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# ▶ Addressing, preventing and eliminating forced labour in the rubber industry in Malaysia

A practical guide for Malaysian employers





▶ **Addressing, preventing  
and eliminating forced  
labour in the rubber  
industry in Malaysia**

**A practical guide for Malaysian employers**

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## ► Foreword by the ILO

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According to the ILO's 2017 Global Estimates of Forced labour, there are still about 25 million people in forced labour globally, many of whom are migrant workers. Of the 25 million people in forced labour, 16 million are in the private economy. Many workers, who were particularly hard hit by the economic consequences of the COVID-19 pandemic, have become more vulnerable to becoming trapped into forced labour. In this context, the risk of migrant workers in the rubber glove industry falling into debt bondage or slavery-like practices should not be overlooked.

In November 2021, Malaysia took an important step by launching a National Action Plan on Forced Labour for 2021-2025. Developed by the Ministry of Human Resources with support from the ILO, the Action Plan focuses on awareness, enforcement, labour migration as well as access to remedy and support services with the aim to eliminate forced labour in Malaysia by 2030.

Furthermore, in March 2022, the Government of Malaysia ratified the ILO Protocol of 2014 to the Forced Labour Convention, 1930, thereby becoming the 58th country in the world, and the second ASEAN member State to ratify that Protocol. The Protocol requires Member States to take effective action to prevent forced labour, to protect victims and to give them access to justice and remedies, including compensation.

This guide, developed by the ILO in collaboration with the Malaysian Rubber Council, aims at providing practical resources, information and guidance to employers in the rubber glove industry on how to identify risks of forced labour in company recruitment, employment and sourcing practices, and how to effectively identify, manage and mitigate these risks. This reference guide is intended for company managers and staff responsible for human resources management, social, and legal compliance issues at the enterprise level in the rubber industry. We would like to take this opportunity to thank ILO's constituents and sectoral stakeholders, especially the Ministry of Human Resources, Department of Labour, Malaysian Rubber Council, Malaysian Rubber Gloves Manufacturers Association, and rubber industry members in Malaysia.

The ILO is committed to continuing its support to the tripartite constituents in Malaysia, including the Ministry of Human Resources, workers' and employers' organizations, as well as other stakeholders to help meet our common goal of ensuring decent work for all.



**Panudda Boonpala**

Deputy Regional Director  
ILO Regional Office for Asia and the Pacific

## ► About the ILO

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The International Labour Organization (ILO) is the United Nations (UN) specialized agency devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.

The ILO Sectoral Policies Department (SECTOR) promotes decent work by supporting the Organization's tripartite constituency, namely governments, employers and workers, in creating opportunities and addressing challenges in 22 different economic and social sectors at the global, regional and national levels.

The ILO's Regional Office for Asia and the Pacific supports work in 36 member countries, from Afghanistan to the Pacific Islands and from Mongolia to New Zealand. Two teams of decent work specialists, based in Bangkok and New Delhi, provide a range of technical services and expertise that support work throughout the region and provide assistance to the ILO's constituents - governments, workers and employers' organizations. In addition, there are country, liaison or project offices in 21 countries in the region.



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“Sustainable Supply Chains to Build Forward Better” is a joint initiative of the International Labour Organization and European Commission (EC) that sets out to advance decent work in five selected global supply chains for a fair, resilient, and sustainable COVID-19 crisis recovery. Rubber glove manufacturing in Malaysia is one of the five sectors in this project

## ► Acknowledgements

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This guide is the product of desk research, interviews and consultations with rubber processing and manufacturing companies and the adaptation of ‘Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers’ for the rubber industry.

This guide is developed by the “Sustainable Supply Chains to Build Forward Better” project, a joint intervention co-funded by the European Commission and the International Labour Organization (ILO).

It was prepared by Miaw Tiang Tang, consultant and former ILO Senior Specialist on Employers’ Activities, who has extensive experience working with employers in South-East Asia and the Pacific. Technical inputs have been provided by ILO officials, Casper Edmonds, Elvis Beytullayev, Kassiyet Tulegenova, Siu Ming Lee, Dong Eung Lee, and Jodelen Mitra.

This guide was made possible through the collaboration and support of the Malaysian Rubber Council, with stakeholder consultation support from the Ministry of Human Resources, Department of Labour Peninsular Malaysia, Malaysian Rubber Gloves Manufacturers Association, and the rubber industry members.

May Hofman edited the report and Monteiro Lewis Communications Sdn Bhd created the layout and artwork. Colleagues at the Regional Communications Unit provided great support in the production and dissemination of this guide.

## ▶ Foreword by the MRC

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The rubber industry in Malaysia has always been the engine of the nation's economy. This commodity is our pride; it is one of the reasons that Malaysia is in the eyes of the world.

The Malaysian rubber products industry is made up of more than 500 manufacturers producing various rubber products. Behind those figures are thousands of workers who work tirelessly to produce these products. Undeniably, workers are the heart of these companies.

Then COVID-19 came along, causing humanitarian disaster and disruptions in supply chains around the world. Nor was Malaysia's rubber industry excluded from its impact. However, the pandemic also taught us how to move forward and made us assess what is crucial and what is relevant.

Since the pandemic, the Malaysian Government, its agencies and companies have been tirelessly working to address the challenge of forced labour in the industry, to mitigate future risks and eventually eradicate all forced labour in the country. Tackling social compliance issues in the rubber industry is the Malaysian Rubber Council's (MRC) top priority. Therefore, the MRC so has carved out a plan to carry out strategic and impactful initiatives such as capacity building, awareness initiatives, and collaboration with stakeholders in the industry.

The publication of this Guide is part of the concerted effort to support the Ministry of Plantation Industries and Commodities' (MPIC) strategic plan and the Ministry of Human Resources' (MOHR) National Action Plan on Forced Labour 2021–2025 launched in 2021. The Guide provides comprehensive guidelines on how rubber companies in the industry supply chain could address, prevent and eliminate forced labour in the industry.

I would like to extend special appreciation to all stakeholders who were involved in the process of adapting and publishing this Guide, especially the International Labour Organization (ILO), the Department of Labour Peninsular Malaysia under the MOHR, the Malaysian Employers Federation (MEF), the Malaysian Rubber Glove Manufacturers Association (MARGMA), and the Council's member companies, as well as workers.

I hope that all companies and stakeholders in the rubber supply chain will be able to make use of this Guide as a toolkit to strengthen the principles for addressing, preventing and eliminating forced labour.



**Nor Hizwan Ahmad**

Chief Executive Officer  
Malaysian Rubber Council

## ► About the MRC

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The Malaysian Rubber Council (MRC), formerly known as the Malaysian Rubber Export Promotion Council, was incorporated on 14 April 2000 under the Companies Act 1965 as a company limited by guarantee under the Ministry of Plantation Industries and Commodities (MPIC).

Governed by a Board of Trustees appointed by the MPIC, the MRC is tasked with undertaking market promotion of quality Malaysian rubber and rubber products in world markets. The MRC is headquartered in Kuala Lumpur, Malaysia and operates six overseas offices located in major export markets. These offices are located in China, India and the United States, as well as in European and the Middle Eastern countries. The overseas offices are critical in market a local presence in the countries where the company operates contributes to better communication between interested parties seeking quality rubber product manufacturers.

The MRC has nearly 500 member companies from the rubber industry, including companies from the downstream and midstream sectors. To date, Malaysia has exported to more than 190 countries and has more than 300 rubber product manufacturers in active trading.

Moving forward, with its vision to make Malaysia a leading exporter of quality and sustainably produced rubber products, the MRC continues to focus on principles to promote sustainable business practices through the implementation of economic, environmental, social and governance (EESG) concerns, as well as building and maintaining solid relationships with its stakeholders.



An agency under the MPIC





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## ► Acronyms and abbreviations

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CIETT</b>	International Confederation of Private Employment Agencies
<b>CSO</b>	civil society organization
<b>CSR</b>	corporate social responsibility
<b>EBMO</b>	Employers and Business Membership Organization
<b>EMPA</b>	East Malaysia Planters Association
<b>ESG</b>	environmental, social, and governance
<b>ETI</b>	Ethical Trading Initiative
<b>ILAB</b>	Bureau of International Labor Affairs (US)
<b>ILO</b>	International Labour Office/Organization
<b>IOE</b>	International Organisation of Employers
<b>IOM</b>	International Organization for Migration
<b>JTKSM</b>	Department of Labour Peninsular Malaysia
<b>MARGMA</b>	Malaysian Rubber Glove Manufacturers Association
<b>MAPO</b>	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
<b>MEF</b>	Malaysian Employers Federation
<b>MEOA</b>	Malaysian Estate Owners' Association
<b>MOHA</b>	Ministry of Home Affairs
<b>MOHR</b>	Ministry of Human Resources
<b>MOU</b>	Memorandum of Understanding
<b>MPIC</b>	Ministry of Plantation Industries and Commodities

<b>MRC</b>	Malaysian Rubber Council
<b>MRPMA</b>	Malaysian Rubber Products Manufacturers Association
<b>MTUC</b>	Malaysian Trades Union Congress
<b>MYR</b>	Malaysian Ringgit
<b>NAPFL</b>	National Action Plan on Forced Labour 2021–2025
<b>NGO</b>	non-governmental organization
<b>PIKAP</b>	National Association of Employment Agencies (Malaysia)
<b>RBA</b>	Responsible Business Alliance
<b>RGA</b>	Responsible Glove Alliance
<b>Sedex</b>	Supplier Ethical Data Exchange
<b>SMETA</b>	Sedex Members Ethical Trade Audit
<b>SOCISO</b>	Social Security Organization
<b>SOP</b>	standard operating procedure(s)
<b>SUHAKAM</b>	Human Rights Commission of Malaysia
<b>UN</b>	United Nations
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights
<b>US CBP</b>	United States Customs and Border Protection
<b>USTR</b>	Office of the United States Trade Representative
<b>WRO</b>	Withhold Release Order

## ► How to use the Guide

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This Guide is a joint initiative of the MRC and the ILO project: “Sustainable Supply Chains to Build Forward Better” (SSCBFB). It aims to provide practical guidance to employers in the rubber industry in Malaysia, particularly those employing migrant workers, on how to identify risks of forced labour in the recruitment, employment and sourcing practices, and how to effectively address, prevent and eliminate these risks.

