Human Rights and Gender Equality

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

National Report: Malaysia

Enhanced Regional EU-ASEAN Dialogue Instrument
E-READI
The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia.

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About the Report
This national report was one of ten national ASEAN Member State reports produced to feed into a regional Comparative Study on Laws and Policies in the Management of Migrant Workers in ASEAN. The regional study offers a comprehensive analysis on how ASEAN Member States have dealt with the movement of migrant workers into their labour markets, covering all skill levels and including occupations under the 8 ASEAN Mutual Recognition Arrangements (MRAs), and providing recommendations as feedback for ASEAN policymakers and practitioners in improving policies and measures pertaining to the mobility of migrant workers.

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This national report was prepared by Marilyn (Maimunah) Aminuddin. The text of this publication is meant as a reference document for concerned stakeholders only. It may not be freely quoted or reprinted. The right to reprint and further circulate this national report lies with Ministry of Human Resource, Malaysia.
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List of Acronyms

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<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ESD</td>
<td>Expatriate Services Division</td>
</tr>
<tr>
<td>FW</td>
<td>Foreign Worker</td>
</tr>
<tr>
<td>MEF</td>
<td>Malaysian Employers Federation</td>
</tr>
<tr>
<td>MRA</td>
<td>Mutual Recognition Agreements</td>
</tr>
<tr>
<td>MTUC</td>
<td>Malaysian Trades Union Congress</td>
</tr>
<tr>
<td>VDR</td>
<td>Visa with Reference</td>
</tr>
</tbody>
</table>
Executive Summary

A study was made to examine the laws, policies and practices relating to the recruitment and management of foreign workers, both skilled and unskilled, in Malaysia. The purpose of the study was to determine why, although there exists an ASEAN level agreement on the free flow of labour within the ASEAN countries, the number of ASEAN nationals working in each other’s countries remains small, particularly at the level of skilled labour (expatriates).

Although some progress has been made in recent years in improving the regulatory systems for recruiting and managing foreign workers in Malaysia, many challenges remain, some of which have been outstanding for a long time.

The ASEAN mutual recognition agreements (MRAs) relating to eight different professions have not led to a significant increase in ASEAN professionals working in Malaysia. Unskilled foreign workers, who form a large percentage of the Malaysian work-force include a substantial number of migrant workers from Indonesia, and to a much lesser extent from Philippines, but few from the other ASEAN countries. Other than Indonesia, the bulk of the migrant workforce in Malaysia is from Bangladesh and Nepal.

It is clear that, at this point of time, the requirements that must be met in order for a foreign employee to be granted an employment pass or work permit are identical no matter the origin or nationality of the employee concerned. There are no special provisions in the Malaysian system for ASEAN nationals which would give them priority over other countries. Neither is there any reason why an employer should prefer to hire ASEAN nationals rather than professionals and skilled workers from other countries.

To overcome this situation, it is recommended that the keeping of statistics on all aspects relating to foreign labour in the country be collected and disseminated by the relevant government agencies. The data will then serve to improve the policy making of the government on this subject.

Further, increased resources need to be allocated to ensure abuse of foreign workers is substantially reduced, if not eliminated altogether. These resources need to be available to the government agencies responsible for enforcing the employment laws as well as to non-government organisations who can respond quickly to workers who need assistance.

Every ASEAN nation which permits its citizens to work in other ASEAN nations should establish systems in those countries to provide the workers with protection to supplement that given by the host-country.
1. INTRODUCTION

The purpose of this study is to identify the gaps between ASEAN level agreements on migrant labour and national level legislation and practices. It is expected that the outcome of the study will be policy recommendations relating to labour mobility, especially for the eight Mutual Recognition Arrangements (MRAs), which establish standards which must be met for each of the professions in order for members of these professions to work in another country within ASEAN.

In the context of Malaysia, “migrant workers” is not a commonly used term for non-Malaysian nationals working in the country. Generally, foreign workers in Malaysia are divided into two distinct groups: (1) expatriates and (2) foreign workers (FWs). The former are the highly skilled, highly paid managerial and professional class of employee and the latter are unskilled or semi-skilled labour. There is a stark difference in the numbers of each group currently working in the country. Accurate and current statistics are difficult to come by, especially for unskilled labour, which again are often divided into two categories, viz. legal and illegal (or documented and undocumented).

1.1 Expatriate Employees

The total workforce, stands at 15.6 million and thus, as will be seen, only a small percentage of the workforce are expatriates, who in 2019 numbered 122,169. Some 21 per cent of these expatriates are from ASEAN member countries. Table 1 lists the origins and numbers of expatriate employees from ASEAN countries. The expatriates from ASEAN countries total 26,213.

Table 1. Origins and Numbers of Expatriate Employees from ASEAN Countries, 2019.

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Numbers of Expatriates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philippines</td>
<td>8,579</td>
</tr>
<tr>
<td>Indonesia</td>
<td>8,106</td>
</tr>
<tr>
<td>Thailand</td>
<td>3,471</td>
</tr>
<tr>
<td>Singapore</td>
<td>2,714</td>
</tr>
<tr>
<td>Vietnam</td>
<td>2,323</td>
</tr>
<tr>
<td>Myanmar</td>
<td>832</td>
</tr>
<tr>
<td>Brunei</td>
<td>98</td>
</tr>
<tr>
<td>Cambodia</td>
<td>74</td>
</tr>
<tr>
<td>Lao D.R.</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>26,213</strong></td>
</tr>
</tbody>
</table>

Source: Statistik Pekerjaan dan Perburuhan Siri 22, Bil. 4/2019 (Work and Labour Statistics), issued by the Ministry of Human Resources on a quarterly basis.

Data provided by the Ministry of Home Affairs states that the number of expatriates employed in various sectors in 2019 were: 64,795 in services; 38,685 in information technology; 6,979 in construction; 6,898 in manufacturing; 2,382 in education; 1,451 in petroleum; 270 in tourism; 260 in commerce; 179 in agriculture; 73 in finance; 64 in medical services; 63 in sports; 53 in transport and 17 in minerals. ¹

¹ Statistik Pekerjaan dan Perburuhan Siri 22, Bil. 4/2019 (Work and Labour Statistics)
1.2 Unskilled Migrant Workers

Documented unskilled labour numbers are just under two million, or some 14 per cent \(^2\) of the workforce of 15.6 million workers as of January 2020. The government has stated that it would like to cap the total percentage at 15 per cent. \(^3\) The total number of foreign unskilled labour is widely disputed. At the end of 2019, one writer said, “Today, according to unofficial estimates, up to six million foreign workers are in Malaysia, or 18.6 per cent of the country’s 32.6 million population. This unskilled labour force is made up of 2.27 million legally working and another 2.5 to 3.37 million illegal foreign workers. Foreign workers represent somewhere between 31-40 per cent of the total Malaysian workforce of 15.3 million, employed primarily in what is called “3D” (dirty, dangerous, and difficult) jobs in the plantation, agriculture, construction, manufacturing, and service sectors.”\(^4\)

Foreign workers from ASEAN countries total 934,690 out of the 1,983,780 total migrant workers in the country in early 2020. The largest number is from Indonesia, and the smallest from Lao PDR. Table 2 shows the number of unskilled workers from ASEAN countries as of 31 January 2020.\(^5\)

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Number of Migrant Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>686,536</td>
</tr>
<tr>
<td>Myanmar</td>
<td>161,992</td>
</tr>
<tr>
<td>Philippines</td>
<td>51,158</td>
</tr>
<tr>
<td>Thailand</td>
<td>16,106</td>
</tr>
<tr>
<td>Vietnam</td>
<td>15,769</td>
</tr>
<tr>
<td>Cambodia</td>
<td>3,085</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>44</td>
</tr>
</tbody>
</table>

Whatever the actual number of foreign workers in Malaysia, what is generally agreed is that the numbers are large and out of control when the number of undocumented workers is taken into consideration.

Within the ASEAN region, Malaysia is mostly a receiving country. However, it does serve as a source country for Singapore, and also Malaysian expatriates can be found in the ASEAN member states in which Malaysian companies have invested such as plantations in Indonesia and vehicle parts manufacturing in Thailand.

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\(^2\) Statistics provided by Labour Department from MyImms (the online Immigration Department Portal)
\(^5\) Statistics supplied by Labour Department from MyImms
There is a significant split between expatriates and foreign unskilled workers which is reflected in the fact that not only are there different employment passes with different conditions required for employment and the approval for each group of workers, but also there are two different divisions in the Ministry of Home Affairs (Immigration Department) which are housed in different locations to deal with applications for the relevant employment passes. The separation of the two groups of workers is replicated by the general attitude of stakeholders in society, i.e. expatriates are generally welcomed and encouraged, whereas extensive effort has been, and continues to be put into solving the puzzle of how to reduce the country’s so called “dependence” on foreign labour.

This report does not examine in detail the issue of undocumented workers, also known as illegal workers, in Malaysia.

1.3 Policies and Laws on Migrant Labour Matters

Malaysia is a federation of 14 states. Although labour-related matters are within the purview of the Federal government, for historical reasons, two states have significant autonomy in relation to labour issues, particularly in relation to the employment of persons from outside the two states, whether Malaysian or non-Malaysian. The Borneo states of Sabah and Sarawak will not, therefore, be included within the parameters of this study. It may be noted in passing, however, that the state of Sabah with its close proximity to the southern Philippines has a large number of workers from that country in the state, most of whom are undocumented. The same applies to Sarawak with its long border with Kalimantan, which is part of Indonesia.

Policies relating to the employment of foreigners are made by the Cabinet Committee on Foreign Workers and Illegal immigrants; a committee consisting of a number of different Ministries with an interest in the subject. The policies made by this Committee are not published, although it makes infrequent press releases. An independent Committee on Foreign Workers was established in August 2019, but its report also was not made public. 6 However, researchers can apply to the Ministry of Human Resources for a copy of the report if it is relevant to their study.

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2. MIGRATION LAWS AND POLICIES IN MALAYSIA

This chapter will discuss the laws and policies implemented by the Malaysian government relating to migrant labour.

2.1 Entry and Stay Measures

The law which first gave the right to the government and its agencies to restrict and control the inward migration of labour is the Employment (Restriction) Act 1968 (revised 1988). The key section of this Act is S.5, which states as follows:

5. (1) (a) No person not being a citizen referred to in the Schedule shall be employed in any business in Malaysia or accept employment in any business in Malaysia unless there has been issued in respect of such person a valid employment permit. (b) No person shall employ in Malaysia any person not being a citizen referred to in the Schedule unless there has been issued in respect of that latter person a valid employment permit.

