If migrant workers voluntarily terminate the contract of employment prematurely without providing reasonable notice and without the fault of employers, e.g. change of mind or change of job, workers are to pay the employer the notice period, and/or other compensation as stipulated in the contract.

(d) Premature termination by employers without cause

- Employers to pay for the notice period, any applicable termination benefits or compensation for any premature termination without the fault of workers in accordance to the Employment Act or employers' terms and conditions of employment.
-

Final wages

Upon termination of employment, the migrant workers should receive all outstanding remuneration, including wages, bonus and overtime pay, or other benefits for work performed, including severance payments normally due, prior to repatriation.

Employers may make deductions for any outstanding payment due to employers e.g. authorised and permissible deductions for meals, accommodation or services or notice payment as stipulated in the Employment Act or terms and conditions of employment if workers terminate the contract prematurely without cause and without notice.

Repatriation

Upon completion of the employment contract, the employers should pay for the cost of the workers' return airfare to the source country as part of the repatriation process.

For premature termination, on a case by case basis, employers should consider to pay for the cost of repatriation if the premature termination is due to employers' breach of terms and conditions of contract or not the fault of worker as indicated in (b) and (d) in the Termination of Employment above.

Employers shall not be responsible for the cost of repatriation for summary dismissal, premature termination by workers without cause as indicated in (a) and (c) in the Termination of Employment segment above.



5

Employers' actions against forced labour

A. Company level measures against forced labour

Understand what is forced labour

For a company to deal effectively with forced labour, it is important for the management to have the proper understanding about the issue, why it is relevant to the company, practices that amount to forced labour and its indicators, and ways to prevent it at the enterprise and supply chain. Refer to Chapter 1 and 2 of this guide.

It is also important to know the legal obligations related to labour in general and specifically on forced labour and trafficking under Malaysian legislation and policies, including penalties for violations. An understanding of international and the regional legal framework and related initiatives would be an added advantage especially for companies dealing or supplying the international market. Refer to Chapter 3 and Appendix 1 of the guide.

These would be the starting points and pre-requisites for a company to effectively eliminate forced labour in their operations and across the supply chain.

Know buyers' code of conduct and sourcing policies

Knowledge of buyers sourcing policies and code of conduct is important especially when supplying to global buyers. As indicated in Chapter 2, most global buyers have sourcing policies requiring their suppliers to meet core labour standards, and some code of conducts are stricter than the obligations under Malaysian laws and regulations. Non-compliance or violations to such codes of conduct could result in suspension, termination of supplier contracts or loss of business. Refer to Appendix 3 for a list of selected companies' codes of conduct and sourcing policies.

The following are the recommended measures on how companies could prevent forced labour practices in their operations and supply chain.

1. Develop a company policy addressing and preventing forced labour

Strictly prohibiting forced labour and human trafficking in the company operation is important. Corporate codes of conduct are increasingly used by companies as a tool to help ensure labour practices in their operations and those of their suppliers are legally compliant. These codes are formal statements of principle that govern the conduct of an enterprise and usually cover issues related to responsible business practices, which include ethical practices, human rights, labour practices, environmental and community responsibility, etc.⁴¹ They are particularly common in export industries such as garments, textiles or electronics. The statement, policy or code of conduct - either a comprehensive document or a brief statement - is a way for companies to formally (though voluntarily) commit themselves to responsible business practices including prohibition of forced labour.

Developing a company statement, policy or code does not have to be difficult. A number of initiatives provide free advice on the steps to take if a company decides to do so.⁴² Some of the steps include:

- Conducting an assessment of the company and business partners to determine the degree to which both adhere to national laws and are consistent with industry good practice;

⁴¹ The concept of responsible business practices is embedded in ILO MNE Declaration (5th edition 2017) that provides guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices. The concept is also centred around other international standards notably OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, IFC Performance Standards, UN Global Compact Principles, and the ISO 26000 Guidance on Social Responsibility.

- Establishing a company-wide working group to develop a draft code that expresses the company's commitment to good and responsible labour practices including prohibition of forced labour;
- Organizing internal consultations on the draft and subsequently consulting with appropriate external partners or stakeholders;
- Finalising the code and presenting to Management for endorsement; and
- Communicating and sharing with staff, business partners, business associations, employers' organizations, the media, and other stakeholders, including workers and their representatives that it applies to all levels of a company's operation and supply chain.

For small and medium-sized enterprises (SMEs), several of these steps can be combined and the process is a lot simpler. Even though SMEs may be less likely to apply the codes on their suppliers and sub-contractors, they can be affected by their buyers' codes along the supply chains.

The guidelines provided in Chapter 4 of this guide can be used to guide the discussion in drafting the forced labour provisions of the code. Appendix 3 provides a list of selected companies' statements, policies and codes of conduct that include forced labour provisions. You may also contact the Malaysian Employers Federation or the International Labour Organization for advice.

2. Implement the policy

Whether a company has developed its own or received the code from their buyers, having a policy is just the first step. Implementing this policy and ensuring the company and its suppliers operate based on the newly established standard could be a much harder task. Here are a few suggestions for recommended actions:⁴³

⁴² For further information on developing company guidelines, contact the ILO's Special Action Programme to Combat Forced Labour (SAP-FL), Global Reporting Initiative, Social Accountability International or the Handbook and Toolkit for the World Bank's International Finance Corporate (IFC) Performance Standard 2.