The Guide is the product of desk research, field interview and employers’ consultation, and is adapted from the ILO/MEF publication *Business responsibility on preventing and addressing forced labour in Malaysia* (2019). It is particularly useful for existing and potential investors, business owners, directors and senior management of companies in the rubber industry in Malaysia, especially companies that export their products to the global market and want to optimize growth and sustainability. It is also a practical guide for managers and staff responsible for human resources management, as well as social and legal compliance at the enterprise level.

Through this practical guide, you will learn what forced labour is, and the international standards and national laws and policies related to forced labour so that you can fulfil your legal obligations. You will also learn from other companies’ experiences how preventing forced labour makes business sense. Guiding principles, good practices in due diligence and responsible business conduct, and frequently asked questions and answers on preventing forced labour practices, as well as how to develop company policies aligned with buyer’s sourcing policies are provided as a reference guide. For further guidance you may also wish to refer to Appendix 3: ILO tools and other resources for business on forced labour.



## ► Introduction

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### The rubber industry in Malaysia

Malaysia is the world's third-largest producer of rubber (BizVibe 2020) and is home to the world's top manufacturer of rubber gloves.<sup>1</sup> Some 600,000 smallholders are engaged in the production of rubber, own 96 per cent of all plantations and contribute 90 per cent of the country's total production (ILO 2020).

Rubber production in Malaysia involves upstream rubber plantation, midstream processing, and downstream segments of the supply chain. The midstream segment entails the processing of natural rubber into latex concentrate and dry or solid rubber as inputs for downstream producers. Rubber gloves, condoms, new pneumatic tyres, catheters and rubber hose for industrial use are the main products in downstream manufacturing. Once the largest exporter of rubber, Malaysia now imports natural rubber and latex to meet local manufacturing demand (MRC, n.d.).

Malaysia exports rubber products to more than 190 countries. The European Union and the United States remain the largest markets for Malaysian rubber products, accounting for a combined 58 per cent share of total exports of rubber products in 2021. Rubber gloves are the main exports product, accounting for 89 per cent of the total exports of rubber products in 2021 (MRC, n.d.). Malaysia holds a share of 62 per cent of the global market for rubber gloves, and is also the world's leading supplier of medical gloves, meeting more than 50 per cent of global demand. Today, rubber products continue to be a significant contributor to Malaysia's gross domestic product (GDP) with 61.7 billion Malaysian Ringgit (MYR) of export revenue in 2021, of which MYR 54.8 billion was contributed by rubber gloves (MRC, n.d.).

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<sup>1</sup> Top Glove Corporation Bhd is the world's largest manufacturer of gloves, capturing 26 per cent of the world market share for rubber gloves.



EXPORT REVENUE 2021  
**RM61.7 billion**  
89% Rubber gloves

GLOBAL MARKETSHARE  
**62%** Rubber gloves  
**50%** Medical gloves



EXPORT DESTINATIONS  
**190 Countries**

## COVID-19 and the challenges of the rubber industry in Malaysia

The rubber industry in Malaysia relies on migrant workers, especially the downstream manufacturing of rubber products including tyres and gloves. According to MARGMA estimates, more than 60 per cent of the 71,800 workers employed in the rubber glove industry in 2019 were migrant workers. The COVID-19 pandemic has led to a surge in global demand for rubber gloves. Since early 2020, exports of gloves have increased substantially, recording MYR 35.3 billion worth of glove exports in 2020, supplying 300 billion pieces or 62 per cent of the world market for rubber gloves (ASEAN 2021). At the same time, the closing of borders has resulted in a shortage of workers to keep production lines running.

Faced with the challenge of this shortage, Malaysia's rubber glove manufacturers have also been plagued by allegations of forced labour. Since the outbreak of the pandemic, the US Customs and Border Protection (US CBP) has imposed bans on several leading rubber glove manufacturers in the country due to forced labour concerns. In October 2020, the US Department of Labour (DOL) added Malaysian rubber gloves to the list of goods produced by forced labour.

### Rubber industry workforce

60%  
migrant  
workers



71,800 workers

2019  
MARGMA  
Estimates

The US State Department in its 2021 Trafficking in Persons Report (TIP) has also downgraded Malaysia into Tier 3, the lowest tier for failing to meet the minimum standards for the elimination of human trafficking.

## Government and industry initiatives

The above perceived image due to forced labour puts the industry into a bad light that necessitates the solidification of efforts to restore the industry's and country's reputation. Various actions have been taken by the Government, employers, trade unions, civil society and the United Nations to prevent and eradicate forced labour in the country, including the development of Malaysia's first National Action Plan on Forced Labour launched on 26 November 2021, in which the Government approved for Malaysia to become a Pathfinder country under the SDG Alliance 8.7, to accelerate efforts to eradicate forced labour. On 21 March 2022, Malaysia ratified the 2014 Protocol to the ILO's Forced Labour Convention, 1930 (No. 29), with a commitment to take effective measures to prevent forced labour, protect victims and ensure their access to justice.<sup>2</sup>

In support of the above initiative, the Government has rolled out education and outreach programmes to increase awareness and understanding of forced labour issues, strengthen enforcement mechanisms and increase labour inspection. The Minister of Human Resources and the Department of Labour conducted regular dialogues and meetings with employers, particularly employers of rubber glove manufacturing, to discuss the mechanism and implementation of the Independent Social Audit Compliance as well as compliance with national laws and international labour standards (Malaysia, MOHR 2020).

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<sup>2</sup> The Protocol to the Forced Labour Convention, 1930 (No. 29) is a legally-binding instrument that requires Member States of the ILO to put in place measures on prevention, protection and remedy in giving effect to the Convention No. 29 obligations to eliminate forced labour. The Protocol shall take effect 12 months after its registration on 21 March 2022.

Employers in rubber glove manufacturing are also taking proactive actions to address and prevent forced labour practices in the workplace, including implementing corrective actions to remedy workers' recruitment fees and improve their rights, welfare and facilities. The MARGMA has declared the industry commitment to social compliance and eradicating forced labour, enhanced its Code of Conduct, adopted a Zero Cost Policy on recruitment of migrant workers, and participated in the Sedex Members Ethical Trade Audit (SMETA) programme for social compliance (The Edge Markets 2021). The leading manufacturers in the industry have embarked on an unprecedented initiative of repayment to migrant workers to remedy the fees and costs they have incurred in getting the job in Malaysia, and have paid more than US\$100 million in total to their current and eligible former workers (Bengtson 2021). The corrective actions taken and improvements made by a number of rubber glove manufacturers have resulted in the lifting of the import ban by US CBP of a few glove manufacturers.



Malaysia has ratified the 2014 Protocol to ILO Forced Labour Convention, 1930 (No. 29)

Source: Ministry of Foreign Affairs, Malaysia  
[https://www.kln.gov.my/web/che\\_geneva/home](https://www.kln.gov.my/web/che_geneva/home)

# 1. What is forced labour?

---

Forced labour refers to situations in which persons are coerced to work against their free will, and are unable to leave that work because of threat, coercion or deception by their recruiters or employers. Coercion tactics include violence or threats of violence, or more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to authorities. Forced labour, modern slavery, debt bondage and human trafficking are closely related though not identical in a legal sense.

Forced labour constitutes a severe violation of human rights and restriction of human freedom (ILO 2005). The ILO Forced Labour Convention, 1930 (No. 29) defines forced labour as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily”.

There are four important elements to this definition:

All work or services	Any person	Menace of penalty	Involuntariness
All types of work, service and employment	Adults and children	Threat of penal sanction or loss of rights or privileges	Employment without free and informed consent
Any industry, sector or occupation	Regardless of nationality, including “undocumented” migrant workers	Includes various forms of coercion, deception, violence, intimidation	Prevented from freely leaving the job and employer
Formal or informal, legal or illegal		Or non-payment of wages, denunciation to authorities	

Although there is no definition of forced labour in Malaysian legislation,<sup>3</sup> the amendments to the Employment Act 1955 include a new section 90B on forced labour which provides that an employer who threatens, deceives or forces a worker to carry out any activity, service or work, and prevents the worker from leaving the place where such activity, service or work is done, commits a forced labour offence, and the employer can be fined up to MYR 100,000 or face imprisonment for up to two years, or both.