Further, the Act states:

11. (1) Subject to subsections 7(2) and (3), an employment permit issued under this Part shall unless otherwise specified be valid only in respect of the particular employment and the employer specified therein. (2) An employment permit shall unless sooner cancelled or suspended be valid for a period of not exceeding two years.

This Act should be read in conjunction with the Immigration Act 1959/63 which makes it an offence to employ any foreigner without a valid permit. The government is considering undertaking a major revamp of the processes and procedures related to the control of migrant labour.

The procedures applied at present whereby migrants and their prospective employers put in a request for the appropriate employment permit vary with the type of pass. There are three main passes as described below, i.e. a pass for high skilled employees, a pass for unskilled or semi-skilled employees and a pass for foreign domestic helpers.

2.1.1 Skilled Workers

Skilled workers include professional/management, high skilled level employees in Categories 1, 2 and 3.  

In this description of the procedures and requirements for the employment of a professional, skilled worker, only Categories 1 and 2 will be discussed. Category 3, which applies to technical/knowledge workers, has slightly different requirements.

All applications for approval to hire Category 1 and 2 employees are handled by a separate division in the Immigration Department, namely the Expatriate Services Division (ESD). All of the documents required for the application are posted via an online portal. The ESD also handles all Passes which relate to the hiring of an expatriate such as:

7 Source: Expatriates Services Division Online Guidebook on Applications
- Employment Pass
- Dependants Pass (for family members of the Expatriate)
- Social Visit Pass (long term) for family members of the expatriate, and
- Professional Visit Pass. This pass is issued for persons with professional/technical skills and is valid for a period of up to 12 months only. Examples of persons who may apply for such a pass are:
  - Professor/Lecturer/Speaker
  - Researcher/Assistant Researcher
  - Consultant
  - Technical Advisor
  - Installation and Fixing of Machines and equipment expert
  - Maintenance expert of Machines and equipment

This report will only examine the system for recruiting expatriates under the Employment Pass.

An employer who wishes to employ a skilled worker/expatriate must register with the online portal provided by the Expatriate Services Division, Immigration Department (ESD) for which an ID will be provided. Information about the applicant (the employer) must be provided including:
  - Copy of all current company directors’ MyKad (Identity card) / Passport copy as per the Companies Commission of Malaysia (SSM) registration and
  - Comprehensive Company Profile (including the following items):
    - Background of company
    - Business activities
    - Organization structure
    - Location of company / number of branches (branch address)
    - Photo of the premise (front and interior)
    - Photo of the products / services offered
    - Copy of Company’s Latest Phone Bill
    - Tenancy Agreement / Sales & Purchase Agreement (S&P)
    - Latest SSM Form 9 or Form 83A (any related documents)
    - Latest SSM Form 24 or Form 80A (any related documents)
    - Latest SSM Form 49 or Form 79 (any related documents)
    - Latest Audited Financial Report
    - Copy of Local Authorities License - (PBT) (if applicable)
    - Other business licenses

The information provided will be checked and verified, after which the employer will be permitted to book an appointment with an officer of the Division. A director of the company must attend this meeting which requires him to sign an Official Letter of Undertaking. Once this process is complete, the employer can submit his application for the Employment Pass of the foreign employee who is to be employed. The Division, according to its online
Guidelines, sets a standard of 14 days to check and verify the information on whether the employer is eligible to hire an expatriate.

Expatriates must have the following minimum qualifications which vary depending upon the category of the expatriate (1, 2, or 3) to be eligible for an employment pass:
- Degree and above, with at least 3 years’ experience in the relevant field;
- Diploma, with at least 5 years’ experience in the relevant field;
- Technical Certificate or equivalent, with at least 7 years’ experience in the relevant field.

The eligibility requirements for the Expatriate Employment Pass (Category One) are:
- The hiring company must successfully register with ESD;
- Applicant must be provided with a basic salary of minimum RM10,000 per month; and
- Applicant must have an employment contract valid up to 60 months.

An Employment Pass holder has the following benefits:
- Allows the holder to be employed in West Malaysia by the hiring company;
- Spouse and children under 18 years old of Employment Pass holder are eligible for a Dependant Pass;
- Children over 18 years old and unmarried are eligible for Social Visit Pass (Long Term);
- Parents / Parents-in-law are eligible for Social Visit Pass (Long Term); and
- Eligible to hire foreign maid(s).

Employment Pass holders are not permitted to work for any employer other than that stated in their Pass. If they wish to change companies, they need to re-submit their application in order for a new Pass to be considered. However, after three years working in the country, the employee may apply to be recognised for a Resident Pass (Talent), which will be valid for 10 years. He must be earning more than RM15,000 per month to be eligible to apply. If this Pass is approved, and there are stringent conditions to ensure the employee can provide substantial benefit to the country, the employee can change employers without informing the Immigration Department. The purpose of this special Pass is to attract and retain highly skilled individuals, particularly in fields where expertise is required in the country’s key economic areas.

Each application to employ an expatriate must be approved either by the relevant Regulatory Boards listed in the next section or by the following agencies before an employment pass will be issued:
- Malaysia Investment Development Authority (MIDA) for the manufacturing and its related services sectors.
- Malaysia Digital Economy Corporation (MDEC) for the information technology sector, specifically companies that have been awarded Multimedia Super Corridor (MSC) Status.
- Central Bank of Malaysia (BNM) for the financial, insurance and banking sectors.
- Securities Commission (SC) for the securities and futures market.
• Iskandar Regional Development Authority for specific companies operating within Iskandar Malaysia (Johor).
• East Coast Economic Region Development Council (ECERDC) for specific companies operating within the East Coast Economic Region.
• Talent Corporation Malaysia Berhad for specific key employers under ICAEW/ACCA/National Key Economic Areas (NKEA) sectors.
• Malaysian Global Innovation & Creativity Centre (MaGiC) for approved programmes under its purview.
• Public Service Department (in the Prime Minister’s Department) Malaysia for government contractual positions.

2.1.2 Skilled Workers within the Ambit of the Eight MRAs
The eight MRAs, with the exception of Tourism Services, are regulated positions, i.e. the relevant law requires all practitioners in the country, whether local or foreign, to be licensed by a body with powers established under the law. The Regulatory Bodies are:

1. Engineering – The Board of Engineers
2. Medical practitioners – The Malaysian Medical Council
3. Dentists – The Malaysian Dental Council
4. Nursing – Nursing Board Malaysia
5. Architectural Services – Board of Architects
6. Quantity Surveyors – Board of Quantity Surveyors Malaysia
7. Accountancy – Malaysian Institute of Accountants

All of these bodies provide extensive details on their websites on how foreign professionals can apply to work in Malaysia, including the procedures and forms that must be completed in order to register/receive a licence to practice. To illustrate the procedures, those of the medical services will be described hereafter.

Foreigners can apply to the Malaysian Medical Council for Registration as a doctor which, if the person fulfils stringent criteria, may be approved for a limited period of time. The application is made through the doctor’s potential employer. Different procedures apply depending on whether the medical practitioner has completed his post-degree internship in Malaysia or in some other country. A form is provided on the Council’s website which needs to be completed by each applicant as well as a checklist of documents which must be supplied. ⁸ All documents need to be properly certified. The list of documents includes:

1. Cover Letter from Employer. (Original + 1 copy)
2. Copy of Appointment/Offer Letter. (1 copy)
3. Copies of Advertisement made in three (3) National Newspapers. (2 copies)
4. Form 7 – Full Registration application form. (Original + 1 copy)
5. Curriculum Vitae of Applicant including work experience. (Original + 1 copy)
6. Recent passport sized photo.
7. A certified true copy of the basic medical degree. (1 copy) a. For Indonesian university graduates only – certified true copies of Sarjana Kedokteran and Ijazah Kedokteran. (1 copy each)

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⁸ See List of Documents in Annex.
8. A certified true copy of the Provisional Registration certificate with the Medical Council /Licensing Authority in country of practice. (1 copy)
9. A certified true copy of the Full Registration certificate with the Medical Council /Licensing Authority in last country of practice. (1 copy)
10. A current and original Certificate of Good Standing from Medical Council/ Licensing Authority in last country of practice (to be sent by the issuing authority directly to MMC) (Original)
11. A certified true copy of the testimonials of the last three years working experience including Senior Houseman Certificate with postings specified, if applicable.
12. Certified true copy of passport. (on an A4 sized paper) (1 copy)
13. Certified true copy(ies) of postgraduate degree(s), if applicable. (1 copy each)
14. Fitness to Practice Declaration form. (Original)
15. Certified true copy of the medical report/sick leaves, if any. (1 copy)
16. Certified true copies of marriage certificate for foreign spouse of Malaysian, if applicable. (1 copy)
17. If the practitioner is either still registered and serving a contract with another employer, a Release or No Objection Letter from the current/previous employer.

Questions have been raised in the press and various online blogs as to whether Malaysia needs more doctors. The general consensus is that generalists are in abundant supply, whereas specialists in various areas are in short supply. If these comments are correct, it would seem that only foreign doctors with specialist qualifications and experience would be able to gain employment in the country. A report quoting Malaysian Medics International stated that “There are 33 medical institutions producing 3,000 doctors every year. We have another 3,000 doctors returning home every year from overseas after completing their education.” Many of the doctors are offered contract positions rather than emplaced in the permanent civil service. This means that their salaries are lower and, most significantly, they are not entitled to apply to study to specialize in a specific branch of medicine.

The Nursing Board Malaysia sets equally stringent criteria for foreign nurses to work in Malaysia. These include:

1. Age: 27 years to 55 years.
2. Must be a Registered Nurse.
3. Must have minimum 3 years of clinical working experience.
4. Possess post basic qualification and provide certification from the training institution from country of origin.
5. Period of service does not exceed 5 years, must leave the country and serve 3 months cooling off period before an extension can be applied for.
6. Verification of registration (VOR) and letter of good standing (LOGS) from origin country / nursing board or council sent directly to the Malaysia Nursing Board by air mail.
7. Provide verification of training and transcript from the training institution sent directly to the Malaysia Nursing Board by air mail.

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8. The quota for employment of foreign trained nurses is 40% of the total local nurses in the facility/institution.
9. Shall not be permitted to practice obstetrics and as a Clinical Instructor in all clinical areas.
10. Only those nurses that have been approved by the Selection Committee for Recruitment of Foreign Trained Nurses are allowed to practice in Malaysia.
11. The highest nursing position in the institution shall be held by Malaysian citizens.
12. Application for employment shall be made through the employer.
13. The employer must obtain the Temporary Practicing Certificate from the Nursing Board Malaysia prior to application for approval of Work Permit and Multiple Entry Visa from the Immigration Department.
14. Only those with a Temporary Practicing Certificate (TPC), Approval of Work Permit and Multiple Entry Visa from the Immigration Department, Ministry of Internal Affairs are allowed to work. The duration of a valid Work Permit and the Temporary Practicing Certificate are the same.
15. Shall be fluent in the English Language (spoken and written).
16. Must possess a Temporary Practicing Certificate issued by the Nursing Board Malaysia, renewable yearly (2 months before expiry date).
17. Subject to domestic laws and regulations and the Nurses Act 1950.
18. The employer must return the TPC card and termination letter to Nursing Board prior to expiry of the employment contract.