⁴³ ILO: *Eradication of forced labour - General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, Special Action Programme to Combat Forced Labour (Geneva, 2007).

- **Internal audit**

One way that companies can implement their code of conduct and ensure their compliance with the law is through an internal audit of existing labour practices, including of their supply chain. An audit can help the company identify its level of compliance with the new code and determine whether there is forced labour in its operations. The more thorough an audit is, the better it will be in identifying situations of forced labour and trafficking. When these cases are detected early and resolved quickly, not only is there lower risk of penalty but it can also be used as good publicity. The audit can be done internally or by hiring a third-party auditor.

You may refer to the Checklist for assessing compliance in Appendix 5.

- **Adoption of the Code of Conduct into company recruitment and employment practices**

Adopt the Code of Conduct or the newly endorsed policy into company recruitment and employment practices to ensure the risk of forced labour is minimised, including screening of recruitment agencies and terms and conditions of employment concerning working hours, overtime, payment of wages, advances and deductions, termination of employment, holding of personal documents, restriction of movement of workers, etc. as stipulated in Chapter 4 of this guide.

- **Staff training**

It is important that companies train its human resource personnel and supervisors and other relevant staff and involve workers at all levels on their role in implementing the code, particularly how to identify, report and address labour issues. This would enable effective implementation of the Code of Conduct and consistent levels of compliance across the company.

Training on forced labour and trafficking in persons can be conducted alone or it can be integrated into other programmes. The company may contact the Malaysian Employers Federation Academy for assistance in planning and delivering the training.

- **Communicating with stakeholders**

Commitment to the code to address and prevent forced labour in company operations should be communicated to workers, buyers, customers, suppliers and relevant stakeholders and the wider public. This can be done by displaying copies of the code on company premises, the company's website, newsletters or as an attachment to the annual report, including measures taken to eliminate the risks.

- **Application to suppliers and subcontractors**

Compliance with the code should be made as a condition of business and integrated into contracts with suppliers, subcontractors and relevant business partners such as the recruitment agencies, and used as a condition of evaluation, selection and maintenance as a supplier to the company. Suggested steps to address risks of forced labour in the supply chain include:⁴⁴

- Screen prospective suppliers if they comply with the code. This includes checking conditions and practices at the premises of the potential supplier;
- Communicate the requirements to the suppliers that forced labour will not be tolerated, and explain company sourcing policies, the Code of Conduct, monitoring procedures and consequences of non-compliance. Chapter 4 on guidelines to eliminate risks of forced labour in company operations can be used as a reference when communicating the above points to the suppliers;
- Contracts with suppliers should set out the basic labour conditions, specifically the prohibition of forced labour and trafficking in persons. The consequences of breaching the conditions, including the possible termination of the contract, should be stated clearly to avoid confusion;
- Understand the suppliers. It is important to look at how their own actions impact on supply chain working conditions. For example, if companies make last minute orders or force suppliers to meet unrealistic deadlines then this may result in suppliers forcing their workers to work excessive hours. By undertaking an assessment of a factory's capacity, companies can ensure that the supplier will be able to meet the deadline set without having to resort to forced overtime.

⁴⁴ Adapted from ILO: *Eliminating child labour - Guides for employers* (Geneva, 2007).

- Monitor and work with suppliers to improve conditions. If a labour issue is detected, discuss with the supplier the compliance issues and, depending on the severity of the issue, plan your course of action. For instance, a corrective plan could be developed and implemented with the supplier; and
- Warn and drop suppliers that fail to improve. If a supplier does not make serious efforts to improve the labour situation after it was detected, for example, if the corrective plan is not implemented in the agreed time frame or there are repeated violations, the company should terminate the contract and drop that supplier.

3. Establish a labour-related complaints mechanism

Handling of forced labour related complaints can be part of the employee grievances procedure. All companies should have an internal procedure for dealing with employee grievances and complaints. An effective procedure for handling grievances allows for swift and flexible handling of complaints, and can play an important part in cultivating good management-worker relations. Measures should be established to ensure employees do not suffer disciplinary action for reporting grievances.

Disregarding employee complaints could be risky, as the problem may be escalated through third-party intervention such as NGOs or exposure by the media which would result in investigations by buyers or in prosecution. This would not only affect the operation of the company, but also create negative publicity for the company.

Guidelines for developing a grievance procedure:

- Prepare the grievance procedure in written form. It can be prepared separately or as part of the company labour policy or code of conduct;
- State the company's commitment to resolving any grievance in a fair, confidential, efficient and thorough manner;
- Commit to treating all grievances seriously, and to conducting proper investigations in each case;
- The mechanism must guarantee protection from harassment, prosecution or any other form of reprisal or retaliation to complainants, victims and other persons associated with the submission of a complaint;
- The designated person to handle complaints has to be trained in confidentiality as well as knowing what to do once a complaint is received;
- Define the steps for bringing a complaint. These should be simple and accessible to all employees;
- Define the timeframe for considering the case and providing a resolution; and
- Provide for an avenue to raise the grievance to the next level of management if the employee is not satisfied with the settlement.

