

Malaysia: Forced labor and relevant legal issues

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I Introduction

Joint research between the International Labour Organization (“ILO”), International Organization for Migration, and Walk Free (“Joint Research”) estimated that approximately 27.6 million people were required to engage in forced labor on any given day in 2021.¹ According to the ILO Forced Labour Convention, 1930 (No. 29), forced or compulsory labor means “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”. The ILO introduced 11 indicators that may help to identify forced labor practices²: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (4) isolation, (5) physical and sexual violence, (6) intimidation and threats, (7) retention of identity documents, (8) withholding of wages, (9) debt bondage, (10) abusive working and living conditions, and (11) excessive overtime.

According to the Joint Research, the prevalence of forced labor among adult migrant workers is more than three times higher than among adult non-migrant workers, due to weaker protection by relevant domestic laws as well as unfair or unethical recruitment practices targeting migrant workers. This is particularly noteworthy in the context of Malaysia, which had an estimated 2.6 to 5.5 million documented and undocumented migrant workers as of July 2023—a significant number, considering that the country’s total population at the time was 33.4 million.³ As there have been cases where multinational companies facing allegations of forced labor issues in their Malaysian supply chains, it is time for companies that have businesses in Malaysia to revisit their compliance systems, as well as human rights due diligence, throughout their value chains.

II Global Legislative Trends

In some jurisdictions, authorities and international bodies have introduced regulations and sanctions to tackle prevalent forced labor practices in global supply chains. For instance:

- (i) In the United States, U.S. Customs and Border Protection (“**CBP**”), the authority that enforces forced labor trade laws, has been issuing Withhold Release Orders (“**WRO**”) and findings to restrict, seize, and

¹ https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40ipec/documents/publication/wcms_854733.pdf

² https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf

³ <https://www.iom.int/countries/malaysia>

forfeit the importation of products linked to forced labor practices. As part of its enforcement efforts, CBP has stopped 2,672 shipments due to forced labor violations.⁴

- (ii) In the European Union (EU), the EU Council approved a regulation on 19 November 2024 that prohibits the import or export of products made using forced labor, which will come into force 3 years after its publication.⁵

Since the U.S. and EU are among the top five export destinations for Malaysia (along with China, Singapore, and Hong Kong)⁶, addressing the forced labor issue has become increasingly important for businesses operating in Malaysia. Although Japan, which is Malaysia's sixth largest export destination, does not have similar legislation, civil society has been advocating for the Japanese government to implement new legislation to ban the import of products linked to forced labor.

III Forced Labor-Related Laws in Malaysia

As a Member State of the ILO, Malaysia has been taking steps to address forced labor issues on both domestic and international levels.

To date, Malaysia has ratified 19 Conventions and 1 Protocol by the ILO, including the Forced Labour Convention, 1930 (No. 29) and the Protocol of 2014 to the Forced Labour Convention⁷, demonstrating Malaysia's commitment to combatting forced labor.

On 20 November 2021, the Ministry of Human Resources of Malaysia also launched the National Action Plan on Forced Labour (2021 – 2025) ("**NAPFL**"), which detailed its plan to tackle and eradicate forced labor practices in Malaysia. The objectives of the NAPFL include enhancing the legislation and regulatory frameworks that address trafficking in labor and child exploitation, strengthening relevant labor migration and domestic work legislation and policies to prevent human trafficking, and improving in-person anti-trafficking responses targeted at combating labor trafficking and child trafficking in all sectors, particularly in the supply chains for goods and services.

General prohibitions against forced labor

Forced labor practices are prohibited in Malaysia under various laws.

Article 6 of the Federal Constitution of Malaysia states that "*all forms of forced labour are prohibited, but Parliament may by law provide for compulsory service for national purposes.*" This is reflected in Section 374 of the Penal Code, which provides that "*whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to 1 year or with fine or with both.*"

To align with international labor standards, the Employment Act 1955 (which applies to employees in Peninsular

⁴ <https://www.cbp.gov/trade/forced-labor/enforcement>

⁵ <https://www.consilium.europa.eu/en/press/press-releases/2024/11/19/products-made-with-forced-labor-council-adopts-ban/>

⁶ Data from December 2024, according to Department of Statistics Malaysia:

https://storage.dosm.gov.my/trade/trade_2024-12_headline_en.pdf

⁷ https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:102960

Malaysia), the Labour Ordinance of Sarawak (which applies to employees in Sarawak), and the Labour Ordinance of Sabah (which applies to employees in Sabah) (collectively, “**Malaysian Employment Laws**”), which are the principal acts governing the rights of employees in Malaysia have been amended to include provisions penalizing the use of forced labor, as follows:

“Any employer who threatens, deceives or forces an employee to do any activity, service or work and prevents that employee from proceeding beyond the place or area where such activity, service or work is done, commits an offence and shall, on conviction, be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 2 years or to both.”⁸

Malaysia also enacted the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 to prevent and combat trafficking in persons and the smuggling of migrants. Pursuant to the act, “trafficking in persons” means all actions involving recruiting, conveying, transferring, acquiring, maintaining, harboring, providing, or receiving a person for purposes of exploitation, including the use of threat, force, or other forms of coercion. “Exploitation” includes all forms of forced labor or services, slavery, practices similar to slavery, and other relevant acts.⁹ Any person who engages in trafficking in persons commits an offense and, upon conviction, may be punished with imprisonment for a term not exceeding 20 years, and also may be liable for payment of a fine.¹⁰

Other relevant legislation

Other Malaysian legislation also plays a role in deterring and preventing forced labor practices, given the 11 indicators of forced labor explained in the first section of this article. These include:

(i) *Employees' Minimum Standards of Housing, Accommodations and Amenities*

Among its provisions, the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 establishes minimum standards for employee housing and requires employers to provide health, hospital, medical, and social amenities. It also outlines the duties and responsibilities of an employer to ensure that any accommodations and amenities provided to employees meet the standards established by the Department of Labour Peninsular Malaysia (e.g., provision of separate accommodations for employees of different genders), thereby helping to prevent exploitative practices and reducing the risk of workers being subjected to inhumane living conditions.