The procedures for a foreign dentist to apply to work in Malaysia are very similar to those for the medical profession. The online documentation provided by the Malaysian Dental Council includes a list of recognised universities, i.e. an applicant must be a degree holder in dentistry from one of these listed universities, failing which he will not be eligible to apply to work in Malaysia. It may be noted that the list includes universities in Indonesia and Singapore, but no university from any other ASEAN nation.11

Employment Pass holders in Categories 1 and 2 are not required to undergo a medical check before or on arrival in Malaysia, although their respective employers may have such a condition for employment especially if the employer is purchasing medical insurance to protect the employee – a common benefit found in expatriates’ contracts of employment.

It should be noted that the procedures which apply to applications to employ a skilled foreigner are the same no matter what his country of origin. There are no special procedures which apply only to ASEAN member countries. There is no priority list whereby nationals of ASEAN countries get preference over expatriates from other countries.

2.1.3 Unskilled Workers

A two-stage process applies to the recruitment of foreign unskilled workers. In the first instance, the employer has to apply to the Department of Labour, Ministry of Human Resources, for approval to import foreign workers. This Department sets the general policies under which approval will be granted. Once approval is given, the employer, or an agency on

his behalf, has to apply to the Immigration Department for the requisite entry and employment passes.

Stage 1. Application to the Labour Department

At this stage several steps have to be completed as follows:

1. The employer must advertise the vacancies in an online portal, JobsMalaysia, which is an agency of the Labour Department. The advertisement must be accessible to job applicants for at least 30 days.

2. The employer then applies for approval in principle to recruit foreign workers. The Department will conduct a check on the employer to determine whether he meets the criteria for employing foreign workers.

3. Once approval is granted, the employer will be personally required to sign an undertaking in front of a Labour Department Official to the effect that he will pay the mandatory levy; prepare and sign a contract of employment with the employee which complies with the Employment Act; pay the wages and other benefits as provided for in the Act; comply with the minimum wage; provide accommodation which complies with the relevant Act; he will not employ any foreigner who is undocumented or does not have the appropriate permit; will not hold the employees’ passport; and will pay for the medical care of the workers.12

4. Once approval is given, the employer will be informed by email.

According to a World Bank Report,13 in January-September 2018, the Department of Labour rejected about 15 per cent of applications by employers because of previous non-compliance with the employment laws. The Department examines whether the employer is genuine and whether his application fits within the general conditions laid down for the import of foreign labour including country of origin, and the number of foreign workers the employer already has compared to the ratios laid down in the guidelines and rules provided to employers. The Department also checks the responses to the employer’s advertisement for workers which is placed with JobsMalaysia. If the employer’s application meets with approval, the Department will recommend that the appropriate work passes be issued by the Ministry of Home Affairs.14 The Ministry of Human Resources has no power to issue the work passes; it only makes a recommendation to the Ministry of Home Affairs. There have been many suggestions that all decision-making and processing of foreign workers be solely in the hands of the Ministry of Human Resources. However, the government has never agreed to make this change.15

Stage 2. Application Moves to the Immigration Department, Ministry of Home Affairs

The Foreign Workers Management Division of the Immigration Department, Ministry of Home Affairs, handles the work permits for all unskilled workers. A number of general criteria apply to applications for unskilled workers as follows:

1. Foreign workers are only permitted in the manufacturing, construction, agriculture, plantation, and mining & quarrying sectors. In the service sectors, foreign workers are limited to certain jobs including restaurant cooks, sanitation/cleaning services,

12 See Employer’s Undertaking in Annex C.
14 Interview with Department of Labour, Director of Foreign Workers
15 See, for example: https://www.thesundaily.my/archive/hr-ministry-should-play-prominent-role-recruitment-foreign-workers-mtuc-CUARCH560570
hotels, resorts on islands, theme parks (animal handlers), golf caddies (male) and cargo handlers in sea and airports.

2. A levy paid on an annual basis is applicable to all unskilled workers, there being no equivalent for skilled workers. The levy is currently paid by the employer, whereas in the past it was paid by the worker. The amount varies by sector ranging from the lowest (agriculture and plantations) set at RM640, to the highest (all other approved sectors) at RM 1850. Discussions are on-going as to how to refine the “flat-rate” system in force at present, to one with more distinctions based on a variety of factors. The levy must be paid within 30 days of the employer receiving approval for his application.

3. Unskilled workers may only be sourced from approved countries. All ASEAN member states are on the list of source countries, as are Bangladesh, Nepal, Pakistan, Sri Lanka, India, Uzbekistan, Kazakhstan, and Turkmenistan. According to statistics published by the Ministry of Human Resources 16 the top five source countries are Indonesia, Bangladesh, Nepal, India and Myanmar.

4. All applications are made online. Once the Immigration Department approves the application for each worker, the levy must be paid and then the worker may be brought into the country. Within one month, he or she is required to undergo a medical check by a concessionaire (Fomema) appointed by the government. Once the worker is cleared by this organisation, the employer may apply for the work permit or employment pass.

As with skilled workers, there are no special provisions applying to workers from countries in the ASEAN bloc.

2.1.4 Domestic Workers

Domestic workers, or as they are still widely known in Malaysia, domestic servants, have a separate permit compared to skilled and other unskilled workers. The Immigration Department refers to this group as Foreign Domestic Helpers. The only countries which are approved to send domestic workers to Malaysia are the ASEAN countries, minus Singapore, Myanmar and Brunei, but including India and Sri Lanka. Domestic workers from other countries are only permitted entry in special circumstances, such as a foreign professional, skilled employee, wishing to bring with him his domestic help employed by him in a country in which he was previously employed. As with other types of employment pass, applications may be made by the employer himself, or by an agency registered with the Immigration Department.

To be eligible to be employed as a domestic worker, the following conditions apply. The worker must be:

1. Female
2. Not less than 21 years old and not more than 45 years old
3. Confirmed fit by the government-appointed medical centre (Fomema)
4. Reside in the country of origin

16 Statistik Pekerjaan dan Perburuhan, 4/2019, Ministry of Human Resources
5. Enter Malaysia via the Visa With Reference (VDR) issued by the Malaysian representative office in the country of origin
6. In possession of a Certified PASS for **IMMIGRATION SECURITY CLEARANCE (ISC)** at the source country.

There are also requirements to be met by a prospective employer. These include:
1. The application may be made by the employer himself, or
2. The application may be made through an employment agency registered with the Immigration Department of Malaysia at the Immigration office of the State as per the employer’s address.
3. The employer and his spouse should have children under 15 years of age or parents who are sick.
4. The employer must have a minimum income, which varies with the country of origin of the domestic helper as shown in Table 3.
5. The employer must sign a standard contract of employment between himself and the domestic helper. 17A copy must be submitted to the Department of Labour.

### Table 3. Conditions for Employing a Foreign Domestic Helper

<table>
<thead>
<tr>
<th>Country of Origin</th>
<th>Employer’s Net Income (per month)</th>
<th>Personal Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>RM 3,000</td>
<td>RM 250</td>
</tr>
<tr>
<td>Philippines</td>
<td>RM 5,000</td>
<td>RM 750</td>
</tr>
<tr>
<td>Vietnam</td>
<td>RM 3,000</td>
<td>RM 1,500</td>
</tr>
<tr>
<td>Cambodia</td>
<td>RM 3,000</td>
<td>RM 250</td>
</tr>
<tr>
<td>Thailand</td>
<td>RM 3,000</td>
<td>RM 250</td>
</tr>
<tr>
<td>Lao D.R.</td>
<td>RM 3,000</td>
<td>RM 1,500</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>RM 5,000</td>
<td>RM 750</td>
</tr>
<tr>
<td>India</td>
<td>RM 5,000</td>
<td>RM 750</td>
</tr>
</tbody>
</table>

It is possible that the minimum income level of prospective employers may be increased in the near future. It should also be noted at this juncture that the minimum wage regulations which establish a minimum wage for employees do not apply to domestic helpers. There also exist a number of other conditions for employing a domestic helper, such as a Muslim employer may only employ a Muslim domestic helper.

Other than the conditions mentioned above, the process for applying for a domestic helper’s pass is similar to those for unskilled workers.

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2.1.5 Orientation/Induction for New Employees

Since 2004, it has been the policy of the Malaysian government that foreign workers in the unskilled group must be provided with an induction programme prior to entering Malaysia. It is recommended that the course include:

1. Proficiency in Bahasa Malaysia (Indonesian workers are exempted from this module) and English
2. Malaysian culture
3. Awareness of Malaysian laws

The Malaysian Employers Federation (MEF) recommended in 2014 in a Survey cum Guideline on the management of foreign workers\(^\text{18}\) that employers organise an induction programme which covers a wide range of issues including:

- Hostel rules briefing
- Distribution of company uniform
- Rules on transport to and fro the workplace
- Company code of conduct, if any
- Briefing on sexual harassment
- Bank account registration
- Briefing on safety rules
- Tour of premises
- Briefing by police

The MEF noted that based on their 2014 survey, all companies had conducted an induction programme for new foreign recruits. No evidence could be found whether this is still the situation. According to the Director of Labour, Foreign Workers, induction courses are no longer compulsory. Originally, the country of origin was required to conduct the programme, but in some instances it was found that workers were charged high fees for attending the course and the quality was variable. Further, the authorities in Malaysia had no effective way of monitoring the courses provided. Whether or not to re-introduce the compulsory nature of induction, but hold the course in Malaysia is still under discussion.\(^\text{19}\)

Given the complexity of the procedures required to be completed by employers before employing foreign workers at any level, it is not surprising that many employers use the services of agencies to assist in the voluminous paper-work. This, in turn, leads to opportunities for corruption within the employing organisation when the officer in charge of this responsibility, typically human resource or administration staff, take the opportunity to request a bribe from the agency for each foreign worker employed.\(^\text{20}\) For example, a recent Industrial Court Award described how a human resource manager was demoted and subsequently claimed reinstatement under the Industrial Relations Act as he believed he had


\(^{19}\) Interview with Director of Labour, Foreign Workers

\(^{20}\) See Industrial Court Award TAN HOCK BEE AND ULTIMATE MACHINING SOLUTIONS (M) SDN BHD. AWARD NO. 1483 OF 2019. Annex C.
been constructively dismissed without just cause or excuse. His ex-employer had accused him of taking bribes from a recruitment agency every time their services were used to hire foreign workers. The manager admitted to receiving a cheque from the agency employee’s partner, but said that it was a loan requested by the partner who was in financial difficulties. The employer had only come to know of the “kickbacks” being demanded and received by the Manager when the agency’s partner complained to the company. The Court found that there was adequate evidence that the Manager had received the bribes and therefore his demotion on these grounds was not a constructive dismissal.
3. INCORPORATION MEASURES

3.1 Permanent Residency

The right to permanent residency in Malaysia is strictly limited. Only persons who have lived in Malaysia continuously for a minimum period of five years are permitted to apply for permanent residency. There are five categories of persons whose applications will be considered. These are:

1. Investors
2. Employees on Employment Passes who have a high level of expertise and are recommended by the relevant government agency
3. Employees with professional qualifications and outstanding skills
4. The spouse and children of a Malaysian citizen and
5. Persons who are able to achieve a minimum number of points on a rating system established by the Ministry of Home Affairs will also be considered. The points of the applicant depend upon his age, qualifications, length of stay in Malaysia, familiarity with Malaysian institutions, value of his investments in the country, his working experience in Malaysia, and his proficiency in Bahasa Malaysia, the national language.