The procedure should be presented and explained to all employees, and line managers should be trained in applying it to complaints. Employers should also ensure that line managers and supervisors understand both the importance of the grievance process and their personal role in maintaining core labour standards in the workplace.⁴⁵

4. Monitor the implementation of the code and develop corrective actions

Implementation of the code should be regularly monitored to determine compliance and the efficiency of its implementation. Instances of non-compliance should be addressed once they are discovered, and steps should be taken to implement changes where necessary to ensure that such instances do not re-occur.

⁴⁵ Adapted from CAMFEBA; ILO: *Promoting equality and preventing discrimination at work in Cambodia: Code of practice* (Phnom Penh, 2013).



5. Document findings

It is also important for a company to document findings of self-assessments or audits and any corrective action taken, to enable tracking of progress and improvements.

6. Work with others

A company may work in partnership with other companies, an industry association or employers' organization in its effort to address forced labour, including developing an industry-wide approach to forced labour or participate in a collective policy statement by an employers' organization or group of companies. In many cases, a group of companies operating in the same industry jointly develops a code of conduct and related social auditing programme. This gives companies the opportunity to exchange information, learn from each other and develop good practices together.

A company may also work directly with workers' organizations or other civil society groups. This can take the form of negotiating an agreement or statement of principle, or involve joint engagement in the implementation of a company code of conduct.



Some of the collaborative initiatives that could be taken on by companies include:

- Participate in prevention and re-integration programmes for former victims of trafficking and forced labour by providing skills development and job training opportunities.
- Participate in national and international programmes, including media campaigns, and coordinate with local and national authorities, labour inspectors, workers' organizations and other stakeholders.
- Encourage national and international events among business actors, identifying potential problem areas and sharing of good practices.
- Find innovative means to reward good practices and considering involving the media.
- Talk to other companies in your industry, create networks, and use those networks to exchange information and develop an industry-wide approach to forced labour.
- Companies may take advantage of the services and training provided by the Malaysian Employers Federation, or seek technical guidance from the International Labour Organization.

10 principles for business leaders to combat forced labour and trafficking⁴⁶

- Have a clear and transparent company policy, setting out the measures taken to prevent forced labour and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains.
- Train auditors, human resource and compliance officers in means to identify forced labour in practice, and seek appropriate remedies.
- Provide regular information to shareholders and potential investors, attracting them to products and services where there is a clear and sustainable commitment to ethical business practice including prevention of forced labour.
- Promote agreements and codes of conduct by the industrial sector (as in agriculture, construction and textiles), identifying the areas where there is risk of forced labour, and take appropriate remedial measures.
- Treat migrant workers in the same manner as other workers and in accordance with the law. Monitor carefully the agencies that provide contract labour, especially across borders, blacklisting those known to have used abusive practices and forced labour.
- Ensure that all workers have written employment contracts, in a language that they can easily understand, specifying their responsibilities and rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour.
- Encourage national and international events among business actors, identifying potential problem areas and sharing good practices.
- Contribute to programmes and projects to assist, through vocational training and other appropriate measures, the victims of forced labour and trafficking.
- Build bridges between governments, workers, law enforcement agencies and labour inspectorates, promoting cooperation in action against forced labour and trafficking.
- Find innovative means to reward good practice, in conjunction with the media.

⁴⁶ ILO: *Factsheet: Strengthening employers' activities against forced labour* (Geneva, 2008).

B. The roles of employers' organizations and industry associations in combating forced labour

Employers' organizations and industry associations can be key players in the efforts to eliminate forced labour. At the global level, employers' organizations have supported the adoption of the ILO Convention against forced labour and the promotion of the Declaration on Fundamental Principles and Rights at Work.⁴⁷ The International Organization of Employers (IOE) has adopted global policies and developed guidance and tools to support its members in addressing forced labour.⁴⁸

Some of the initiatives or actions that can be taken by employers' and industry associations include:

Developing a strategy or action plan

A key first step for employers' organizations and industry associations is to develop a strategy or action plan to address forced labour and trafficking in persons in a systematic and sustainable way, and to encourage strategic thinking on tackling the problem. Detailed contents of the strategy would be determined by the organization itself depending on the expertise it has on social issues; the nature of the services it already provides to its members; and the unique position employers have as key labour market actors.

Providing information and advice

Providing information and advice is one of the key functions of employers' organizations. Forced labour and human trafficking can be complex and confusing topics for employers, and they may be misunderstood or confused with other concepts of labour laws violations. Thus a key starting point for any employers' organization is to provide information and advice to its members.

As part of the overall strategy, an employers' organization might choose to designate a department or a member of its staff as a focal point on forced labour. The key here is that the members know to whom they can go should they have inquiries or require assistance.

⁴⁷ IOE: *Forced labour: Why it is an issue for employers* (Geneva, 2010).