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

**Answer:** The formal consent of a worker does not always guarantee that the worker works out of free will. If the consent has been given under the threat of a penalty or violence, or induced by deceit, false promises or retention of identity document, such practices are considered forced labour as defined by ILO Conventions.

## ► 1.1 Not all labour violations are forced labour

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Forced labour cannot be equated with low wages or poor working conditions, which may constitute labour law violations (see box 1).<sup>4</sup> Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of alternative employment. Forced labour has a certain degree of compulsion or threat of penalty and is a severe violation of human rights. Nevertheless, the best way to prevent forced labour is to avoid any labour violation, because unaddressed labour violations often become aggravated to forced labour. Enforcers also look at the presence of other forced labour indicators when investigating any labour violation.

<sup>3</sup> The Employment (Amendment) Bill 2021 was passed by both Houses of Parliament, and has been gazetted in May 2022. However, as at June 2022, the Amendment Act has not come into force and there is currently no indication as to when this might happen.

<sup>4</sup> The main labour laws in Malaysia are the Employment Act 1955 and its regulations, the Industrial Relations Act 1967, the Trade Union Act 1959 and the Occupational Health and Safety Act 1994.

**Box 1****Examples of criminal forced labour (Worker A)  
and labour law violations (Worker B)**

- A works 12 hours a day, six days a week in a rubber glove factory and is often forced to work on his rest day without overtime or rest day pay. His pay will be deducted if he refuses to work overtime. He is housed in the workers' quarter; his movement is monitored and his passport is kept by the employer for reason of security. He has to get the employer's permission to access his passport.
  - B works in a small tyre factory near his house. The factory does not have proper safety measures and he is earning less than the statutory minimum wage. He often has to work extra hours to earn enough to support his family. He is free to leave the job at any time, but he feels obliged to stay as he does not have another job offer and would not be able to support his family without a job.
- A** is a victim of forced labour, as there are elements of coercion: retention of his passport, restriction of his movement and forced overtime. His employer is also violating the Employment Act 1955: excessive working hours and without paying overtime or rest day pay.
- B** is not a victim of forced labour, even though there are elements of violation of the laws and regulations: paid less than the minimum wage and unsafe working conditions; but there is no element of coercion or deception, he chooses to remain at the workplace voluntarily when he is free to leave the job.

## ► 1.2 Forced labour is a global issue and COVID-19 has exacerbated the risk

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Forced labour, modern slavery and human trafficking exist in all regions of the world and in many economic sectors. According to the 2017 *Global Estimates of Modern Slavery*, 24.9 million people were victims of forced labour in 2016 and out of these, 16 million victims of forced labour were in the private economy (ILO, Walk Free Foundation, and IOM 2017). The prevalence is highest in Asia and the Pacific, where four out of every 1,000 people in the Asia-Pacific region are trapped in jobs into which they were coerced or deceived and which they cannot leave.

The COVID-19 pandemic and the economic shockwaves accompanying it are causing a dramatic rise in socio-economic vulnerability, placing unprecedented pressure on workers and employers. It has worsened poverty and exploitation and increased the pool of workers vulnerable to forced labour and worsened work situations that are already exploitative, resulting in a rise in forced labour.

►► I have often likened forced labour to a virus in the world of work – a virus that has demonstrated its capacity to mutate to come back in sometimes ever more virulent forms and we have to adapt our action to this dynamic situation in respect of forced labour.

**Guy Ryder** — ILO Director-General (ILO 2021a)





© Shutterstock

**4 in 1,000**  
workers are trapped in jobs



## ► 1.3 Forced labour in the Malaysian rubber industry

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In Malaysia, forced labour is often associated with migrant workers due to their vulnerability and the country's reliance on migrant workers in labour-intensive sectors including the rubber industry; such workers are largely from Bangladesh, Myanmar and Nepal. According to the Department of Statistics, Malaysia had about two million registered migrant workers in late 2020, 10 per cent of the workforce. It is however estimated that as many as four million more undocumented migrants work in the country (*The Business Times* 2021).

There have been numerous studies and reports in recent years that highlight the risks of forced labour in the Malaysian oil palm plantation and manufacturing sectors, including rubber and medical gloves manufacturing and their supply chains. As in the report in late 2018 (The Guardian 2018) of migrant workers being subjected to conditions of forced labour in medical rubber glove factories in the global supply chains, debt bondage due to excessive recruitment fees, passport retention, deceptive recruitment and sub-standard living and working conditions of migrant workers in the rubber glove factories in Malaysia continue to be highlighted. The manufacturers, including some of the world's major suppliers of rubber gloves, have come under increased scrutiny over alleged labour exploitation and abuse of migrant workers.

The recent research by the UK-based Modern Slavery & Human Rights Policy and Evidence Centre (2021) has revealed the magnitude of the problem. The research used the ILO indicators of forced labour, and found evidence of all indicators, with four of the 11 indicators worsened during the COVID-19 pandemic – abusive working and living conditions, movement restrictions, isolation, and excessive overtime (see box 2).

### **Box 2**

#### **The common allegations related to forced labour in the rubber industry**

- Deceptive recruitment practices
- High recruitment fee resulting in debt bondage
- Withholding of passport
- Restriction of movement
- Withholding, delay and unlawful deduction of wages
- Excessive working hours
- Unable to take annual leave
- Poor living conditions

## ► 1.4 Employers' perspective on forced labour in the rubber industry

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Employers in the rubber industry agreed that forced labour practices are unacceptable and have committed to eliminating such practices in Malaysia.<sup>5</sup> They support and appreciate the efforts and initiatives of the Government to eradicate forced labour practices and restore the country's reputation. They however expressed concern regarding policies and practices on the recruitment and employment of migrant workers in the industry, and the social compliance standards imposed by external parties. They also stressed the need for tripartite consultation on policies affecting employers and businesses.

Employers indicated that there has been a significant shortage of workers in the rubber industry, especially during the pandemic with the surge of global demand and the freeze of migrant workers intake by the Government. The industry has been advocating for the Government to lift the freeze and welcomed the moves by the Government to approve the special intake of 32,000 migrant workers for the plantation sector in September 2021,<sup>6</sup> and to open applications starting on 15 February 2022 for other permitted sectors including manufacturing (Lee 2022).

Employers want enabling policies and an eco-system to facilitate and expedite the recruitment of migrant workers to fulfil industry requirements. However, they are still facing the challenges of the worker shortage, high recruitment costs and lengthy approval processes. They welcome the move to involve the MOHR One-Stop-Centre in approving applications to ensure uniformity of policies and procedures and to speed up the process.

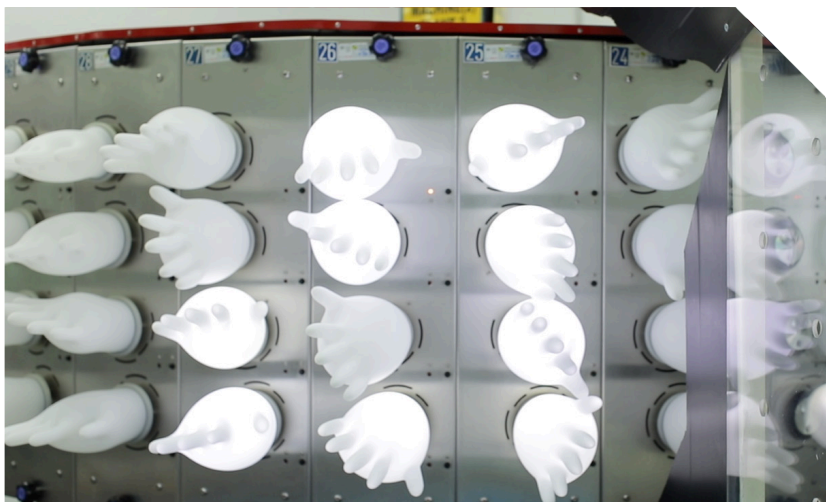
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<sup>5</sup> Inputs gathered from meetings, field interviews and consultation with the MRC, the MARGMA and employers of rubber glove manufacturers.

<sup>6</sup> In September 2021, the MARGMA appealed to the Government to allow foreign workers to enter the country to meet growing demand, citing a critical shortage of 25,000 workers since 2019 (Reuters 2021a).

They also welcome the bilaterally agreed recruitment arrangement between Malaysia and the source country, for example, the Memorandum of Understanding (MOU) signed between the Governments of Malaysia and Nepal in 2018 and the recent MOU signed between the Governments of Malaysia and Bangladesh in December 2021. They hope the bilaterally agreed recruitment arrangement will not only reduce the recruitment cost but will promote an open, transparent and well-governed system of recruitment that is fair to both employers and workers and in accordance with the ILO “General Principles and Operational Guidelines for Fair Recruitment” (ILO 2019).

Employers expressed their strong concern about deceptive recruiters in the source (sending) countries charging jobseekers exorbitant fees. They hope the Government will take up the matter with the source countries to control and cap the recruitment fees charged by the agents in these countries, as whatever fees charged to the workers will eventually be paid by the employers under the zero-cost recruitment policy. They are also seeking assistance to have a list of accredited recruitment agencies in the source countries for reference.