Once applicants gain permanent residency status, they no longer require an Employment Pass and are free to change employers as they please, as applies to all citizens of the country.

Anecdotal evidence suggests that it is difficult for foreigners to get the right to permanently reside in Malaysia. Most of the complaints relate to the lengthy time taken for processing the application, often without any information being given to the applicant as to whether he is still being considered and what might be the problems delaying the application.

Unskilled workers do not have any right to apply for permanent residency in Malaysia. Upon completion of their contract, the employer is required to ensure they return immediately to their country of origin.

3.2 Rights under the Employment Laws

Malaysia has many employment laws to protect the rights of employees (workers with a contract of service). The scope and coverage of these laws do not differentiate between locals and documented foreign workers. However, not all laws cover all workers as will be briefly described below.

The Employment Act 1955 – the scope of the Act is employees earning not more than RM2,000 per month. The Act does not apply therefore to skilled workers who earn more than this amount, nor does it apply to domestic workers, except for a provision on notice. The Act, in s.60K has a section specifically on foreign employees which disallows an employer from paying wages or benefits which are discriminatory between locals and foreign workers in the same category of employment. But the law also makes it an offence for an employer to terminate the services of a local employee and replace him with a foreigner (s. 60M) and in s. 60N, where workers are found to be redundant and are retrenched by their employer, foreigners must be terminated before any locals are so affected.

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21 It is anticipated that the scope of the Employment Act may be increased, possibly to RM5,000 per month or even to cover all employees, without imposing a wage limit sometime this year, 2020. Discussions with stakeholders on this change have been in place since early 2019.
As described later in this report in the section on Enforcement Measures, the Department of Labour is the agency responsible for the enforcement of this Act. No official figures are published which provide an insight into how many foreign workers make use of the mechanism provided in the Act to lodge complaints against their employer if their rights under this Act or under the terms of their contract of employment are violated.

The Employment Act only applies in Peninsular Malaysia, and not in the Borneo states of Sabah and Sarawak which have their own law on labour, i.e. the Sabah Labour Ordinance and the Sarawak Labour Ordinance, which are similar in content to the Employment Act but they do not include any of the amendments introduced to the Employment Act in 2012.

**Minimum Wages Orders** issued under the National Wages Consultative Council Act – Since 2011, Malaysia has had a legally mandated minimum wage in place. The current wage order has been standardized for all states in Malaysia (whereas previously there was a lower rate for Sabah and Sarawak) but, as of 2020 the minimum rate depends on whether the employee is located in an urban area or not, with a lower rate for employees in non-urban areas where the cost of living is generally a little lower than in the major cities. The Wage Orders make no differentiation between local or foreign workers. However, the Wage Orders do not apply to domestic helpers.

**The Industrial Relations Act 1967** (IRA) and the **Trade Unions Act 1959** (TUA) – These Acts establish the sub-systems of industrial relations in the country. The rights of foreign workers are affected by three sets of provisions laid down in these Acts. These are:

1. The right to claim reinstatement when an employee believes he has been dismissed without just cause or excuse (s. 20 IRA) and
2. The right to join a trade union.
3. The right to be protected by a collective agreement.

The IRA gives the right to all employees in the private sector to claim reinstatement if they believe they have been dismissed without just cause or excuse. The claim is conciliated first at the level of the Department of Industrial Relations, Ministry of Human Resources and, if not settled, is referred to the Industrial Court, a special tribunal which deals only with disputes between employees and their employers. The time lapse between filing a claim by the employee and an award being heard by the Court is mostly two years, although there are cases which are considerably delayed, occasionally up to five years for various reasons. An employee who has been dismissed can apply for an extension to his right to stay in Malaysia (Special Pass) while his case is being processed but during this extension, for which a fee has to be paid, he is not permitted to work. This prohibition makes it difficult in practice for unskilled workers to see through a claim unless they are supported financially by a non-government organisation or other party. According to statistics provided by the Industrial Relations Department, in 2018 and 2019 a total of 20 and 25 expatriates lodged a claim for reinstatement. In the same years, unskilled foreign workers filed 6 and 8 claims respectively. Both of these statistics are miniscule in comparison to the number of claims made by Malaysians, which were 4814 in 2018 and 6027 in 2019.²²

The rights of an employee to join a trade union and the restrictions and limitation on those rights are contained within the **Trade Unions Act**. This Act does not differentiate between

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²² Source: Email from Deputy Director General, Industrial Relations Department.
foreigners and locals in the right to join a trade union, but the position of officer in a union is only open to citizens of Malaysia (s. 28(a)). Similarly, in s. 2 of the Act employees of a trade union must be local citizens.

The IRA establishes procedures for collective bargaining and for the legal cognizance of collective agreements signed between employers and a trade union representing the employer’s workers. Foreign workers will be within the scope of a collective agreement, unless they are specifically excluded from the scope of the agreement. Employers are generally keen to exclude foreign unskilled labour from the agreement, hence to provide an exclusionary clause in a “diplomatic” manner, many agreements state that they do not apply to any employees working temporarily. i.e. on a fixed-term contract of up to 24 months duration.  

As a general rule, this would mean that all migrant workers will be excluded as their contracts of employment are all less than two years.

As described later in this section, while unskilled and semi-skilled foreign workers may be eligible under the law to join the union relevant to their trade, or industry, very few avail themselves of this opportunity, mostly because of fear of retaliatory behaviour by their employer. Furthermore, the unions face difficulty in accessing these workers in order to encourage their membership as immediately after work they are transported to their hostel or other accommodation to which “outside persons” including union organisers have no access. According to statistics provided by the Department of Trade Union Affairs, in 2018, 14 out of 497 unions in the private sector had foreign workers in their membership. However, there are no published data on the number of foreign workers who have joined a trade union. The Malaysian Trades Union Congress (MTUC) estimates that in the National Union of Plantation Workers, one of the oldest-established unions in the country, and at one time the largest union in membership size in South-east Asia, 70 per cent of the members are foreign workers. Similarly, the Timber Employees Union, Peninsular Malaysia has about the same percentage of foreign members.

To assist foreign workers, including expatriates, the MUTC, the umbrella body for trade unions, has established a Migrant Resource Centre. As well as helping foreign workers who are being abused in some way by their employer, the Centre actively attempts to recruit foreign workers into the relevant union. To achieve this, they advertise their services to workers through fliers and direct communications, where possible, with workers in their hostel. In this way, they are able to encourage these workers to become union members. Nevertheless, success is limited as the workers are fearful that if they should join the union, their services may be immediately terminated by the employer and they will be deported forthwith. According to the MTUC, this has occurred a number of times.

**The Social Security Legislation** – Social security benefits are provided under three laws:

1. The Employees’ Social Security Act 1969
2. The Employment Insurance System Act 2017
3. The Employees Provident Fund Act 1951/Revised 1991

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23 See for example, Collective Agreement between Metal Industry Employees Union and Sumitomo Electric Wintec Sdn Bhd. Article 6.
24 Source: A trade union General Secretary in an industry with a large number of foreign workers, mostly Indonesian at the semi-skilled level.
27 [https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Malaysia%20HRDD.pdf](https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Malaysia%20HRDD.pdf)
28 Source: Interview with Officer of Malaysian Trades Union Congress.
The Employees’ Social Security Act is a mandatory insurance scheme which provides compensation to employees who are hurt as a result of an accident at the place of work, and also while commuting to and from their workplace or if the employee suffers from a work-related illness. Both employers and employee pay a small monthly contribution to the Social Security Organisation (SOCSO).

Prior to January 2019, foreign workers were excluded from the scope of the Act. Employers, before that date, had to purchase insurance from approved insurance companies for the purpose of compensating these workers if they were involved in an accident. Considering the numbers of workers employed in manufacturing, construction and plantations—all industries with a high risk of accidents, this insurance was important to these workers. The policy on this protection was changed in 2019 as there were suggestions that the previous system was discriminatory against foreign workers. In particular the benefits available under the old system were considerably less than those provided by SOCSO. The current scheme no longer discriminates between locals and foreign workers. The Act provides protection to all levels of employee, but not to domestic servants.

The benefits SOCSO provides to foreign workers under its Employment Injury Scheme include:
1. Payment of medical bills at government hospitals and selected clinics
2. Temporary Disablement Benefit
3. Permanent Disablement Benefit
4. Dependents Benefit
5. Funeral Benefit

The Employment Insurance System Act, which is also administered by the Social Security Organisation does not apply to foreign workers. Again, this is a contributory scheme by which workers who have been retrenched can apply for various benefits until such time as they find another job. The benefits are both in the form of cash and assistance to find a new job as well as subsidized re-training efforts.

Foreign workers are not required by the Employees Provident Fund Act to register and pay contributions towards the Fund which is to provide financial protection to employees “in their old age”. This is the only scheme in Malaysia, other than the government-provided pension for civil servants and other public sector workers, to ensure the welfare of workers post-retirement. However, foreign workers at both skilled and unskilled levels, have the option of joining the Fund and contributing on a monthly basis via a pay-roll deduction made by the employer. If they elect to contribute, the rate is the same as that for Malaysians, i.e. 11% of their wages. However, the employer’s contribution is only RM 5.00 per month compared to a contribution rate of 12 or 13% of the Malaysian employee’s wages (depending upon his salary level).

Non-Malaysian members of the Fund can withdraw their funds when they leave the country, providing they are not intending to return.