⁴⁸ The International Organisation of Employers (IOE) is one of the main representative organizations of the private sector in the world, it consists of 150 national employers' organization members from 140 countries (as at July 2018). It is the employers' secretariat at the International Labour Conference (ILC) and participates actively in social and labour policy debate in the ILO, across the UN and multilateral system, and in the G20. The Malaysian Employers' Federation (MEF) is a member of the IOE.

At a basic level, enterprises will want to know about the law and relevant provisions in the labour and criminal codes, as well as information about international buyers and corporate social responsibility.

Employers' organizations can encourage members to be more aware of the policies of their suppliers and offer advice on combating forced labour. This can be done person-to-person through the focal point; or the organization can provide a platform to facilitate sharing issues of interest, challenges and exchange of ideas between members. Companies can learn a great deal from each other. The employers' organization can collect, document and disseminate examples of good practice among members.

Raising awareness and providing training

The employers' organization and industry association can play a lead role in raising awareness and providing relevant training on forced labour to employers. As the issues are relatively new for employers in Malaysia especially the SMEs, awareness raising and training would be useful and beneficial.

A structured way of sharing information and raising awareness is to arrange a national workshop, symposium, seminar or as a training programme. This will not only provide information to employers but encourage dialogue between the employers' organization and its members, and among members themselves. The event can be organized in collaboration and support of other stakeholders.

Promoting good practices and compliance to laws and regulations

The employers' organization and industry association can also play the wider roles of promoting good practices and compliance to Malaysian laws and regulations by raising awareness, providing information, advice and conducting training on critical labour issues including forced labour, child labour, equality and non-discrimination, freedom of association, collective bargaining and workplace cooperation, etc. Collecting, sharing and dissemination of good practices among the member companies would be an effective measure.

Policy influence

The key role of an employers' organization is engaging government in legislative reforms and policy development. Employers' organizations should be included in the development of national policies with regard to forced labour, and should receive the support needed in fulfilling expectations placed on business. This means that for instance national action plans against forced labour and trafficking in persons should be elaborated in consultation with employers' organizations. Participation in legislative reforms and policy development ensures that employers' perspectives are represented throughout negotiations. The Malaysian Employers Federation has been very pro-active in advocating for fair policies with regards to migrant workers management, it has provided valuable inputs, comments and suggestions to the Government policies from time to time, and has recently led the industry groups comprising of 23 industries and business associations to submit a comprehensive proposal on the Government initiative for a holistic review of a migrant workers management system in Malaysia.

Collaboration and engaging with others

It is strategic for the employers' organization or industry association to collaborate with other organizations or stakeholders when addressing forced labour, for support and assistance as well as sharing of information. Government, national and international NGOs, United Nations agencies, including the ILO, IOE and workers organization.

Employers' organizations also represent their members in dialogue with other actors such as workers organizations, non-governmental organizations, educational institutions and the media. For example, employers' organizations and workers' organizations may want to work together at the sector level to develop a joint statement or implement programmes addressing forced labour and trafficking in persons. Employers' organizations may also wish to participate in programmes that take preventive and protective action against forced labour and trafficking, or seek to rehabilitate and reintegrate former victims of forced labour and human trafficking.

Who to contact for support in Malaysia

- Malaysia Employers Federation (MEF):
<http://www.mef.org.my>
- Ministry of Human Resources (MOHR):
<https://www.mohr.gov.my/>
- International Labour Organization particularly the From Protocol to Practice: A Bridge to Global Action on Forced Labour (Bridge Project):
<http://www.ilo.org>

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Appendix I

International framework on forced labour and trafficking in persons

ILO Conventions, Protocol and Recommendation on Forced Labour

Forced Labour Convention, 1930 (No. 29)

Convention No. 29 has a broad scope and aims at suppressing all forms of forced or compulsory labour. It defines forced labour, identifies certain exceptions, and requires members States to make illegal exaction of forced or compulsory labour punishable as a penal offence. Malaysia ratified the Convention in 1957.

Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)

Protocol No. 29 supplements Convention No. 29 by establishing measures to prevent and eliminate forced or compulsory labour, to provide protection and access to appropriate and effective remedies to victims, and to sanction the perpetrators of forced or compulsory labour.

Forced Labour (Supplementary measures) Recommendation, 2014 (No. 203)

Recommendation No. 203 supplements Protocol 2014 to the Forced Labour Convention, 1930 (No. 29). It provides non-binding guidelines on implementation of Protocol No. 29.

Abolition of Forced Labour Convention, 1957 (No. 105)

Convention No. 105 focuses in its scope, and address exaction of forced labour in five specific cases, most of which relates to state-imposed forced labour.

ILO 1998 Declaration on Fundamental Principles and Rights at work

The elimination of all forms of forced or compulsory labour is one of the four fundamental rights recognised in the ILO 1998 Declaration on Fundamental Principles and Rights at Work:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of forced or compulsory labour;
- the abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

Adopted in 1998, the Declaration commits all ILO Member States to respect and promote the above four fundamental principles and rights, whether or not they have ratified the relevant Conventions. Companies are also expected to uphold the standards contained in these core conventions.

UN Protocol

Trafficking in persons is prohibited in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Palermo or Trafficking Protocol), supplementing the UN Convention against Transnational Organized Crime (UNTOC). Malaysia ratified the Protocol in Feb 2009.