© Malaysian Rubber Council

In addition, employers indicated that a company could be subjected to different standards and audits imposed by different buyers. Some of the companies in the rubber glove industry are undergoing up to four levels of audit – internal audit, customer-driven audit, independent third-party audit and government audit of the MOHR. They also indicated that while large corporations may be able to cope and comply with the requirement, small operations would need support and guidance.

Employers in the rubber glove industry also expressed concern about the standards used by the US CBP and the interpretation of the ILO forced labour indicators. They also stated that the indicators of forced labour should take into consideration the background and culture of the migrant workers and the circumstances and context in Malaysia.

## ► 1.5 Why are external parties measuring Malaysian business practices based on international standards?

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

The ILO has developed a set of eleven indicators (see box 3) based upon the definition of forced labour specified in its Convention No. 29, and derived from theoretical and practical experience of its technical assistance programmes.



## ▶ 1.6 ILO indicators of forced labour

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### Box 3

#### Indicators of forced labour

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

**As an employer, ensuring that your business does not practise any of the following would prevent forced labour in your enterprise.**

#### Abuse of vulnerability

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

- Worker is not familiar with the neighbourhood.
- Worker does not speak the language of the host country.
- Worker does not have a written contract in the language he/she understands.
- Worker is frequently transferred from one workplace to another.
- Worker sleeps at the workplace and/or lives and works in the same place.
- Worker’s earnings are held by employer, and he or she has no direct access without employer’s approval.

### **Deception**

Do not make false promises about the nature and terms of employment to the worker, and if you are recruiting through a third party make sure the agency has provided complete and truthful information to the worker before she/he signed the contract.

Common deceptions include:

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

### **Restriction of movement**

Do not control workers' movement inside and outside the workplace; allow them to enter and exit the premises freely. Companies that restrict movement of workers raise strong suspicion of forced labour practices. A good company that complies with national laws and employs good practices for workers' retention has no reason to restrict the workers' movement.

### **Isolation**

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

### **Physical and sexual violence**

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



### **Intimidation and threats**

Do not intimidate or threaten your workers when they make complaints about their conditions or want to leave their jobs. Good practice would be to listen to the complaints and engage in negotiation with the worker without resorting to threats and intimidation. Common threats include reporting to authorities, deportation, or loss of “rights” such as wages, rest day, leave or freedom. Constantly insulting and undermining workers also constitutes a form of psychological coercion. The courts evaluate the credibility and impact of the threats from the worker’s perspective, taking into account individual beliefs, age, cultural background, and social and economic status. For instance, an employer may threaten the worker but is actually bluffing, but if the worker thinks the threat is true then it may be a form of coercion leading to forced labour.

### **Retention of identity documents**

According to the Passport Act of Malaysia, you are not allowed to keep your workers’ passports. Retention by the employer of identity documents or other valuable personal possessions is an element of forced labour if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss.

### **Withholding of wages**

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

### **Debt bondage**

Migrant workers often work to pay off their incurred debts, which arise from wage advances or loans to cover high recruitment fees. To avoid being accused of debt bondage, if you have provided a wage advance or loan to your workers, do not artificially inflate the amount of the debt, such as adding exorbitant interest, or deduct nothing from the debt despite the workers having performed work, thereby keeping them in your employment. Provide salary slips or receipts to workers showing the payments from work performed, together with details of deductions made.

### **Abusive working and living conditions**

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

### **Excessive overtime**

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

# 2. The business case against forced labour

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Forced labour poses a significant risk for employers and business owners of both small enterprises and multinational corporations with complex supply chains and outsourcing operations. According to the survey of the Responsible Business Alliance (RBA), forced labour has ranked as the number one concern for Malaysian businesses in recent years (Walk Free 2019).

The challenges are significant. In recent years several Malaysian leading palm oil and rubber glove producers have faced US import bans over allegations of forced labour, which has impacted and raised serious concern among the industries. In the social audit findings by the Supplier Ethical Data Exchange (Sedex) of countries with the most forced labour indicators found in audits, Malaysia topped the rank in “Definite Indicators” and came second in “Strong Indicators” (Sedex 2021).

According to analysts, rating agencies, and activists interviewed by Reuters, Malaysia must reform its labour laws and improve enforcement, while companies should invest to ensure better conditions (*The Business Times* 2021). The Government has stepped in with actions and initiatives and many businesses are proactively and voluntarily tackling the issue, recognizing that it is not only the right thing to do but that it also makes good business sense.



## ► 2.1 Avoid risk of an import ban

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Companies are facing increased pressure to avoid risks of import bans to demonstrate that the goods were produced without the use of forced labour. Under the US Tariff Act 1930, the US Customs and Border Protection (CBP) has the power to issue Withhold Release Orders (WROs) when information reasonably indicates that goods have been produced with forced labour. The US CBP has recently increased its use of WRO, and when a WRO is issued, the goods will be detained and the importer will be required to either re-export the goods or submit information to the CBP demonstrating that the goods were not produced with forced labour. When a finding of forced labour is issued, the goods may be excluded or seized (US CBP, n.d.). A few leading glove manufacturers in the country have been issued the WRO and, according to the MARGMA, it is estimated that the manufacturers could incur cumulative losses up to MYR 3.6 billion in potential glove export revenue due to the WRO (*Malay Mail* 2022).

In July 2020, Canada's Customs Tariff was amended to prohibit the importation of goods that are mined, manufactured or produced by forced labour. Canada has halted imports of Malaysian rubber gloves after a similar move was imposed by the US CBP (see box 4) over allegations of forced labour practices (*Bangkok Post* 2021). In February 2022 the European Commission was preparing a new legislative instrument to ban products made by forced labour from entering the EU market, as announced by its President von der Leyen in September 2021, and a resolution to this effect was adopted shortly afterwards by the European Parliament. This instrument covers goods produced both inside and outside the European Union, combining a ban with a robust enforcement framework (Business and Human Rights Resources Centre 2022a, 2022b).

Companies that export products to the global market must ensure that there are no forced labour practices in their operation and that the goods manufactured or produced are free from forced labour practices.

**Box 4**  
**WRO issued by US CBP**

In July 2020, the US CBP issued a WRO against a leading rubber gloves manufacturer and its subsidiary in Malaysia, detaining their disposable rubber gloves from entering the United States. The WRO was based on reasonable but not conclusive information on forced labour indicators in the company's glove factories, including debt bondage, excessive overtime, abusive working and living conditions, and retention of identity documents.

After receiving the WRO, the company submitted a statement and evidence to the CBP demonstrating that the detained goods were not produced with forced labour. It also took extensive remedial action to improve its labour practices, including remediation payments to workers, blacklisting unethical recruitment agents, enhancing workers' accommodation, and ensuring that workers were not tasked with excessive overtime.

In March 2021, a forced labour finding was issued which indicated that the CBP had "sufficient information to believe that the company uses forced labour in the production of disposable gloves". The finding also instructed the seizure of shipments of all the company's disposable gloves.

The company subsequently submitted a petition to modify that WRO and had an independent consultant confirm that it had remediated the 11 ILO forced labour indicators.

In September 2021, the CBP announced that it had modified the forced labour finding on the company, and that with immediate effect the CBP would permit the importation of disposable gloves made at the company's factories in Malaysia.

According to the CBP, "the Company's actions in response to the Withhold Release Order, which include issuing more than \$30 million in remediation payments to workers and improving labour and living conditions at the company's facilities, suggest that CBP's enforcement efforts provide a strong economic incentive for entities to eliminate forced labour from their supply chains".

Source: US CBP, n.d.

## ► 2.2 Managing risk in the supply chain

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Forced labour as a risk to global supply chains is not new; however, international efforts to combat forced labour and improve working conditions have become more urgent in recent years. International companies are increasing scrutiny over their global supply chains and are terminating contractual and business relationships upon detection of forced labour and workers' exploitation. Government agencies, global traders and NGOs are elevating the issue and, in many industry segments, are working collaboratively to not only educate those affected but also work toward finding specific solutions and best practices.

There are numerous reasons why companies should put controls and procedures in place to combat forced labour in their global supply chains – besides being a socially responsible company. Mandatory human rights due diligence on supply chains has become the norm for businesses operating globally. Under the UN Guiding Principles on Business and Human Rights (UNGPs), companies have a responsibility to undertake human rights due diligence, including on forced labour. Countries such as Australia, France, the United Kingdom and United States have passed legislation that requires companies to disclose how they are addressing forced labour in supply chains.<sup>7</sup> The Canadian authorities are pursuing legislation to address labour exploitation in supply chains, including obliging businesses to conduct due diligence, and the European Commission is proposing new legislation that will impose mandatory human rights and environmental due diligence obligations on companies operating across all sectors in the European Union, including requirements to address child and forced labour issues in supply chains. Appendix 2 lists human rights due diligence and forced labour policies of major importing countries of Malaysian rubber products.

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<sup>7</sup> Modern Slavery Act 2018 in Australia; Modern Slavery Act 2015 in the United Kingdom; Corporate Duty of Vigilance in France; California Transparency in Supply Chain Act and Dodd-Frank Act in the United States.