The Human Resource Development Bhd. Act 2001 was established to collect a monthly levy from employers for the purposes of ensuring employers conduct training for their employees. An employer is required to pay a levy at the rate of 1% of every employee’s monthly wages into the Fund. The employer, upon conducting approved training can then
claim reimbursement from the Fund. The levy does not apply to any foreign employees and employers cannot claim any funds if they are provided with training. One consequence of this system is that employers are unlikely to offer any kind of training to foreign unskilled workers, other than the most basic knowledge and skill needed to do their jobs on a daily basis. Thus the unskilled worker remains unskilled even after working a number of years in Malaysia. When he is repatriated to his country of origin he is no better off in terms of knowledge and skill than when he was when he first came to Malaysia.

3.3 Abuse of Foreign Workers

Stories and anecdotes of abuse of foreign workers in Malaysia are legion. Although there are no published official statistics, evidence of abuse from reputable sources, mostly non-government organisations abound. Some of the worst cases of abuse are those of domestic helpers who are often invisible to persons outside the employer’s home and, by virtue of their isolation, are often unable to get assistance when facing problems with their treatment. Further, inspection of homes by the Labour Department is a herculean task, given the numbers of these employees and the small number of labour inspectors in the Department of Labour. When a particularly awful case of abuse of a domestic helper comes to light in the media, the outcry is immediate and loud but after a while, the on-going issue disappears for a while until the next shocking case is publicised. In court cases involving domestic workers, the relevant embassy will usually provide assistance, when requested.

In September 2019, the Minister of Human Resources 29 repeated a previous statement that the introduction of a stand-alone law on the rights of domestic helpers was pending. However, no Bill for this purpose has been tabled in Parliament up to March 2020. This effort, he said, was part of a general upgrading of the employment laws in line with international standards.

In factories and construction sites employing migrant labour, abuses of employees’ rights are often only known to the authorities responsible for enforcement of the employment laws after a major incident such as an accident, or much more rarely, a strike by the workers concerned.

The most common examples of abuse described by the NGOs who investigate these matters are:

1. Withholding of employees’ passports by the employer – employers have a fear, justified by the reality of the number of undocumented workers in the country who entered with valid passports and employment permits, but who absconded and disappeared in to the huge black hole of those persons known in Malaysia as “illegal workers”. Although the Passport Act 1966, s.12 is very clear on this issue. It says that any person who without lawful authority has in his possession any passport or international travel document issued for the use of some person other than himself shall be guilty of an offence for which the penalty is a fine of up to RM10,000 or a jail sentence of up to 5 years, or both.

2. Failure to pay wages regularly, or at the rate agreed in the employee’s contract of employment; failure to pay statutory premium rates for working overtime, working on public holidays and on rest days.

3. Unwarranted wage deductions such as for tardiness, and poor quality work or high rate of rejects

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4. No increases in wages during the contract period, even though the cost of living has increased
5. Long working hours on a regular basis
6. Unsanitary and crowded living accommodation provided by the employer
7. Threats issued that certain actions will not be tolerated and if discovered will lead to the termination of employment, cancellation of work permits and immediate repatriation to the employees’ country of origin. Actions which may cause the displeasure of the employer include joining a trade union, reporting an industrial accident, 30 taking sick leave, or any disciplinary problems.

Because of the continuous exposure of abuses of migrant workers, a number of international companies have hired consultants and specialised audit firms to check on businesses in their supply chain who employ migrant workers. For example, BP works with Verité to examine a number of issues. The BP website says, 31 “We worked with non-profit organization Verité to identify any labour rights issues among potential suppliers. The focus was on migrant workers - checking that they were ethically recruited and employed under safe and humane conditions.

Working hours, recruitment processes, freedom of movement and employment contracts were identified as areas for improvement. Working together with Verité and BP, suppliers developed and put in place management plans to remedy the issues within a specified time frame.”

Auditing of potential suppliers, as BP has done in Malaysia is becoming more common. These “big-name” companies with a highly visible profile know that if they do not conduct these checks, non-government organisations from around the world will target them, with the possibility of a public relations nightmare.

The MTUC is an example of one of the several non-government organisations which assists foreign workers who are facing abuse. When a foreign worker brings a complaint to them, it is investigated as far as possible, after which the MTUC contacts the employer and attempts to persuade them to make right the abuses, particularly those which involve payments due to the workers, which is their main concern, even though non-monetary abuses are also voiced such as physical abuse and bullying at the workplace. If communicating the problem to the employee is not successful, the MTUC is prepared to make a report to the relevant enforcement authorities.

### 3.4 Access to Healthcare

Other than direct abuse of foreign workers employed in skilled and unskilled work, another issue which causes concern is the access of these workers to healthcare. In a recent article on this subject, the researchers 32 provided some helpful statistics. They compared the fee structure in public clinics and hospitals for locals and for foreigners, as shown in Table 4.

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30 Source: General Secretary of a Trade Union
32 Tharani Loganathan,, Deng Rui, Chiu-Wan Ng, Nicola Suyin Pocock. (3rd July 2019). Breaking down the barriers: Understanding migrant workers’ access to healthcare in Malaysia.
Table 4. Fee Structure of Public Clinics and Hospitals

<table>
<thead>
<tr>
<th></th>
<th>Malaysian Citizen</th>
<th>Non-Citizen</th>
<th>Price Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ward Deposits</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Class (Medical)</td>
<td>RM20</td>
<td>RM1,400</td>
<td>73X</td>
</tr>
<tr>
<td>3rd Class (Surgical)</td>
<td>RM30</td>
<td>RM2,800</td>
<td>90X</td>
</tr>
<tr>
<td><strong>Daily Ward Charges</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Class</td>
<td>RM3.00</td>
<td>RM160.00</td>
<td>53X</td>
</tr>
<tr>
<td><strong>In-patient treatment charges</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Class</td>
<td>Free</td>
<td>RM100.00</td>
<td>+ 100</td>
</tr>
<tr>
<td><strong>Out-patient treatment charges</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outpatient Department</td>
<td>RM 1.00</td>
<td>RM40.00</td>
<td>40X</td>
</tr>
<tr>
<td>Specialist clinic</td>
<td>RM5.00</td>
<td>RM120.00</td>
<td>24X</td>
</tr>
</tbody>
</table>

The major barriers faced by migrant workers according to the writers in accessing health care are:

1. Financial barriers and affordability,
2. Lack of legal documentation,
3. Language barriers,
4. Discrimination and xenophobia,
5. Physical barriers, and
6. Employer-related barriers.

It is clear from the above table why migrant workers, especially undocumented workers, have fears of not being able to pay for health care. The minimum wage is only RM1,200 (as of 1st February 2020) per month, although the basic wage is often supplemented by overtime payments. Undocumented workers may not even receive the minimum wage. It also appears that unskilled migrant workers are willing to forego any medical treatment of their health problems as they are committed to sending as much of their wages as possible back to their families in their countries of origin and they may also be indebted to parties who provided them with a loan so that they could get the necessary documents so as to be employed in Malaysia, i.e. the recruiting agencies in their own country.

Undocumented workers are put in an impossible situation were they to apply for medical treatment at a government facility. To register at a clinic or public hospital, the employee has to show his work permit and his passport. Without these documents, the hospital staff may refer them immediately to the local police beat or Immigration Desk (in the larger public hospitals) who are empowered to detain the worker on suspicion of being in the country illegally. Treatment will only be offered by the facility in the event of a medical emergency. The authors of this study into healthcare access for migrant workers suggest that this problem does not occur at private health clinics. Of course, the cost of treatment and medication, where needed, is also relatively high at these clinics.

As the statistics make it clear, a large number of ASEAN unskilled workers are employed in rural areas in plantations or other agricultural settings. The extra problem that they face,
compared to workers in manufacturing and construction, is the distance to the nearest clinic, whether public or private. Without transport provided by the employer, they may not be able to get the medical treatment they need, although it should be noted that all the major plantation companies provide a medical clinic with trained staff within the premises of the plantation.

Not all foreign workers face problems accessing health-care. Many employers have appointed what are called "panel doctors", that is, a few different medical clinics close to the place of work or the location of the worker's accommodation. These doctors send the bill to the employer once a worker, whether local or foreign, receives treatment. The employer may, however, put a ringgit limit on how much they will pay per year for each worker and if this is exceeded, the employee will have to pay the extra himself.

One of the issues described in the article into access by migrant workers to healthcare is that if they do not work, because they are visiting a public health facility – which could easily take up to half a day because of waiting times, they are not paid during their absence. Also if they are issued with a medical certificate (MC) stating they are not fit for work, the employer may still refuse to pay their wages. There is a disconnect here between the law and this finding in the article. The Employment Act clearly states that all employees are entitled to a prescribed number of days of paid sick leave, providing they have an MC from a government hospital or a registered medical practitioner.

3.5 Passports
Although it is clearly an offence under the law for an employer, or any other party, to hold a foreign worker’s passport, employers typically do so. They fear the employees will abscond, or even have their passports stolen if they are not kept carefully – conditions which may not apply as the workers are housed in hostels. Yet, the lack of a passport causes problems for the foreign workers. They are legally employed, but if stopped by the police while out shopping or riding to work on a motor-bike, they may be suspected of being illegal and will be held at the local police station until the employer comes to pick them up and confirm their status. The issue of holding a foreign worker’s passport does not apply to expatriates. There are no cases known where an expatriate has not been permitted to keep his passport in his possession. The question may be asked as to why the unskilled workers hand over their passports to their employer. It is obvious that they have no choice, especially when they are required by the employer to complete a declaration that they have “requested the employer to keep their passport for safe-keeping.”
4. EXIT MEASURES

Malaysia does not require foreign workers, whether from the skilled or non-skilled groups, to apply for permission to leave the country via an exit visa, or as it is commonly called a “no-objection” certificate issued by the employer.

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

If any employee absconds during his contract period, the employer is required to inform the Immigration Department (a form is provided for this purpose) and to make a police report.

To be sure that foreign workers leave the country at the end of their contract, if no extension has been applied for, an employer must complete a “Check out memo”, failing which they will lose the security bond payable when the worker first entered the country. Information required for the check-out memo includes a copy of the employee’s ticket which will return him to his country of origin.

Any worker who absconds either during his employment contract or fails to return to his country of origin at the end of the contract period, will be blacklisted from any further application to work in Malaysia.
5. ENFORCEMENT MEASURES

Three entities are responsible to ensure that the laws and procedures relating to migrant labour are enforced. They are:

1. The Department of Labour, Ministry of Human Resources
2. The Immigration Department, Ministry of Home Affairs
3. The Royal Malaysian Police

5.1 Enforcement by the Department of Labour

Enforcement of the employment laws by the Department of Labour is done by inspections of workplaces and the provision of a complaints mechanism and formal hearing of complaints in a quasi-judicial manner known as the “labour court”.