The concept of forced labour is closely related to the concept of trafficking in persons. Trafficking in persons is often understood as a process which leads to different exploitative outcomes, one of which is forced labour.

UN Guiding Principles on Business and Human Rights (UNGPs)

UNGPs is an instrument consisting of 31 principles implementing the United Nations 'Protect, Respect and Remedy' framework that provides an authoritative framework for companies to embed policies and practice to prevent forced labour consistent with international human rights standards. The UNGP expectation for companies to undertake ongoing human rights due diligence requires far more than social auditing. Companies can work with business partners to integrate responsible business practices through the inclusion of policy commitments or codes of conduct within contractual arrangements.

United Nations Sustainable Development Goals (SDGs) 8.7

The target of SDGs 8.7 calls for immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

Regional framework on forced labour and trafficking in persons

ASEAN Declaration and Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and its Plan of Action

The ASEAN Declaration Against Trafficking in Persons, Especially Women and Children (ACTIP), was adopted by ASEAN Member States in 2004, to combat transnational crimes, including the trafficking in persons in the region. The ACTIP Convention was signed on 21 November 2015 in Kuala Lumpur, and Malaysia ratified the Convention on 7 September 2017.

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

The Declaration on the Protection and Promotion of the Rights of Migrant Workers was adopted by the ASEAN heads of state in Cebu in 2007. The Committee on the Implementation of the Declaration (ACMW) was set up as a follow up, and the yearly ASEAN Forum on Migrant Labour (AFML) was established to develop recommendations for implementation of the Declaration.

ASEAN's Labour Ministers Work Programme 2016 – 2020

The ASEAN Labour Ministers (ALM) Work Programme for 2016-2020 is attuned to the ASEAN Socio-Cultural Community blueprint 2025. In this connection, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, was signed by the ASEAN Leaders at the 31st ASEAN Summit in Nov 2017 shows the political will and commitment of ASEAN Leaders to safeguard the rights of migrant workers in the region.

Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime

The Bali Process is an official forum on People Smuggling, Trafficking in Persons and Related Transnational Crime in Asia and the Pacific that started in 2002 and endorsed at the Ministerial Conference in 2016. The process is co-chaired by Australia and Indonesia and includes more than 48 countries including Malaysia. The Government and Business Forum was initiated in 2017 as a collaboration between government and business to prevent and combat human trafficking, forced labour, and modern slavery in the region.⁴⁹

⁴⁹ The 2nd Bali Government and Business Forum was held on 6 & 7 August 2018 in Bali, followed by the Ministerial Conference and senior officials meeting.

Appendix II

List of legislation related to forced labour, recruitment and employment of migrant workers in Malaysia

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM Act) - <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20670.pdf>

Employment Act 1955 (Act 265) - <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20265%20-%20Employment%20Act%201955.pdf>

Employment Restriction Act 1968 (Act 796) - [http://www.federalgazette.agc.gov.my/outputaktap/aktaBl_20171115_Act796-Employment\(Restriction\)Act1968.pdf](http://www.federalgazette.agc.gov.my/outputaktap/aktaBl_20171115_Act796-Employment(Restriction)Act1968.pdf)

Immigration Act 1955/63 (Act 155) - <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20155.pdf>

Passport Act 1966 - <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act 150>

Penal Code (Act 574) - [http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20\[Act%20574\]2.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20[Act%20574]2.pdf)

Private Employment Agencies (Amendment) Act 2017 - http://www.cljlaw.com/files/bills/pdf/2017/MY_FS_BIL_2017_07.pdf

Occupational Health and Safety Act 1994 - <http://www.dosh.gov.my/index.php/en/list-of-documents/acts/>

Workers' Minimum Standard of Housing and Amenities Act 1990 - <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87154/118009/F797374692/MYS87154.pdf>

Workmen's Compensation Act 1952 (Act 273) - https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=43905

Appendix III

Tools and resources for businesses on forced labour

ILO tools and resources for business on forced labour

- **Combating forced labour: A handbook for employers and business**
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf
- **Strengthening employers' activities against forced labour**
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097734.pdf
- **UN.GIFT Guide - Human trafficking and business: Good practices to prevent and combat human trafficking**
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf
- **ITUC Guide - How to combat forced labour and trafficking**
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142664.pdf

Selected companies' codes of conduct and sourcing policies

- **Responsible Business Alliance Code of Conduct: Version 6.0 (2018)**
http://www.responsiblebusiness.org/media/docs/RBACodeofConduct6.0_English.pdf
- **Sime Darby Modern Slavery and Human Trafficking Statement (2018)**
<http://www.simedarbyplantation.com/sites/default/files/2018%20SDP%20Modern%20Slavery%20and%20Human%20Trafficking%20Statement.pdf>
- **Nestle Responsible sourcing standard**
<https://www.nestle.com/csv/impact/rural-livelihoods/responsible-sourcing>
- **Apple Suppliers' Code of Conduct, version 4.5 (2019)**
<https://images.apple.com/.../Apple-Supplier-Code-of-Conduct-January.pdf>
- **Adidas policy on Forced labour and human trafficking**
https://www.adidas-group.com/media/filer_public/3c/14/3c145fe8-e777-4696-aa51-4ef49731fbaa/adidas_policy_on_modern_slavery__2017.pdf

Appendix IV

Sample template of an employment contract for migrant workers⁵⁰

This is presented in this guide only as an example, and not as the prescribed template that each employer should use. See Chapter 4 on the suggested contents of the employment contract. It is important that every employer ensure that the employment contract given to the workers is in compliance with all relevant laws of Malaysia.