The employers in the rubber industry in Malaysia, from the upstream plantation to mid-stream processing and the downstream segment of the supply chain must not only ensure that not only their own facilities are free from forced labour or any human rights violations, but also those of their suppliers (see box 5). Monitoring labour practices of the suppliers and contractors, especially beyond the second and third tier, can be a difficult challenge. It is thus important for companies to select suppliers that are also committed to human rights and the prohibition of forced labour.

**Box 5**  
**Forced labour in supply chains**

In September 2019, TT Printing, a supplier of packaging materials to a few rubber glove manufacturers, was investigated by the Labour Department, the Immigration Department, and the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) following reports that their former workers from Bangladesh had fled, alleging mistreatment. The Labour Department investigated the company for alleged offences under the Employment Act 1955 which include the company's failure to report the hiring of migrant workers; failure to report the termination of the contract for their migrant workers; and irregular deductions to salaries of their workers.

These allegations of forced labour in their supply chain raised the alert among the rubber glove manufacturers. The employers of rubber gloves manufacturers have the responsibility to ensure that their suppliers and supply chain actors are free from forced labour practices. They engaged with TT Printing to ensure progress in its social compliance practices and that there are no forced labour practices.

Source: Ashraff and Alhadjiri 2019.



## ▶ 2.3 Avoid lawsuits and prosecution

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All employers and businesses in Malaysia have the legal obligation to comply with Malaysian laws and regulations and to organize their operations accordingly. Forced labour is a serious criminal offence in Malaysia: businesses have a legal obligation to prevent and eradicate it in their company operations, and failing to do so can lead to criminal prosecutions and sanctions (see box 6). Article 6 of the Malaysia Federal Constitution prohibits slavery and all forms of forced labour. The Anti-Trafficking in Persons and Anti-Smuggling of Migrants 2007 (ATIPSOM) Act 670 (amended 2022) prohibits all forms of human trafficking and smuggling of people activities and prescribes heavy punishments of up to life imprisonment and whipping.

The Penal Code also imposes heavy penalties on anybody who is found guilty of these offences, including various acts facilitating the commission of forced labour and human trafficking, even when the accused does not directly employ the exploited workers. The amendments to the Employment Act 1955 via the Employment (Amendment) Act 2021<sup>8</sup> include a new section on forced labour, and employers can be fined up to MYR 100,000 or imprisonment for up to two years or both for committing the offence. Chapter 3 provides further details on Malaysian laws and policies relating to forced labour offences.

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<sup>8</sup> As of June 2022, the Employment (Amendment) Act 2021 has not come into force.

### Box 6

#### Migrant workers and forced labour

A group of migrant workers filed complaints against their employer in the industrial court over unpaid wages, citing non-compliance with a collective agreement, wrongful deductions, denial of workers' full access to their passports, and threats to migrant workers.

The Labour Department investigated and charged the company over nine violations of labour laws regarding excessive hours and wrongful salary deductions. It fined the company MYR 41,500. The Industrial Court also ordered the company to pay back wages to some workers and comply with the agreement.

Source: Al Jazeera 2021.

## ► 2.4 Reputational risk and brand image

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Due to increased lobbying and media exposure, consumers, buyers and civil society are becoming more aware and concerned about human rights abuses, including forced labour. A company's image and reputation can be adversely affected by allegations or findings of forced labour in its operation, and the reputational cost is high, reflected through decline in sales and share prices, or even loss of business. Furthermore, reputational damage due to forced labour practices by a player in an industry can tarnish the reputation of an entire industry in a country. All suppliers have a stake even if they do not have forced labour practices in their own operations or supply chain (ILO 2009).

In the last few years Malaysia's glove factories have been plagued by reports of abusive working conditions, and the gloves produced by Malaysian manufacturers have been banned by the US CBP one after another for allegations of labour exploitation and forced labour practices (see box 4 and box 7). The US Department of Labour has added Malaysian-made rubber gloves to a list of goods produced by forced labour.<sup>9</sup> The allegations have severely affected the reputation of the industry, as well as the revenue and share prices of the affected companies.

### Box 7

#### Company's reaction to forced labour allegations

Following the issuance of a WRO by the US CBP in October 2021 prohibiting imports from a leading rubber glove manufacturer and its subsidiaries over alleged forced labour practices, the company has embarked on a series of remedial actions and improvement initiatives to meet the international labour standards and ensure that compliance and best practices are adopted into the company's HR practices. Among the actions taken include:

- Strengthening the human resources team, and capacity building of the management and supervisory team on prevention of forced labour.
- Implementing a zero cost recruitment policy.
- Remedying recruitment fees paid by all its current and former migrant workers within the scope.
- Improving benefits, facilities and living conditions of workers including major refurbishment to its hostel facilities.
- Adopting equal pay and benefits for all workers including migrant workers.
- Raising minimum wages to MYR 1,400, above the statutory rate.

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<sup>9</sup> The list of goods produced by child and forced labour of the US Department of Labour aims to raise public awareness about forced labour and child labour around the world and to promote efforts to combat them, including risk assessments and due diligence on labour rights in their supply chains.

- Revising and updating the company handbook to promote awareness of employment and workers' rights.
- Setting up a worker's committee consisting of representatives among migrant workers and elected by all migrant workers.
- Putting in place a whistleblowing channel administered by an independent third party that will report directly to the board of directors.

The effectiveness and implementation of these policies will be inspected by different levels of audits and will be monitored against the ILO 11 forced labour indicators. Based on its efforts and progress, the import ban against the company has been lifted.

Source: Ong 2022.

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

- attracting better talent;
- be perceived as providing more value, which often allows them to charge a premium;
- have more loyal customers; and
- have higher market value as it is believed that such companies will deliver sustained earnings and future growth (IFC and SAI 2010).

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

## ► 2.5 Meet buyers' expectations

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Over the past decades, international attention to violations of human rights and labour standards has increased, as demonstrated by the emergence of mandatory due diligence and reporting, required by the laws of buyer countries such as Australia, Germany and the United Kingdom. Global buyers, investors and consumers are increasingly concerned and aware of human rights abuses, and a workplace that is free from forced labour has become a fundamental requirement. The revolution in technologies has also facilitated access to and revelation of working conditions to buyers and consumers in supply chains.

Global buyers and large brands are increasingly devising codes of conduct and sourcing policies on how their suppliers should treat their workers, to ensure that their products – including the supply chains – are free from forced labour and human rights abuses. Appendix 4 provides examples of company codes of conduct and sourcing policies.

Companies and suppliers thus need to ensure that there are no forced labour practices in their operations, including those of their supply chains, as finding forced labour could lead to potential suspension or termination of supplier contracts with global buyers that value their reputation as responsible companies. In December 2021, a leading Australian personal protection and safety products manufacturer suspended its orders from a rubber glove manufacturer following allegations of forced labour practices (Reuters 2021b; see also box 8).

Conversely, compliance with core labour standards, which include prohibition of forced labour, is an attractive attribute to global buyers and may lead to awarding of contracts and licenses by leading global brands or public procurement.

### **Box 8**

#### **Ansell Supplier Code of Conduct**

### **3. Human Rights, Modern Slavery and Fair Labour**

#### **3.1 Modern Slavery**

Ansell is committed to a **zero-tolerance approach** to all forms of modern slavery practices in its supply chain and defines Modern Slavery to include:

- (a) slavery; (b) servitude; (c) forced labour; (d) deceptive recruiting; (e) forced marriage; (f) debt bondage; (g) human trafficking; and (h) child labour.

#### **3.3 Involuntary, Forced or Debt-Bonded Labour**

- (a) Supplier will not use or condone the use of any forced, bonded or involuntary labour and Supplier will not deprive any worker from their freedom.
- (b) Punishment and/or mental coercion are strictly prohibited. Disciplinary policies should be clearly defined and communicated to all workers.
- (c) Supplier will not require workers to surrender any government-issued identification, such as a passport, worker permits or any other legal documents, whether as a condition of employment or not. Workers must always and at all times be allowed to maintain control over their identification documents.
- (d) Supplier must ensure that workers do not pay fees or make payments connected to obtaining or keeping employment throughout the hiring process and the period of employment. Supplier is responsible for payment of all recruitment fees and expenses relating to employment, both in supplier's country of operation and in the workers home country.

- (e) Supplier will provide all workers with a contract of employment detailing their rights together with other key documents in a language the workers understand, preferably in their native language.
- (f) Supplier will not restrict freedom of movement of workers, including during breaks and rest periods.

Source: Extracts from Ansell Supplier Code of Conduct, last reviewed and updated 26 April 2022.

## ► 2.6 Avoid risk of trade barriers

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All World Trade Organization (WTO) member governments are committed to internationally recognized “core” standards – freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination). There are an increasing number of trade agreements and policies incorporating labour and social provisions, including prohibition of forced labour, with which the countries need to comply to continue trade relations and enjoy certain trade advantages conferred. It is reported that over 80 per cent of trade agreements that have come into force since 2013 contain labour provisions (ILO 2016a).