One of the many duties of the Department of Labour is to inspect places of work to determine whether employers are complying with the employment laws, specifically:

1. The Employment Act, which provides for basic benefits and other matters relating to terms and conditions of employment.
2. The Employees Minimum Standards of Housing, Accommodation and Amenities Act which establishes the minimum standards which must be met by an employer if he chooses to provide accommodation for his workers, whether foreign or local.
3. The National Wages Consultative Council Act which establishes a mechanism by which the Ministry of Human Resources sets minimum wages which apply throughout the country, to foreign workers and to locals alike.

In order to inspect an employer’s premises, an officer of the Department does not require a warrant. He has the right to enter and check documents as well as to interview employees.

Inspections may take place as part of routine checks of workplaces, or as a result of a complaint by an employee that his or her rights have been violated. Any employee, within the scope of the Employment Act, may present himself at his nearest office of the Labour Department and file a complaint. Alternatively, he may write to or email the Department. If the information provided suggests that the employer has violated the rights of the employee, the employer will be called to the Labour Office. If he admits the offence, he may be ordered by way of a correction notice to take the appropriate action to rectify the matter. If he does not admit to the offence, a hearing (the labour court) will be heard, conducted by a senior Labour Officer who will decide the matter and give an order accordingly. Decisions of the Labour Officer may be appealed to the High Court.

Statistics in Table 5 on the number of complaints filed at the Labour Department by foreign workers for 2018 and 2019 suggest that many of the abuses faced by the workers may have been settled with the employer with the help of third parties rather than by a formal filing with the Department. Further, although the statistics show a small number of claims from foreign workers, each claim may involve more than one worker from the same company.
Table 5 Complaints Filed at the Labour Department by Foreign Employees, 2018 and 2019

<table>
<thead>
<tr>
<th>Category of Worker</th>
<th>2018</th>
<th>2019</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unskilled foreign worker</td>
<td>173</td>
<td>137</td>
<td>310</td>
</tr>
<tr>
<td>Domestic helper</td>
<td>19</td>
<td>26</td>
<td>45</td>
</tr>
<tr>
<td>Total</td>
<td>192</td>
<td>163</td>
<td>355</td>
</tr>
</tbody>
</table>

5.2 Enforcement by the Immigration Department

Under the Immigration Act severe penalties are stated for employers who employ undocumented foreign workers. A fine may be imposed of between RM10,000 to RM 50,000. If the employer is found to have employed five or more illegal workers, he may be imprisoned for a period of six months to five years, and he may be whipped by up to six strokes.

The Deputy Home Minister announced in Parliament that in the first nine months of 2018, 72 employers had been charged under the Act.34

The potentially high fine has led to cases where employers or their agents have tried to bribe Immigration Department officials who threaten to prosecute firms for non-compliance. For example, in early 2020, two men were fined by the Sessions Court the sum of RM40,000 each for offering RM5,000 to an Immigration Officer so that he would not take action against them for employing four illegal workers in their coffee-shop.35

Where an undocumented worker is discovered, the Immigration Department officers have the powers to detain him or her in special detention centres until such time as an investigation into the worker’s status is determined, after which he will be deported.

The special detention centres in which foreign workers are held while their status is investigated and before they are deported have received much negative criticism.36 For example, it was reported, “In immigration detention, the number of custodial deaths remains serious with 37 cases of deaths reported between January to October 2019. This is a notable increase from the 24 cases reported for 2017 and 32 reported for 2018. However, the main causes of death remain largely similar over the years with most deaths reported to be attributable to health and medical reasons.”37

5.3 Enforcement by the Police

The main role of the Royal Malaysian Police Force in relation to foreign workers is to stop and check any persons in public who are suspected of being undocumented foreign workers. Thus police on foot patrol or in police cars who note such persons may ask to see their

33 Source: Director, Foreign Workers, Department of Labour.
37 SUARAM’S HUMAN RIGHTS OVERVIEW REPORT ON MALAYSIA 2019. https://www.suaram.net/
documents. If the person is unable, on the spot, to prove that he has a valid work permit, he will be taken to the nearest police station for further investigation or he will be handed over to the Immigration Department for the same purpose.
6. PROGRESS AND CHALLENGES IN IMPLEMENTATION

The challenges facing Malaysia in relation to the management of foreign labour, whether migrants from neighbouring ASEAN countries, or from elsewhere, are long-standing. Numerous studies have been conducted in the last two years, nearly all repeating the same issues, over and over.

There appear to be no outstanding barriers to skilled labour, including members of the professions related to the MRAs, from finding employment in Malaysia, other than the tedium of the employment pass applications, which are made by their prospective employer rather than the employee himself and occasionally by consultants or agencies on behalf of the employer. The lack of ASEAN applicants may stem more from their inability to meet the stringent registration conditions set by the varying regulatory boards and, as far as Malaysia is concerned, the problem may lie more with the perceived attractiveness of other countries, both within and without ASEAN for highly qualified job-seekers. There are many countries with a shortage of highly qualified professionals who pay higher wages than Malaysia, including its neighbour Singapore, and nations in the Middle East and even Europe who are open to receiving these workers.

There is no evidence that ASEAN-origin professionals face any abuse or other problems at the workplace. The same cannot be said for the huge number of migrant workers at unskilled or semi-skilled level whereby various types of abuse continue to be common, as described earlier in this report.

In a brief examination of ASEAN legal issues, two Malaysian academics made a comment about ASEAN as a whole, which also fits the Malaysian scenario on migrant labour perfectly. They said, “ASEAN can be said to be very busy “processing” rather than “progressing”.

Changes have been made in various aspects of the recruitment and management of foreign workers, sometimes as a result of complaints from employers, or when there is an outcry from organisations reacting to a particularly bad case of abuse of one or more migrant workers, or because of the need to respond to a fluctuating economic situation. Change tends to come about at the individual employer’s level when disaster strikes. In September 2019, the USA prohibited the import of rubber gloves from one of the biggest glove-manufacturers in Malaysia. This was a result of complaints that the gloves were made with forced labour. Earlier last year, the company also made headlines after nearly 2,000 Nepali migrant workers staged a three-day strike claiming that they were not paid three months’ worth of wages.

The Labour Department subsequently launched an investigation into the company and found that it had withheld the salaries of its workers, did not pay overtime, had made unfair pay cuts and had wrongful working hours during breaks and public holidays. The US authorities also complained that the company restricted the movement of the migrant workers after working hours. The company then ceased operations briefly while liquidators were put in place. Money was raised to pay the workers the wages owing and, also, to ensure the company

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complied with the law from there on, a retired Inspector General of Police\(^{40}\) was hired as a consultant.

One of the challenges to better acceptance of migrant workers in Malaysia is the commonly perceived issue that the influx of foreign workers has led to the re-introduction of diseases, which had previously disappeared from the local scene. While the evidence is not clear, it appears that the huge number of illegal workers is more likely to be the source of such problems. As the employer has up to 30 days to send his migrant workers to undergo a compulsory medical check-up, diseases may have been spread in that time period. Although any worker who fails the check-up is supposed to be immediately repatriated, he may abscond and move into undocumented status rather than return to his country of origin. In many cases this is because he has incurred a debt in order to secure a job in Malaysia which has to be re-paid and therefore he fears returning home whereby he will be unable to repay what is owed. Furthermore, as described earlier, undocumented workers are unlikely to seek treatment at public health facilities for fear of being handed over to the Immigration Department. Thus, they may unknowingly spread contagious diseases to others at their workplace.

The public in Malaysia have often voiced their displeasure at the number of foreigners working in the country. Other than the fear of health issues as described above, concern is voiced over the “take-over” of certain areas, particularly in the capital, Kuala Lumpur, whereby shops and other services have been established by foreigners especially to cater to the needs of foreign workers.\(^{41}\) For example, a local businessman was quoted as saying that small businesses run by foreigners should not be permitted as these opportunities should be limited to locals. He said, “If foreigners want to open high-end shops, big businesses or franchises, that’s fine. Those businesses provide international flavour and jobs for locals.” A widely read English language newspaper provided an attention-getting headline at the end of 2019. It said, “Invasion of the Business Snatchers”.\(^{42}\) The story outlines the problems faced by the Immigration Department and other enforcement authorities such as City Hall in stopping the growth of small businesses run by foreigners. According to the articles, most of these foreigners came into the country as employees with the appropriate work pass, but they subsequently absconded and became an undocumented person. They take the risk of deportation because they find they can earn far larger sums of money running a small business than they did as an employee.

Many worries are also expressed that the influx of foreigners at all levels mean that less jobs will be available for locals, particularly fresh graduates who face high rates of unemployment.

The large numbers of foreign workers also leads to a high level of remittances to the country of origin of these workers. Indonesia, Philippines and Thailand have been cited as the countries receiving the highest remittances from Malaysia.\(^{43}\) The Central Bank of Malaysia (BNM) however says that in 2017, RM33 billion was sent abroad, mostly to Indonesia, Bangladesh and Nepal (which is in line with the numbers of foreign workers from these

\(^{40}\) The Inspector General of Police is the highest ranking officer in the Royal Malaysian Police Force.


\(^{43}\) https://www.instarem.com/blog/remittances-how-much-money-do-migrants-send-home/
countries working in Malaysia). The Bank was also quoted as saying that “In addressing misconceptions surrounding outward remittances being only beneficial to receiving countries, Nik Mohamed said the Malaysian government can "directly benefit" from remittances done via formal channels, as users are charged the goods and services tax (GST) of 6%, while providers too will be subject to corporate tax.” 44 Although the Bank notes benefits accruing to Malaysia from the remittances, nevertheless, this “loss of funds” is seen by many Malaysians as another reason to discourage the policy of allowing foreign workers into the country.

Without a doubt, many Malaysians are worried about the impact of foreign workers on the country. This is clearly shown by an ILO study conducted in 2019 on the attitudes of locals towards foreign workers. 45 A news portal quoted some of the results of the study and said, “Malaysians still have negative and false perceptions of migrant workers and low support for their rights despite having increased their interaction with them in the last decade. Most of the 1,009 respondents associated migrant workers with high crime rates and said they believed their presence had a negative effect on the economy, culture and heritage of the country.”