Date:

EMPLOYMENT CONTRACT

This Employment Contract is made and entered into on this day _____ month of _____20____by and between _____(Hereinafter called the EMPLOYER) (or represented in the contract by (Agent Name and licence No.) a licenced recruiting agency which shall be joint and severally responsible for compliance herewith, and Employee_____, both agree to the following terms and conditions:-

Basic terms and condition of contract:

1. Employee's details:

Name:

Date and place of birth:

Passport No:

2. Employee's job title or position:

3. Place of work:

4. Job Description:

⁵⁰ Adapted from the employment contract of Nepalese workers in Malaysia issued by the Embassy of Nepal. https://my.nepalembassy.gov.np/.../2018/05/employment_contract.pdf [accessed 15 August 2019].

5. Basic monthly salary:

Allowance (whichever applicable):

| | |
|-----------------------------|------|
| (i) Attendance : | = RM |
| (ii) Food : | = RM |
| (iii) Transport : | = RM |
| (iv) Shift : | = RM |
| (v) Overtime: | = RM |
| (vi) Any other (bonus)..... | = RM |

Total

6. Duration of contract: (to specify)

7. Salary payment:

Salary of the employee and other allowances or payment will be paid directly to the employee’s bank account in Malaysia by the last day of the month.

8. Travelling expenses and visa fee:

The visa fee and travelling expenses from (source country) to Malaysia shall be borne by the employer. Expenses of the air passage from Malaysia to (source country) shall be borne by the employer upon completion of this contract.

9. Government levy:

The employer will pay the Government levy as per prevailing laws in Malaysia.

10. Accommodation:

(To specify if the accommodation is provided by employers and if it is free or paid including essential facilities like water and electricity supply)

11. Working days, working hours and rest day:

8 hrs per day and 6 days per week with one rest day per week.

12. Overtime pay:

According to the Employment Act 1955 as follows:

On normal days: XX On Sunday/rest days: XX On public holidays: XX

13. Annual leave:

In accordance with the Employment Act 1955 as follows:

- 8 days leave for the first two years of service;
- 12 days leave for period of service between two to five years; and
- 16 days of leave for services of more than five years.

14. Sick leave (In accordance with the Employment Act 1955):

Without hospitalisation:

- 14 days for each year of service for service less than two years;
- 18 days for services between two to five years; and
- 22 days annually for services exceeding five years.

And in case of hospitalisation, the employee qualifies for 60 days leave in each calendar year.

15. Public holiday:

The employee shall be entitled to paid holiday for a total of 10 public holidays in any one year of service in accordance to the Employment Act 1955.

16. Yearly medical examination:

Yearly medical examination will be arranged as required by the Immigration Department of Malaysia and costs incurred will be borne by employer.

17. Medical treatment and insurance:

The cost of medical treatment will be borne by _____ and insurance will be provided as per the Foreign Workers Compensation Scheme.

18. Emergency contact:

In case of emergency, the employer shall contact the following person:

19. Deceased:

In the event of any employee's death in the course of his/her employment, the employer shall arrange for the body of the deceased to be repatriated to his/her next of kin in (source country) at the employer's expense.

20. Restriction:

- That the employee shall not change his/her employment during the contract period and shall not carry or do business without the written permission from the employer.

- That the employee shall not engage in any illegal or criminal activity, or commit any serious misconduct as per company's rules and regulations.

If the employee is found to have violated the above terms, he/she will be dismissed with immediate effect and will be repatriated on his/her own expenses.

21. Termination of service:

- Premature termination by worker.
 - The employee is obliged under the terms of contract and shall not terminate the contract prematurely without any valid reason. However in extenuating circumstances such as serious illness or other family emergency (with satisfactory proof to be provided to employer), on a case by case basis, the employer may release the employee prematurely.
- Premature termination by employer.

The employer shall be entitled to terminate the contract of employment prematurely without any notice if:

 - The employee breaches any of the restrictions in Clause 20 above or is convicted of any offence under the laws of Malaysia.
 - The employee's work permit is withdrawn by the Malaysian authorities on legal grounds.
 - The employee is found medically unfit for employment as certified by an authorised medical doctor.

22. Repatriation:

- Upon completion of the employment contract, the employer shall pay for the cost of the worker's return airfare to the source country as part of the repatriation process.
- Employer shall not be responsible for the cost of repatriation for summary dismissal, premature termination as indicated in Clause 20 and 21 above.
- The employer may consider on a case by case basis, to cover the employee repatriation cost for pre-mature termination due to extenuating circumstances as indicated in clause 21(a) above.

23. Other terms and conditions:

Other terms and conditions not covered herein and which are provided by the laws of Malaysia shall apply and shall be the part of the contract.