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**80%**

of all trade agreements since 2013  
have labour provisions

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While labour provisions found in some trade agreements are of a promotional and cooperative nature, there is increasing pressure on global trade to incorporate labour issues as a condition. In addition, there are also other pressure points with potential impacts on Malaysia international trade. For example, Malaysia was downgraded to “Tier 3” in the *US Trafficking in Persons* (TIP) Report (US 2021), and Malaysian rubber gloves have been added as products that use forced labour in the US ILAB list of goods, in addition to the garment, electronics and palm oil sectors.<sup>10</sup> This could have trade implications for Malaysian exports, as those reports are taken seriously by trading partners. Forced labour was added to the List of Trade Barriers on the USTR Review List on 17 September 2021, and includes failures by governments to eliminate forced labour in the country (ST&R 2021).

## ► 2.7 Level the playing field and prevent unfair competition

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Forced labour practices can affect the playing field when unscrupulous employers use forced or child labour to suppress labour costs to gain price advantage in the open market to the detriment of the law-abiding employers and enterprises in the industry, who face unfair competition from those who operate outside the law. In 2014 the ILO estimated that forced labour in the private economy generates US\$150 billion in illegal profits per year, with the Asia-Pacific region the highest at US\$51.8 billion annually (ILO 2014). This means that employers who exact forced labour reap billions of dollars of unfair profits by exploiting their workforce. It is thus in the interest of law-abiding enterprises in the same industry to take action against these unlawful practices to level the playing field and prevent unfair competition from non-law-abiding enterprises.

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<sup>10</sup> The List of Goods Produced by Child Labor or Forced Labor is an annual publication issued by the US Department of Labor, Bureau of International Labor Affairs (ILAB). Garments, oil palm, and electronics in Malaysia have been cited by the ILAB as sectors that involve forced labour in its production, and in October 2021 Malaysian rubber gloves were added to the list.



## ► 2.8 Improve productivity and competitiveness

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There has been discussion on whether enforcing labour standards, including non-use of forced and child labour and compliance to laws and regulations, would benefit firms, as implementation of enhanced labour standards will most certainly increase overhead costs and push up prices, thereby disadvantaging a firm's ability to compete favourably with other firms operating in territories where labour standards are not observed. A comparative cost-benefit analysis on implementing labour standards suggests that organizations benefit significantly by enforcing labour standards; it translates into higher productivity and enhanced organizational competitiveness and survival as workers experience job satisfaction, safe and healthy working conditions and environments which reduce the rate of industrial accidents, medical costs and sick leave. Furthermore, employers benefit from implementing enhanced labour standards through low worker turnover rates and improved cooperation and understanding between workers and their employers, resulting in a stable and positive labour relations environment that is devoid of unplanned work stoppages due to industrial action and loss of production (Samuel 2014).

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

## ► 2.9 Responsible business practices and supporting the Sustainable Development Goals (SDGs)

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Forced labour is in violation of international labour and human rights laws. Businesses have a responsibility to uphold these rights and provide decent work with fair, safe and decent conditions for workers. There are increasing business initiatives and calls for businesses to adopt responsible business practices<sup>11</sup> and take action to end forced labour. The Government has committed to this and is in the process of developing a National Action Plan on Business and Human Rights (*Malay Mail* 2021). Doing so is also in support of Goal 8 of the UN Sustainable Development Goal “Decent Work and Economic Growth”, in particular SDG 8.7 aiming to end modern slavery, trafficking and child labour.<sup>12</sup>

Global brands, companies and buyers have adopted various corporate social responsibility (CSR) and corporate codes of conduct which include the protection of core labour standards, including the prohibition of forced labour through their supply chains, and often embedding these demands in legal contracts as a condition of doing business, with non-compliance a reason for terminating suppliers’ contracts (see CGF 2018a, 2018b).

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<sup>11</sup> The concept of responsible business practices is embedded in the ILO Tripartite Declaration of Principles concerning Multinational Enterprises (MNE Declaration) (ILO 2017) which provides guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices. The concept is also centered around other international standards, notably the OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, IFC Performance Standards, UN Global Compact Principles, and the ISO 26000 Guidance on Social Responsibility.

<sup>12</sup> The target of SDG 8.7 calls for immediate and effective measures to eradicate forced labour and end modern slavery and human trafficking.

The [ILO Global Business Network on Forced Labour](#) is a business-led initiative coordinated by the ILO. It comprises businesses of all sizes and sectors, employer and business membership organizations, industry trade groups and sectoral associations, and aims at leveraging comparative advantages and collective action towards the elimination of forced labour and human trafficking. [The Responsible Glove Alliance \(RGA\)](#) is a new collaborative initiative created to prevent, identify and remedy forced labour in Malaysia's rubber glove industry through recruitment transformation, collective influence and the application of due diligence (see box 9). On 17 August 2018, the US CBP published the guidelines "Responsible Business Practices on Forced Labour Risk in the Global Supply Chain" which details best practices for importers of goods into the United States. Box 10 shows some of the leading international and regional business initiatives against forced labour.

### **Box 9**

#### **Responsible Glove Alliance (RGA)**

"The RGA is a collaborative initiative launched on 1 March 2022, aimed at ensuring the protection of workers vulnerable to forced labour in supply chains within the medical supplies industry.

"The RGA's initial focus is the Malaysian rubber glove manufacturing industry, as the country is the world's largest producer of rubber gloves and relies heavily on migrant labour. The RGA will work to identify, remediate and prevent the conditions giving rise to forced labour through recruitment transformation, collective influence, and the application of due diligence with advanced standards, tools, and programs.

“The RGA membership is open to buyers and suppliers of rubber gloves from Malaysia that meet strict membership requirements and commitments. All RGA members commit to core principles that recognize the importance of promoting responsible recruitment and employment practices in the rubber glove industry, including enforcing the Responsible Business Alliance (RBA) Code of Conduct, undertaking continuous improvement measures, and fostering transparency and accountability through public reporting and disclosure.

“The RBA is the Secretariat for the RGA, providing administrative, strategic, and operational support.”

Source: Responsible Glove Alliance webpage.  
<https://www.responsiblebusiness.org/rga/>.

**Box 10**  
**International and regional business initiatives**  
**against forced labour**

- The UN Global Compact Human Rights and Business Dilemmas Forum
- Bali Process Government and Business Forum
- The Consumer Goods forum’s Business Action Against Forced Labour <https://www.theconsumergoodsforum.com/.../key-projects/forced-labour>
- The Sedex Stakeholder Forum (SSF)
- Responsible Business Alliance
- Leadership Group for Responsible Recruitment
- ILO Global Business Network on Forced Labour
- amfori – trade with purpose amfori – trade with purpose
- Ethical Trading Initiative

# 3. Malaysian laws and policies on forced labour

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## ► 3.1 Federal constitution

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The Malaysian Constitution prohibits slavery and all forms of forced labour in Malaysia.<sup>13</sup> All persons, including foreigners and migrant workers, documented or undocumented, are entitled to constitutional rights in Malaysia.<sup>14</sup>



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<sup>13</sup> Federal Constitution, amended to 2009, Art. 6.

<sup>14</sup> The Court in *Ali Salih Khalaf v Taj Mahal Hotel* [2014] 2 MELR 194 opined that all persons are equal before the law because Art 8(1) of the Federal Constitution uses the word “persons” and not “citizen”. The Court further held that refugees have a right of employment and can seek relief for unlawful dismissal under the Employment Act 1955 and Industrial Relations Act 1967 even in the absence of the recognition of the right to work.



## ▶ 3.2 Anti-Trafficking in Persons and Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM, Amendment Act 2022)

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The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM Act) is the specific legislation that addresses human trafficking. Forced labour is a form of exploitation under this Act. Trafficking victims can become victims of forced labour when they are placed in exploitative work situation and is a criminal offence under the Act.

The Act was amended via the ATIPSOM (Amendment) Act 2022 which came into effect on 22 February 2022 (see box 11). It is part of the Government's efforts to strengthen the regulatory framework to address modern slavery and to curb human trafficking and smuggling of migrants in the country. Among others, the definition of human trafficking is widened, the definition of coercion is repealed, and the penalty of the offence increased including introduction of whipping.

**Box 11**

**Prohibition of forced labour and human trafficking under the Anti-Trafficking in Persons & Smuggling of Migrants Act 2007 (ATIPSOM Amendment Act 2022)**

The amended Section 2 of the Act defines:

“trafficking in persons” means all actions of recruiting, conveying, transferring, acquiring, maintaining, harbouring, providing or receiving, a person, for the purpose of exploitation, by the following means:

- (a) threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) abuse of power;
- (f) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
- (g) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person; “exploitation” as all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.

Any person who commits an offence under the Act, on conviction could be liable to imprisonment for life or for a term not less than five years, and whipping.



## ▶ 3.3 Passports Act 1966 (Act 150)

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The Passports Act prohibits the holding of another person's passport. It outlines that only those with lawful authority (an immigration officer, police officer or officer of customs) can hold the passport issued in the name of another person.

Passport retention is an offence under Section 12(1)(f), as shown in box 12.

### Box 12

#### Prohibition on passport retention under the Passport Act 1966

Section 12(1)(f):

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

## ▶ 3.4 Penal Code (Act 574) and Criminal Procedure Code (Act 593)

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The Penal Code criminalizes kidnapping, abduction including importing, exporting, removing, buying, selling or disposing of any person as slave or forced labour,<sup>15</sup> and offenders shall be punished with imprisonment for a term which may extend to one year or with fine or both.

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<sup>15</sup> Section 359 to 374 of the Penal Code (Act 574), Chapter XV1.