If the Malaysian government were able to develop a clear plan of measures that are to be put in place to reduce, but not eliminate, the unskilled migrant workforce, it should become easier to better manage the remaining workers. Attempts to encourage automation and increased use of robots do not seem to be gaining traction. One Member of Parliament was quoted as saying, “Our addiction to cheap labour is beginning to show. While many of our Asian neighbours have made the big move into automation, we are behind the curve. As at 2016, robot density in the local manufacturing sector is 34 robots per 10,000 employees, well below the Asia average of 63 robots, according to the International Federation of Robotics. Employers are asking for more time to get onto the automation track, citing cost as one of the main deterrents. But how much more time should be given?” 46

Another challenge which needs to be tackled at the highest levels is the lack of written policies relating to various facets of the management of the intake of foreign workers. Apparently, there are a number of internal policies used within the relevant government departments and agencies but these are not made known to the stakeholders, specifically the employers who wish to recruit foreign workers. This dearth of information leads to suspicion amongst these parties that special privileges are available to some and not others. 47

At the time of writing this report (February 2020 to April 2020) it is impossible to predict the future path for migrant workers in Malaysia, and specifically workers from the ASEAN countries. A change of government occurred in these months and there are no indicators available to suggest whether the new government will revert to previous policies introduced prior to 2018, will continue with the somewhat more pro-migrant workers’ rights policy of the government of 2018 to early 2020, or whether a totally new policy will result.

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47 Suggestion by a government official.
6.1 Challenges from the Employer’s Perspective

Employers in Malaysia constantly decry the high and ever-increasing cost of employing migrant labour. The rising cost is one of the reasons employers withhold employees’ passports, even though it is illegal to do so. Employers fear that without this measure, they will not be able to stop their expensively hired migrant labour from absconding. Not only do they lose the direct cost of recruiting the migrant worker, but they also forfeit the security bond which they have paid and still have to pay the costs of hiring replacement workers.

6.2 Challenges from the Government’s Perspective

The Malaysian government has stated many times that it intends to find ways to reduce the number of migrant unskilled workers, whether documented or undocumented. However, little progress has been made. When this policy statement is repeated, employers inevitably respond that they need foreign workers in order to stay in business as they are unable to persuade local workers to take up the jobs they offer, especially those which are considered dirty, dangerous or difficult. Employers continue to assert that Malaysians, with their rising aspirations and higher level of educational qualifications, are unwilling to take these “3D” jobs. The unions’ response to this argument is that if wages in these jobs were raised to a reasonable level, Malaysians would accept the jobs so described. They point out the huge number of Malaysians employed in Singapore in the same types of jobs which fit within the 3D category.

6.3 Challenges from the Perspective of Potential Job Applicants

The opinion of individuals in ASEAN nations who may be interested to work in Malaysia were not addressed in this report. Neither is there direct evidence of whether those already in the country face problems while employed, other than the complaints of various abuses brought to the attention of agencies and organisations who can help or who are responsible for stopping the abuse, such as the Department of Labour. Thus it is unknown whether potential job applicants from the ASEAN region, both skilled professionals and unskilled labour, choose countries other than Malaysia in which to work because of the negative reporting on abuses.

6.4 Progress Made

In recent years, progress has been made in the application processes for employment passes by not only putting information about the required procedures and documentation online as guidelines to prospective employers, but also by the creation of special portals which guide the applicant through the process and lead to speedier approvals. For expatriate, or skilled professional migrants the services of an agent are not necessary which reduces the costs for employers.

Another area of success in overcoming abuse of migrants already in the country lies in the abolition of outsourcing of foreign workers. Prior to 2019, the authorities permitted agencies to import and supply workers to employers needing unskilled workers. The migrants employed in this way were considered to be the employees of the outsourcing company and not the end-user of the workers’ services. Exploitation and abuses of workers were common with this system. While the end-users of the labour may have paid the outsourcing companies...


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Enhanced Regional EU-ASEAN Dialogue Instrument
reasonable rates per worker, as the company was in business to make a profit, not all of this money would reach the workers. Furthermore, when complaints were made, the outsourcing companies either denied they were the employer of the worker, or when complaints were made to the Labour Department over poor treatment of the workers, the company, quite often a one-man outfit, simply disappeared leaving the workers with no redress.49

7. LESSONS LEARNED

Questionnaires with a large number of questions, many requiring notes to be made by the officer completing the survey instrument, should be reduced to the essence as far as possible, in order to reduce interviewee fatigue. Government officers in particular are busy people and may neither have the time nor the patience to answer long questionnaires. However, having the researcher provide tentative answers is a helpful practice as it allows the officer to move more rapidly through the instrument. Some of the questions in the survey instrument were presented in a way that confused the interviewee and explanations had to be provided, which in turn led to a longer time needed to complete the questionnaire.

As much as sixty per cent or more of the information needed to complete the research on the agreed topics was available online. Hence, the review of the documents was invaluable. Nevertheless, checking needed to be carried out to ensure that the information provided online by the various government agencies was up-to-date as some of the sites are not dated, neither is information given as to when the last update to the material was made.

Only minimal statistics related to the study can be found online. Yet, it is clear that the various government agencies do have more data available to them than is published on their websites or in annual reports and other publications. Some of this data was made available to the researcher when it was specifically requested.

In order to conduct a useful comparative study, the national reports need to provide background information, as far as possible, on why a particular policy is in place. If a policy has been recently changed, again, the reasons for the change should be highlighted. Reasons for a policy are often not widely known and yet without this knowledge, it is possible that some parties may criticize the policy without properly understanding its raison d’être. It may also be noted that many policies relating to the topics being researched are unwritten policies, internal to the government agencies concerned. This leads to a shortfall in transparency which, in turn, increases the suspicion of the general public that there are “special cases” and that parties with close contacts with decision-makers can subvert the system.

It was noted that nearly all the government websites as well as those of the regulatory bodies in the professional disciplines provide bi-lingual material on their websites, i.e. the documents and guidelines are in both English and Bahasa Malaysia, which is helpful considering that the material relates to the recruitment and management of foreign workers.

Malaysia has experience in managing the importation of foreign workers going back to the earliest decades of the 20th century. The Colonial government of the time recognised that labour was needed in several sectors, particularly plantations and mining. They were agreeable to the importing of workers, mostly from India or China and accepted the necessity of establishing protective mechanisms for these vulnerable workers. Legislation was introduced to ensure there was no undue exploitation of these workers. Over the years, as the economy developed, the laws were extended and amended to ensure all workers received protection, especially in relation to terms and conditions of work and security of tenure. It is not known to what extent the early laws were enforced. Today, enforcement is clearly one of the most troubling issues relating to foreign workers. Malaysia has laws which should provide adequate protection to all workers, including foreigners, but, clearly, lack of enforcement on a consistent basis is a problem to the authorities. The final section of this
report, Chapter 9, on the situation during the Covid-19 crisis, highlights the need for constant enforcement of the laws relating to migrant workers.
8. RECOMMENDATIONS AND OPPORTUNITIES FOR COOPERATION

One of the objectives of this study is to identify measures to promote labour mobility in the ASEAN region. A series of questions for key informants and relevant government bodies was drafted for this purpose. However, it appears that a key stakeholder group was not studied directly, although other parties may have given their thoughts on the matter. The group of people referred to are the qualified professionals from ASEAN countries, especially those in the MRA fields. One may ask: Have they applied to work in another ASEAN country and if not, why not? What are the perceived barriers that prevent them from making such an application? It would seem appropriate that a study be made of these people which may reveal why the ASEAN objective of free movement, particularly of skilled labour, is not being realized.

There is much confusion concerning the actual number of foreign workers in Malaysia at any point of time. Different sources provide widely varying numbers, particularly when undocumented workers are taken into consideration. Writers who looked at this problem in 2018 said, “While foreign labour management is a top policy priority in Malaysia, the number of foreign workers in the country is a perennial mystery.” Data on foreign workers, the various industries in which they are found, their countries of origin and so on, needs to be provided in portals available to researchers, and updated on at least a twice a year basis.

Some barriers to this movement of workers to Malaysia may be hypothesized such as the cost of making an application for the relevant employment pass or permit. If this is the case, a MOU may be needed between the governments of the region to ensure that the employer pays the initial recruitment costs including airfare, visa fees, and medical check-up. The downside to this suggestion is that the cost to employers would rise which, in turn, might discourage them from hiring workers from the region.

Abuse of migrant workers has reached a point in Malaysia where a major effort is needed by the authorities to reduce or eliminate the most common issues. This means that the Labour Department, in particular, needs an adequate budget so as to be able to increase its inspection efforts. If the abuse continues unabated, Malaysia’s reputation both in ASEAN and in the other source countries who send workers here will be sullied. Sending countries could assist in this effort (to reduce abuse) by providing every worker who leaves their country of origin with clear information in their own language on the rights of the worker and give him the telephone numbers and addresses of government departments to whom he can make a complaint.

The role of non-governmental organisations (NGOs), whether home-grown or international organisations, need to be strengthened so that they can be effective “watch-dogs”, able to quickly assist abused employees to make reports to the relevant authorities. Some of these NGOs and other organisations have reasonable funding, for example, the Bar Council Malaysia has Legal Aid Centres in every state which provide advice to persons who request it and can also represent them in court, if necessary. The Bar Council also has a scheme whereby pupils in chambers (in training) are placed at the MTUC Migrant Workers Centre to

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help sort out the various employment related issues reported to them by migrant workers. Other organisations rely on public donations which makes it more difficult for them to reach out to their intended targets and to offer assistance when requested. If the government hopes to reduce abuse of migrant workers, funding could be made available for this purpose. It may not be sufficient, but at least it would show the country’s commitment to move in the direction of eliminating abuse of migrant workers.

The ASEAN nations through their respective embassies and labour attaches need to improve their ability to support their nationals who require assistance while working in Malaysia. It was reported that the Indonesian embassy has only three people to manage over 4,000 cases per year. While it might not be financially feasible for some of these embassies to provide staff dedicated to labour matters, they could prepare written materials in their respective languages for distribution to their nationals working here which outline the employees’ rights and give contact numbers of organisations that can assist them. The Philippines appears to have a functional model designed to protect their workers overseas. Key components of the model include: (i) the recruitment of domestic helpers (a vulnerable group needing protection) can only be conducted on behalf of employers by agencies registered with the Philippines Overseas Labour Office (POLO), including both the Philippine agency which sources workers who are interested to work abroad, and the receiving country agency which places them with employers; (ii) standard contracts of employment for the workers must be signed by all parties, including the agencies. The contract must be verified by the POLO office; (iii) agencies placing helpers in employment must continue to be responsible for their welfare and are to be contactable in case of abuse or other problems; (iv) continuing efforts are made to upgrade the skills and employability of the workers while they are in the source country, so that upon their return to the Philippines they will find it easier to find employment.