The employer and the employee shall read and fully understand this agreement and certify that the terms and conditions together with the application constitute their entire agreement or understand that any other conditions set besides this contract shall be considered null and void.

In witness whereof the parties have here unto voluntarily signed their respective names below on this _____date of _____ 20__ at _____.

Employer's authorised signature

Name:

Designation:

NRIC No:

Signature of employee

Name:

Passport No:

Witness by:

Name:

Designation:

Date:

Witness by:

Name:

Designation:

Date:

Appendix V

Checklist for assessing compliance⁵¹

Companies may refer to the below checklist to assess risks of forced labour and identify good practices in their operations and supply chains.

The questions are not intended to serve as an exhaustive list to determine if there is a situation of forced labour. However, a YES or DON'T KNOW answer to any of the questions in RED indicate that the issue should be given attention, or need to be addressed to prevent potential allegations of forced labour.

YES to the questions in BLUE indicates that the company is having good practices in addressing and preventing forced labour in company operations and supply chains.

| Assessment of pre-employment practices | | | |
|---|-----|----|------------|
| Pre-employment practices | Yes | No | Don't know |
| Recruiting foreign workers through recruitment or employment agencies | | | |
| Background check | | | |
| 1. Are you aware of the recruitment agency's policies and practices? | | | |
| 2. Is the agency licensed? | | | |

⁵¹Adapted from VCCI-ILO. *Preventing Forced Labour in the Textile and Garment Supply Chain in Vietnam: Guide for Employers. Annex 1: Red flags checklist for compliance assessment.* (Hanoi, 2016).

| | | | |
|--|--|--|--|
| 3. Is the agency a member of a national or international employment agencies association that have received certification for ethical recruitment practices from reputable certification bodies? | | | |
| Cost structure | | | |
| 4. Is the fee structure of the agent in line with the market rate? | | | |
| 5. Is the fee charged to you inclusive of all recruitment costs - work permit, foreign worker's levy, medical, air ticket, agency fee and related documentation? | | | |
| 6. Does the agent charge any recruitment fee to the workers? | | | |
| 7. Is the fee charged by the agent to the worker in accordance with the rules and regulations of the worker's source country? | | | |
| 8. Does the agent provide loans to worker who cannot afford the recruitment fee? | | | |
| Documentation, procedures and contract | | | |
| 9. Did the agent adhere to the procedures and documentation of the source country? | | | |

| | | | |
|--|--|--|--|
| 10. Is the employment contract issued in a language understood by the worker? | | | |
| 11. Are the terms and conditions consistent with the employer requirements/standards? | | | |
| Passport, travel and medical examination | | | |
| 12. Is the medical examination conducted? | | | |
| 13. If yes, are the expenses part of the recruitment cost borne by the employer? | | | |
| 14. Are the transport and logistic arrangements of the worker part of the recruitment cost borne by employer? | | | |
| 15. Did the agent retain or hold the passport of the worker? | | | |
| Recruitment fees | | | |
| 16. Does the company charge to the worker any fee or costs related to the recruitment (work permit, levy, agencies fees, etc.)? | | | |
| Fair recruitment practices | | | |
| 17. Does the company provide information about the nature of the job and conditions of work to recruitment agencies and/or in the advertisement? | | | |

| | | | |
|--|--|--|--|
| 18. Was training on good recruitment and employment practices provided to managers and supervisors? | | | |
| Pre-departure and post-arrival orientation | | | |
| 19. Has the worker attended the pre-departure orientation before leaving the source country? | | | |
| 20. Have you seen the content of the pre-departure orientation? | | | |
| 21. Does your company provide post-arrival orientation to all migrant workers upon their arrival in Malaysia? | | | |
| 22. Is the post-arrival orientation provided in the local language of the worker? | | | |
| 23. Is the time spent on post-arrival orientation training considered working hours and paid? | | | |
| 24. Does the company have an on-site coordinator who is conversant in both the local language as well as the language of the worker? | | | |
| Fair and transparent contract | | | |
| 25. Is a written contract of employment provided to the worker in a language she/he can understand? | | | |

| | | | |
|--|--|--|--|
| 26. Does the employment contract clearly indicate worker’s wages, working hours, rest day and other terms and conditions of employment in accordance to the Employment Act 1955 and other relevant laws? | | | |
| 27. Are migrant workers treated fairly and equally in a similar manner as local workers and do they have the same terms and conditions of employment? | | | |

| Assessment during employment practices | | | |
|--|------------|-----------|-------------------|
| During employment practices | Yes | No | Don’t know |
| Wage payments | | | |
| 1. Are the wages of migrant workers paid regularly and directly to the worker’s bank account? | | | |
| 2. Do the wages of migrant workers comply with national minimum wage requirements? | | | |
| 3. Is the worker provided with a payslip that has clear and transparent information on wages i.e. hours worked, wage rates, overtime, and any lawful deductions? | | | |