## ► 3.5 Immigration Act 1959/63 (Act 155)

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

Thus any person including employers could be charged for harbouring illegal immigrants in the premises under Section 55B, 56 (1)(d) of the Act, and could be subjected to a fine between MYR 10,000 to MYR 50,000 or imprisonment not exceeding 12 months or both for each illegal immigrant employed, and could also be subject to whipping of up to six strokes if he is found employing more than five illegal immigrants at the same time.

Section 55E of the Act extends the liability to a company supervisor or manager who has direct interest or control in allowing an illegal immigrant to enter or stay in the premises of the company, subjected to a fine of between MYR 5,000 and MYR 30,000 or imprisonment not exceeding 12 months or both for each illegal immigrant.

## ► 3.6 Employment Act 1955 (Act 265)

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The Employment Act 1955 applies to all workers in Malaysia including migrant workers and it provides minimum protection to workers with regard to their terms and conditions of service, consisting of working conditions, hours, wages, holidays, retrenchment benefits, and so on.

The amendments to the Employment Act 1955 via the Employment (Amendment) Act 2021 inserted a new section on forced labour (Zico Law 2021), as shown in box 13.<sup>16</sup>

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<sup>16</sup> As at June 2022, the Employment (Amendment) Act 2021 has not come into force

**Box 13****Forced labour is an offence under the amendments to the Employment Act (Employment (Amendment) Act 2021)**

90B: Forced labour

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 one hundred thousand Ringgit or to imprisonment for a term not exceeding two years or to both.

The Employment (Amendment) Act 2021 also includes the following, among others:

- The weekly limit on regular working hours is to be reduced from 48 hours to 45 hours.
- Employers are required to conspicuously exhibit a notice to raise awareness of sexual harassment in the workplace.
- The Director-General of Labour may make an order relating to discrimination in employment, and failure to comply with such order is an offence and can be fined up to fifty thousand Ringgit.
- Employers must obtain prior approval from the Director-General of Labour to hire migrant workers. Failure to do so may be liable to a fine not exceeding one hundred thousand Ringgit and/or to imprisonment for a term not exceeding five years.
- Employers must inform the Director-General of Labour when the employment of the migrant worker is terminated, including through a worker's abscondment.

## ▶ 3.7 National Wages Consultative Council Act 2011

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Since 2013, the Minimum Wage Orders under the National Wages Consultative Council Act 2011 have applied to both Malaysians and migrant workers. The minimum wage extends to all workers covered by the Employment Act 1955, Sarawak Labour Ordinance (Cap 76) or Sabah Labour Ordinance (Cap 67) except domestic workers.

Effective 1 May 2022, the national monthly minimum wage has increased from MYR 1,200 (US\$276) to MYR 1,500 (US\$345) for businesses in the private sector that have five workers or more.

## ▶ 3.8 Trade Union Act 1959

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Migrant workers have a choice of join or not to join a trade union, but they are not allowed to form a union of their own or hold elected leadership positions in trade unions.

An employer cannot prohibit workers from joining a trade union, or include a clause in the employment contract banning them from doing so.

## ▶ 3.9 Private Employment Agencies Act 1981

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Private employment agencies in Malaysia are regulated by the Private Employment Agencies Act 1981. The Act capped the allowable placement fees imposed on migrant workers to not more than one month of basic wages.

The Private Employment Agencies (Amendment) Act 2017 which came into force on 1 February 2018 has introduced new changes and expands the enforcement provisions on private employment agencies to include recruitment of migrant workers including migrant domestic workers, in addition to placement of Malaysian workers in local or overseas positions.

## ▶ 3.10 Employees' Social Security Act 1969

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Effective 1 January 2019, employers who hire migrant workers must register their workers with SOCSO and contribute to the Employment Injury Scheme only.

Under the Employment Injury Scheme, migrant workers are eligible for medical benefits, temporary/permanent disability benefits, constant-attendance allowance, dependant's benefits and rehabilitation.

## ▶ 3.11 Occupational Health and Safety Act 1994

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The Act Imposes A Duty On All Employers To Ensure, So Far As Practicable, The Safety, Health And Welfare At Work Of All Workers Including Migrant Workers And Domestic Workers.

## ▶ 3.12 Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446) and its regulations

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The Act Obligated An Employer Or A Centralized Accommodation Provider To Ensure That Every Accommodation Provided For Migrant Workers Complies With The Minimum Standards And That Decent And Adequate Amenities Are Provided.

With The Latest Amendment In July 2019 And February 2021, The Act Is Now Expanded To Cover All Sectors Throughout Malaysia. Employers Who Provide Accommodation To Workers Are Required To Ensure "Free And Adequate" Running Water, Adequate Electricity And That The Building Is "Kept In A Good State Of Repair" Including Provisions For "Health, Hospital, Medical And Social Amenities" To Workers. Employers Are Allowed To Collect, Up To MYR 100 A Month As Rental Charges For The Accommodation Provided.

Employers and central accommodation providers are mandated to obtain a certificate of accommodation, and can be fined up to MYR 50,000 for non-compliance with the Act and its regulations. The FAQ of the Department of Labour answers common questions on Act 446.<sup>17</sup>

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<sup>17</sup> Soalan Lazim mengenai Akta Standard Minimum Perumahan, Penginapan dan Kemudahan Pekerja 1990 (Akta 446) [https://jtksm.mohr.gov.my/images/akta446/3\\_faq446.pdf](https://jtksm.mohr.gov.my/images/akta446/3_faq446.pdf)

## ▶ 3.13 Employers' Undertaking

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Since January 2018, the MOHR has made it compulsory for employers who have been granted a certificate to hire migrant workers to sign the "Employers' Undertaking", a pledge by employers to adhere to certain conditions, such as to pay the full levy cost in employing migrant workers, pay wages accordingly, and not to withhold the worker's passport.

## ▶ 3.14 National Action Plan on Anti-Trafficking in Persons 2021–2025 (NAPTIP 3.0)

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The third [National Action Plan on Anti-Trafficking in Persons 2021–2025](#) was launched by the Government on 31 March 2021. The plan has four Pillars, nine Strategic Goals and numerous specific objectives and activities that aim to eradicate all forms of trafficking in persons including forced labour. The programmes and initiatives are to be implemented by the various government agencies under the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) together with NGOs, civil society organizations (CSOs) and the international community to combat trafficking in persons in the country.

## ► 3.15 National Action Plan on Forced Labour 2021–2025

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The Government launched the country's first-ever [National Action Plan on Forced Labour \(NAPFL\)](#) on 26 November 2021, which demonstrates the country's commitment to eradicating forced labour. The NAPFL focuses on awareness, enforcement and labour migration as well as access to remedial and support services to eliminate forced labour in Malaysia by 2030.

The NAPFL is an important tool to prevent and eliminate forced labour practices in Malaysia. It sets out actions to be carried out by the Government as well as by employers' and workers' organizations as well as civil society. Legal compliance and enforcement related to forced labour will be improved, and migration management – including recruitment practices – strengthened. Victims of forced labour will be provided with improved access to remedial, support and protective services. In addition, awareness and understanding of forced labour will be enhanced among workers, employers and the Government, young people and the general public. A review will take place in 2023 to take stock of progress on NAPFL implementation.





Overview of NAPFL 2021 - 2025	
Eliminate the use of forced labour in Malaysia	
Vision	
<b>Guiding Principles</b> (SDG 8, ILO P29 & UNGP)	<p>Forced labour is a violation of fundamental human rights</p> <p>Trauma informed victim centred and gender sensitive</p> <p>Duty of State protect everyone and duty of business to comply with laws and regulations</p> <p>Partnership of all stakeholders</p>
<b>Pillars</b>	<p>P1: Prevention</p> <p>P2: Protection of victims</p> <p>P3: Prosecution</p> <p>P4: Partnership</p>
<b>Strategic Goals</b>	<p>Improved knowledge and awareness</p> <p>Improved compliance and enforcement</p> <p>Strengthened migration management</p> <p>Improved access to support and protection services</p>
<b>Programme Areas</b>	<ul style="list-style-type: none"> <li>• Increase awareness raising and understanding of FL among workers, employers and general public.</li> <li>• Robust data collection, analysis and information dissemination.</li> <li>• Create comprehensive database in MOHR.</li> <li>• Develop evidence-base policy studies.</li> <li>• Revise laws and policies on FL and protection to victims.</li> <li>• Empower special ATIP unit.</li> <li>• Capacity building of law enforcers - labour inspectors.</li> <li>• Capacity building of employers to improve legal compliance - information and outreach programmes.</li> <li>• Capacity building of trade union to organise, support and assist workers particularly migrant workers.</li> <li>• Promote transparent recruitment via MOUs and other G-to-G cooperation.</li> <li>• Collaborate with source countries to strengthen migration management.</li> <li>• Improve regulations and operations of recruitment agencies in Malaysia and source countries.</li> <li>• Coordinate programmes with NAPITIP to improve safety net for the vulnerable.</li> <li>• Improve access to remedy.</li> <li>• Improve national capacity to identify, protect and support victims of FL.</li> <li>• Improve complaint mechanism and procedures.</li> <li>• Establish a national referral mechanism.</li> <li>• Collaboration of government agencies, trade unions and CSOs to develop and deliver protection services to victims.</li> </ul>
<b>SDG</b>	: Sustainable Development Goal 8
<b>ATIP</b>	: Anti-Trafficking in Persons
<b>MOHR</b>	: Ministry of Human Resources
<b>UNGP</b>	: UN Guiding Principles
<b>FL</b>	: Forced Labour
<b>G-to-G</b>	: Government to Government
<b>ILO P29</b>	: ILO Protocol to Forced Labour Convention No. 29
<b>NAPITIP</b>	: National Action Plan on Anti-Trafficking in Persons
<b>CSOs</b>	: Civil Society Organizations