Although this report does not focus on undocumented workers, nevertheless it should be noted that the future of migrant workers in Malaysia, whether documented or not, are interrelated. Undocumented workers are the most vulnerable to abuse and have been the target of a number of campaigns to repatriate them. Yet, if a majority of the estimated 2 to 3 million undocumented workers were stopped from working, several sectors of the economy would collapse. For example, small retailers and building contractors rely heavily on these workers. It is clear that jobs which are difficult to automate need these workers. An example of an industry which has depended on imported labour since its inception is the plantation industry, the products of which are significant to Malaysia’s export earnings. In December 2019, the Minister for Home Affairs (the Prime Minister at the time of writing) outlined a plan which he hoped would severely reduce the number of undocumented workers in the country. He was reported as having said, “The plan outlines five strategies for eradicating the illegal immigrant problem: enforcement operation, legal and policy, border control and entry point, management of foreigners, and media and publicity.”

No further details were available concerning how this plan would operate in practice. The Minister also said, “Amnesty programmes give foreigners the wrong message that anyone can enter and reside in Malaysia without documents as they will eventually be “pardoned”.

51 https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Malaysia%20HRDD.pdf
52 Source: The Labour Attache, POLO Office, Embassy of the Philippines, Kuala Lumpur
Sharing of policies and practices throughout ASEAN can undoubtedly assist in improving existing policies and introducing new policies which other countries have found to be beneficial. However, each country has different objectives for their respective economies and societies and therefore it is not feasible to suggest common policies be introduced throughout the region.

Finally, the words of a 2019 report by the European Union Agency for Fundamental Rights are relevant to this Study. It says, "Unscrupulous employers use the weak position of migrant workers to force them to work for endless hours with no or little pay, often in dangerous settings, and without the minimum safety equipment required by law." The report is not about migrant labour in Malaysia. It is not about migrant law in ASEAN. It refers to the position of many migrant workers in the European Union. Hence, it is clear that abuse of migrant labour is a world-wide phenomenon which needs to be stopped with immediate effect.

9. MIGRANT LABOUR POST-COVID19

The Covid-19 crisis period of mid-March to mid-June 2020 has brought the issue of foreign workers in the country to the fore. Two reasons for the social media and authorities’ interest in this issue at this time may be surmised, viz. the larger than usual number of local workers retrenched by their employers leading to a perception amongst workers that foreign workers were more highly valued than locals. Second, a number of parties have suggested that as illegal workers were unlikely to come forward for testing to determine whether they had the virus, they were a safety hazard to the general population with whom they came into contact. 55

Possibly as a result of these fears, the Immigration Department raided places where undocumented foreign workers were most likely to be found. These workers were then detained. Charges will follow and they will be deported as soon as it is feasible to do so.

Campaigns to reduce the number of undocumented workers have been carried out in the past on many occasions although they have never been able to make a large reduction in this group of workers. 56 For example, in January 2020, the Department of Immigration announced that in the previous year some 165,000 illegal workers had been deported, with another 30,000 awaiting deportation under a programme named “the Back for Good” amnesty programme. This number would not have made much of a dent in the 3-4 million undocumented workers said to exist in the country at the time.

The publicity given to the raids between April and May of 2020 caused an outcry during the height of the crisis period. A number of non-government organisations (NGOs) stated their belief that the timing was not right to conduct the raids. They pointed out that the detention centers in which the workers were held were overcrowded and unsanitary and hence impossible to observe safety precautions such as social distancing measures. The accuracy of these claims were quickly borne out when a significant number of these detainees – some 300 - were tested for the virus and found to be positive. The government was forced to open a quarantine center which had been previously prepared as a precautionary measure for local cases in which to hold the undocumented foreign workers. There are 14 immigration detention centers in the country, but the three largest, all found in and around Kuala Lumpur, are the largest and have the most Covid-19 cases.

It was found during the crisis period that in the center of Kuala Lumpur there were a number of clusters of virus patients discovered in several old blocks of apartments which housed foreigners almost exclusively. The media highlighting these well-known buildings adjacent to popular shopping areas found that some apartments with only one bathroom had up to 30 persons living there. Residents of these apartments, some legal and others undocumented, were not permitted to leave their apartments. To ensure they stayed inside, barbed wire was

55 In March 2020, the government announced an “amnesty” for undocumented foreign workers to encourage them to come forward and be tested for the Corona-19 Virus. The government promised that if they underwent a test, no legal action would be taken against them on the grounds of being undocumented. However, on 1 June 2020, this offer was rescinded and the Minister in charge stated that no workers had come forward to be tested. (https://www.thestar.com.my/news/nation/2020/06/01/with-no-takers-offer-of-health-screening-amnesty-for-illegals-ends#cxrecs_s)
56 https://www.malaymail.com/news/malaysia/2020/01/01/immigration-d-g-165040-illegals-repatriated-under-b4g-programme/1823883
placed around the buildings and they were guarded by police. Again, there was extensive coverage by various media concerning the situation of these workers.

While many people applauded the actions of the authorities in dealing with the illegal workers, not all were supportive. Employers and NGOs came out with strongly worded statements, albeit for different reasons, against the timing of the move to reduce the number of illegal workers, including those actions which appeared to be driven entirely by health concerns. A group of more than 60 NGOs, including all of the major bodies involved in human rights condemned the action taken by the government. They believed that the health situation would worsen as a result because many undocumented workers would refuse to come forward to be tested for the virus and would go into hiding, as far as possible. Their joint statement made on 19 May said, “Should the authorities resort to the mass arrests of migrants, this will invariably create a culture of fear that will ripple out among migrant communities and completely scare them away from coming forward to be tested. Indeed, migrants will probably be even more inclined now to go into hiding and to avoid detection at all costs. With the transition to a conditional movement control order on 4 May, migrants who fear detention will be even harder to track and to trace, resulting in severe health risks for the Malaysian public as a whole.”

As the health crisis worsened, most of the Kuala Lumpur “wet markets” were closed down as, one by one, it was determined that either workers or traders at the market were found to be ill with the virus. It soon became evident that without foreign workers, legal or otherwise, the markets could not survive in business as the majority of their workers were foreigners and, at least according to the traders, locals did not want the jobs offered. One trader said, “From her experience, … locals tend not to last more than a week and are reluctant to do any of the heavy lifting (transporting fresh produce) or cleaning; basically the “tough” jobs….So we resorted to hiring migrant workers, not that we refused to source for local manpower.”

The Minister for Federal Territories (which include Kuala Lumpur) was quoted as saying, “The wholesale market (Kuala Lumpur wholesale market) has been entirely overtaken by foreigners. Not only the workforce but even the businesses, according to reports I received…..He appealed to market traders to cooperate with him in this exercise to hire locals and also refrain from sub-letting business licences to foreigners. I want laws to be respected. If the licences have been given to Malaysians, it’s not right that they sublet the licence.”

Other than the worry about the number of foreign workers in the country, whether legal or otherwise, there is also anxiety about the living conditions of these workers. The President of the Malaysian Medical Association (MMA) said, “The majority of foreign workers in the country stay in overcrowded, cramped dormitories, construction site cabins, shop lot rooms, terrace houses or apartments where physical distancing and personal hygiene may be almost impossible to observe. An SOP (standard operating procedure) alone for foreign worker accommodation may also be needed along with random checks by the authorities. While

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59 Op cit
testing of foreign workers will be necessary, steps must be taken to address the living conditions of foreign workers.” Thus, it is evident that, going forward, housing for foreign workers, which is within the purview of the Department of Labour and the local authorities, needs to be given far more attention than in the past. Two days after the complaint about foreign workers’ living conditions was made by the President of the MMA, the newly appointed Minister of Human Resources said that the amended Minimum Standards of Housing and Amenities Act would be implemented as of 1 June 2020, although a short grace period would be given to employers so that they could ensure the housing provided to foreign workers met the standards required.61

Even the government decree that all foreign workers must be tested for Covid-19 before they will be allowed to continue working has led to issues. Employers are upset that they are expected to pay for the tests for any foreign worker who has not been registered with the Social Security Organisation (SOCSO). While foreign workers are supposed to be so registered (as of 1 January 2019), many employers have not bothered and little action has been taken against them for this failure. The Minister responsible for making announcements and government decrees relating to Covid-19 stated that 60% of documented foreign workers were registered with SOCSO.62 It is very likely that with this added cost, some employers at least may choose to reduce their dependence on foreign workers.

The post-pandemic period will clearly need employers and the government to clarify their policies and practices relating to migrant labour.

Annex A

Research Methodology
The methods used to gather information for this report were:

1. A questionnaire consisting of two parts with 48 and 11 questions respectively was agreed upon by the Project Director with input from various parties. This questionnaire, one for each of the main types of employment pass/permit was presented in person to a senior officer in the Immigration Department, Ministry of Home Affairs and a senior officer in the Expatriate Services Division of the same Department. The former was responsible for the issuing of work permits to unskilled workers, and the latter for employment passes for expatriates, i.e. skilled professionals or managers. The report author completed as many of the questions as she was able in advance of the meeting with these officials and then requested their confirmation or correction, as appropriate, to the answers to the questions in the survey instrument.

2. Structured, face-to-face interviews were conducted with four key informants who play a significant role in the systems relevant to migration of labour within ASEAN. These informants consisted of:
   (i) The Education and Training Officer of the Malaysian Trades Union Congress
   (ii) The Department of Labour, Director of Foreign Workers
   (iii) The Manager, Legal and Industrial Relations, Manpower Services Sdn Bhd
   (iv) The Labour Attaché, Philippines Overseas Labour Office, Kuala Lumpur

3. An email interview was conducted with an experienced trade union leader in the electronics industry which has a large number of unskilled foreign workers.

4. A desk review was made of documents relevant to achieving the objectives of the study. These included legislation relating to labour matters, guidelines both official and unofficial which described the conditions under which employment passes and work permits are issued, and the labour rights of migrant workers. Documents reviewed also included reports by non-government organisations, both local and foreign, which have made studies of the conditions of work of migrant workers in Malaysia. These are listed in Annex C.

Annex B

List of Individuals Consulted and Interviewed
i. The Secretary General of the Electronic Industry Employees Union, Western Region. (Interview by email).
ii. The Education and Training Officer, Malaysian Trades Union Congress.
iii. The Director, Foreign Workers, Department of Labour, Ministry of Human Resources.
iv. The Legal and Industrial Relations Manager, Manpower Services Sdn Bhd.
v. The Labour Attaché, Philippines Overseas Labour Organisation (POLO), Embassy of the Philippines.
Annex C

List of Documents Reviewed


Department of Labour, Ministry of Human Resources, Malaysia. Contract of Employment (Standard) for Domestic Helpers.


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Standard Contract of Employment for Domestic Helpers


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Endorsed on 21 September 2020

Enhanced Regional EU–ASEAN Dialogue Instrument