| | | | |
|--|--|--|--|
| 4. Is the payment of wages in accordance with the Employment Act 1955, i.e. not later than the seventh day of the last day of the wage period? | | | |
| 5. Does the company keep all records on payroll and calculation of wages? | | | |
| Wage reduction and in-kind payment | | | |
| 6. Does the company pay wages in the form of goods (in-kind) instead of cash? | | | |
| 7. Is the worker required to purchase goods or services from any particular store or service provider assigned by the company? | | | |
| 8. Does the company deduct from worker's wages aside from those clearly allowed in the Employment Act? | | | |
| 9. Have wage deductions been made for any of the following: <ul style="list-style-type: none"> • Fee related to workers' recruitment; • Loss or damage of tools, material or equipment in the cause of work; or • Worker's absence due to sickness or authorised leave? | | | |
| Loans and advance payment | | | |
| 10. Does the company provide loans or advance payments to workers beyond what is allowed by national laws? | | | |

| | | | |
|---|--|--|--|
| 11. If the answer is Yes to Question 10, is there any term restricting the worker from leaving the employment before repayment of the loan? | | | |
| 12. Does the company charge any interest on the loan provided to the worker? | | | |
| 13. Does the worker need to place deposits during employment (e.g. for the use of tools, housing, food etc.)? | | | |
| Working hours, overtime, leave and holiday entitlements | | | |
| 14. Has any worker worked more than 12 hours a day including overtime or more than 104 hours of overtime in a month? | | | |
| 15. Is overtime compulsory? | | | |
| 16. Does the worker need to work overtime to earn minimum wage? | | | |
| 17. Are the workers given rest time and a weekly rest day in accordance to the Employment Act 1955? | | | |
| 18. Is the company's policy on paid holiday, annual leave and sick leave higher than or at the minimum, in accordance with the Employment Act 1955? | | | |

| | | | |
|--|--|--|--|
| 19. Does the company pay overtime, rest day or public holiday not less than what is provided for in the Employment Act 1955 when the worker is required to work on those days? | | | |
| 20. Does the company have any programme to reward the manager, supervisor or worker for good practice in improving workplace relations? | | | |
| Disciplinary and grievances policy | | | |
| 21. Does the company have any written policy, code of conduct or rules and regulations? | | | |
| 22. If Yes, is there any training given to relevant personnel on their respective roles and responsibilities under the policy? | | | |
| 23. Is there any measure that enables workers to make complaints or report any incidence of abuse or violation of company policy? | | | |
| Passports and personal possessions | | | |
| 24. Is the migrant worker required to handover their passport or personal document to the company? | | | |

| | | | |
|---|--|--|--|
| 25. In case the worker has requested the company to keep the passport or valuables, does the worker have access to such documents and possessions freely without need for permission from anyone? | | | |
| 26. Does the company provide a safe place for the worker to keep her/his own passport and valuable items, for example a safe or a secure cabinet? | | | |
| 27. If Yes, does the worker have access to the locker/cabinet/safe freely at any time, without needing permission from anyone? | | | |
| 28. Does the company have policies and procedures for safe keeping of such documents and are they compliant to the Passport Act? | | | |
| Freedom of movement | | | |
| 29. Is accommodation provided to migrant workers? | | | |
| 30. If Yes, are workers' free to move around and go out of the accommodation at any time outside working hours? | | | |
| 31. Are the doors to the workplace (even during work hours) or dorms locked to prevent workers from leaving? | | | |
| 32. Is a security guard tasked to monitor worker movement at the dormitory? | | | |

| Accommodation and health | | | |
|---|-----|----|------------|
| 33. Are there any rules and regulations provided about the accommodation? | | | |
| 34. Is the worker free to choose if she/he wants to live in the accommodation provided by the employer? | | | |
| 35. Does the company provide medical attention to migrant workers in the event of illness? | | | |
| Assessment of post-employment practices | | | |
| Post-employment practices | Yes | No | Don't know |
| Termination of employment | | | |
| 1. Do both migrant and local workers have the same terms on notice of termination? | | | |
| 2. Can a migrant worker terminate the contract of employment before the completion of terms by serving the required notice period? | | | |
| Final wages | | | |
| 3. Does the company make a final payment to the migrant worker for all outstanding remuneration, including wages, bonus and overtime pay, or other benefits due, prior to repatriation? | | | |

Repatriation

| Post-employment practices | Yes | No | Don't know |
|---|-----|----|------------|
| 4. Does the company pay for the repatriation cost of the migrant worker upon completion of the employment contract? | | | |
| 5. Does the company pay for the repatriation cost of the migrant worker if she/he needs to terminate the contract prior to completion of terms due to illness or family emergency or other valid reasons? | | | |
| Assessing suppliers' recruitment and employment practices | | | |
| 1. Does the company assess and screen its suppliers with regards to their recruitment and employment practices? | | | |
| 2. Does the company policy or Code of Conduct apply to suppliers? | | | |
| 3. Does the company implement any monitoring procedures with regards to its suppliers? | | | |



Business responsibility on preventing and addressing forced labour in Malaysia

A must-read guide for Malaysian employers

This guide provides practical guidance to employers on how to identify risks of forced labour in company recruitment, employment and sourcing practices, and how to effectively prevent and eliminate these risks. It is intended for company managers and staff responsible for human resources management, social and legal compliance issues at the enterprise level.



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