Employers who provide accommodations for their employees are required to obtain a Certificate of Accommodation from the Director General of Labour of Peninsular Malaysia.¹¹ Any employer or centralized accommodation provider that contravenes any provision of the act is guilty of an offense. If no penalty is expressly provided for, the violator will be liable to pay a fine not in excess of RM 50,000 upon conviction.

(ii) *Limitation on Employment of Children and Young Persons*

The Children and Young Persons (Employment) Act 1966 regulates the employment of children (i.e.,

⁸ Section 90B of the Employment Act 1955, Section 19B of Labour Ordinance of Sarawak (as proposed to be amended by the Labour Ordinance of Sarawak (Amendment) Bill 2024) and Section 18B of the Labour Ordinance of Sabah (as proposed to be amended by the Labour Ordinance of Sabah (Amendment) Bill 2024)

⁹ Section 2 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

¹⁰ Section 12 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

¹¹ Section 24D(1) of the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990

persons under the age of 15) and young persons (i.e., persons who have attained the age of 15 but are under the age of 18) in Malaysia. This act restricts the type of work a child or young person is allowed to perform, as well as the number of working days, and total working hours. For example, no child or young person can engage in any hazardous work. These safeguards reduce the risk of abuse and exploitation of vulnerable persons in the workplace.

Any person who breaches any provision of this act commits an offense, and if convicted, can be fined up to RM 50,000, imprisoned for up to 2 years, or both, and for a second or subsequent offense, the penalty increases to a fine of up to RM 100,000, 5 years' imprisonment, or both.

(iii) *Prohibition on Unlawful Retention of Passports*

The Passports Act 1966 governs the possession and production of travel documents by persons entering, leaving or travelling within Malaysia. It includes a provision that makes it an offense for any person to retain the passport of an individual without lawful authority,¹² with the aim of preventing the unlawful practice of employers retaining the passports of their foreign workers. This protects foreign workers' autonomy over their passports and allows them to leave forced labor conditions.

Any person convicted under this act may be liable for payment of a fine not exceeding RM 10,000, imprisonment for a term not exceeding 5 years, or both.

(iv) *Prohibition on Outsourcing Foreign Workers*

The outsourcing of foreign workers is no longer permitted pursuant to amendments introduced by the Private Employment Agencies (Amendment) Act 2017, read together with the relevant licensing guidelines issued by the Department of Labour Peninsular Malaysia, as "outsourcing" is expressly stated to be a prohibited activity under the licensing guidelines.¹³ Under the previous outsourcing model, foreign workers were supplied to companies by third-party agents, circumventing the formation of an employer-employee relationship between the company and foreign workers. This arrangement deprived foreign workers of the rights to participate in trade unions and to negotiate for better working terms and conditions.¹⁴

The outsourcing ban aims to protect foreign workers by ensuring they are employed directly by companies, thereby holding employers accountable for workers' welfare and working conditions. Any person who contravenes any provisions of this act commits an offense and, if convicted, may be liable for payment of a fine not exceeding RM 50,000, imprisonment for a term not exceeding 1 year, or both.

(v) *Limitation on Working Hours and Overtime Work*

The Malaysian Employment Act 1955 aims to protect the welfare of employees, including without limitation by setting a limit on the maximum number of hours an employee may work in a day and a week. In addition, the Employment (Limitation of Overtime Work) Regulations 1980 limit the amount of overtime work an employee may perform to a maximum of 104 overtime hours during any single month. These legal limits ensure that employees are not overworked and act as a protection for employees' well-being and a shield against exploitative labor conditions.

¹² Section 12(1)(f) of the Passports Act 1966

¹³ <https://itksm.mohr.gov.my/sites/default/files/2023-06/Garis%20Panduan%20Prosedur%20Perlesenan%20APS.pdf>;
<https://itksm.mohr.gov.my/sites/default/files/2024-02/Penetapan%20Syarat-syarat%20Lesen%20Agensi%20Pekerjaan%20Swasta%20di%20bawah%20Akta%20Agensi%20Pekerjaan%20Swasta%201981.pdf>

¹⁴ https://www.malaysianbar.org.my/cms/upload_files/document/Praxis-Apr-June2011.pdf

The general penalty provided in the Employment Act 1955 is that any person who contravenes any provision of the act or any regulations made thereunder shall be liable for payment of a fine not exceeding RM 50,000.

IV Commentary

Forced labor risks in the supply chains of businesses operating in Malaysia could trigger not only domestic legal violations but also enforcement actions under foreign laws and regulations. Forced labor issues also can have a negative effect on relationships with foreign business partners, particularly where contracts include clauses prohibiting human rights violations, and can cause damage to a company's reputation. It is important for companies to perform human rights due diligence on all portions of their value chains to address the root causes (especially the 11 indicators of forced labor explained in the first section of this article) effectively, in accordance with the international human rights standards set forth in the United Nations Guiding Principles on Business and Human Rights, in addition to, and as part of, companies' ongoing legal compliance efforts.

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