# 4. Guiding principles and good practices on addressing, preventing and eliminating the risk of forced labour in the rubber industry

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Since the endorsement of the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#),<sup>18</sup> human rights due diligence has received much attention by policymakers, and a wave of responsible business legal requirements is impacting the global markets, with mandatory human rights due diligence schemes already in place or in development. In June 2021, the German and the Norwegian Parliaments adopted a new law on corporate due diligence in the supply chains. The mandatory due diligence introduces a new duty on corporations to carry out robust human rights due diligence, including on forced labour, across their entire supply chains. Australia, France, the United Kingdom and the United States have passed legislation requiring companies to disclose and report the steps taken to address and prevent the risk of forced labour in their company operation including the supply chains. Preventing forced labour in supply chains has become a mandatory requirement. Performing due diligence can help to meet those legal requirements and potentially mitigate the adverse effects of non-compliance. Box 14 lists examples of instruments and guidelines on human rights and forced labour due diligence.

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<sup>18</sup> The UNGPs were endorsed by the UN Human Rights Council in June 2011 and published in 2012 (OHCHR 2012). They set out the existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms; the role of business enterprises to comply with all applicable laws and to respect human rights; and the need for rights and obligations to be matched to appropriate and effective remedies when breached.

#### Box 14

##### Examples of human rights and forced labour due diligence

- Human Rights Due Diligence of the UN Guiding Principles on Business and Human Rights (OHCHR 2012)
- CBP Due Diligence in Global Supply chains (US CBP 2018)
- EU Guidance on Due Diligence for EU Businesses to address the risk of forced labour in their operations and supply chains (EU 2021)
- RBA Practical Guide to Implementing Responsible Business Conduct Due Diligence in Supply Chains (RBA 2018)
- RBA Practical Guide to Due Diligence on Recruitment Fees in International Supply Chains (RBA 2020)
- Forced Labour Due Diligence of the Responsible Labour Initiative (RLI website)
- A Self-assessment Tool for Enterprises (ILO 2022)
- ILO Due Diligence Toolkit for Fair Recruitment (ILO 2021b)
- Ethical Trading Initiative Human Rights Due Diligence in Malaysia's Manufacturing Sector (ETI 2019)
- SMETA (Sedex Members Ethical Trade Audit) (website)

This chapter provides practical guidelines to employers in the rubber industry on how to address, prevent and eliminate risks of forced labour in pre-employment, during employment, and post-employment practices, with a focus on recruitment and employment of migrant workers. Further information is available in the video<sup>19</sup> produced for the ILO-MEF publication *Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers* (ILO and MEF 2019), which is related to this chapter. Appendix 6 provides a checklist to assess risks of forced labour and identify good practices in your operations and supply chains.

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<sup>19</sup> <https://youtu.be/LtOPTjuDzps>; <https://youtu.be/wECAoLQACYY>.

## ▶ 4.1 Pre-employment

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Many challenges in managing migrant workers stem from issues that arise during the recruitment phase. The movement of a worker from a source country to a workplace in the host country can be a complex process involving many actors, including recruitment agents and government officials in both source and host countries. Forced labour could emerge as a consequence of deceptive or coercive recruitment practices.

In 2020 it was reported that migrant workers in the rubber glove sector paid exorbitant fees up to MYR 20,000 to recruiters for landing a factory job (*Malay Mail* 2020). Employers in the rubber glove sector are particularly concerned about the high recruitment fees charged by recruiters in the source countries. Thus, it is important that employers have clearly defined and transparent procedures for managing recruitment of migrant workers, including due diligence of the recruitment agencies.

The guidelines below for employers on fair recruitment describe how to eliminate deception and coercion in recruitment practices.





#### *4.1.1 Recruiting migrant workers through recruitment agencies*

If the employer decides to engage recruitment agencies, it must conduct pre-selection due diligence and regular audits of the recruitment agencies or other sub-agents involved in the recruitment and placement of migrant workers in both the source country and Malaysia. Box 15 describes one company's experience of working with a recruitment agency.

##### *(a) Pre-selection due diligence*

- ✓ To assess the policies and practices of the recruitment agency if the agency has a policy in place that shows the commitment to work with ethical standards, address grievances and be compliant with the laws and regulations of Malaysia and the source country.
- ✓ To ensure the agency does not have any record of fraudulent or deceptive practices.
- ✓ To engage only licenced recruitment agencies that observe the laws and regulations and the standards of ethical practice, for instance, a member of a national or international employment agencies association such as the Malaysian National Association of Employment Agencies (PIKAP) or International Confederation of Private Employment Agencies (CIETT), among others.
- ✓ If the agency has a sub-agent or labour recruiter, to ensure that it only engages with licenced recruiters in the source country.
- ✓ To ensure that the agency does not charge any fee to the workers.
- ✓ To ensure the agency does not retain the workers' passport.
- ✓ To ensure that the agency will provide pre-departure orientation to the workers, which includes information about Malaysia, their rights and obligations, the job responsibility, terms and conditions of employment, living conditions and how to access a remedy.

*(b) Post-selection due diligence*

As a result of the due diligence, and upon selection of the recruitment agency, employers should ensure that the contents of the contract between the employer and the recruitment agency include the following:

- ✓ Prohibition of forced labour and human trafficking and of all forms of exploitation, deception and coercion in the recruitment, hiring and management of migrant workers.
- ✓ Services provided by the recruitment agency.
- ✓ Detailed list of fees and costs covered by the employer and the agency.
- ✓ Recruitment fees are not paid by workers.
- ✓ All workers are treated fairly in the recruitment process, without holding up of documentation.
- ✓ Employer to provide the recruitment agency with a clear job description and terms and conditions of work.
- ✓ The employment contract issued to the workers accurately describes the terms and conditions of work and the job description in the language understood by the workers.
- ✓ Sanctions for labour agency non-compliance with contractual terms.
- ✓ Recruitment agency licencing and accreditation information.
- ✓ Licencing, accreditation or registration information for any subcontractor or sub-agent used by the agency.



**Box 15**

**Working with a recruitment agency**

When Company BB faced a continuous shortage of workers some years ago, and given its plan to expand production, it decided to hire migrant workers to meet production needs. With no prior experience and limited knowledge on the recruitment of migrant workers, the company had to engage a local recruitment agency. After reading many stories about unethical labour recruiters and agencies, the company conducted pre-selection due diligence and engaged a reputable and licenced agency as approved by the MOHR.

Instead of relying on the agency entirely, the Executive Director worked closely with the agency and was guided on the recruitment process, including being provided a template for the employment contract and workers' salary. Through the agency, the Executive Director travelled to Nepal to meet the local agent and interviewed the workers. She managed to speak to the senior management of the local agent in Nepal who showed her their operation and system in place. The Executive Director also inspected the local accommodation of the prospective workers and ensured that there was no mistreatment or illegality.

Source: Interview with the company on 30 March 2022.

#### 4.1.2 Recruitment fees

Some employers in the rubber industry, particularly rubber glove manufacturers, are practising a “zero cost recruitment policy” (see box 16) that aims to ensure that workers do not pay any recruitment fee at pre-employment, during employment, and post-employment. A few leading rubber glove manufacturers have moved a step further to retribute to both current and former migrant workers the recruitment fees they incurred for getting a job in the company. The guiding principles and best practices on recruitment fees include the following:

- ✓ Do not charge any fee or cost for recruitment directly or indirectly to the worker.
- ✓ Employers should practise a zero cost recruitment policy ensuring that workers do not pay any recruitment fees.
- ✓ All costs associated with recruitment, including the work permit, migrant workers’ levy, medical, air ticket, agency fee, and related documentation should be borne by the employer.<sup>20</sup>

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<sup>20</sup> It is proposed that some of the costs, such as the cost for visa extension, should be borne by the Government.

**Box 16**

**Zero-cost recruitment policy and remediation**

In response to the debt bondage issue faced by the migrant workers in the rubber glove industry as highlighted in the media and reports, since November 2019 most rubber glove manufacturers in Malaysia have adopted a zero-cost recruitment policy. All fees and costs related to the recruitment are to be borne by the employers, while workers are not required to pay any recruitment cost, directly or indirectly.

To demonstrate the industry commitment to the zero-cost policy, to manage the debt bondage issue of the workers, and in response to the Withhold Release Order (WRO) of the US CBP imposing an import ban on Malaysian rubber gloves produced by some of the rubber glove manufacturers, the leading rubber glove manufacturers have embarked on an arduous and complicated debt assessment exercise to ascertain the actual debt and/or cost paid by the workers, and as reported, the total amount of remediation paid by these few leading rubber glove manufacturers exceeds MYR 416 million (US\$100 million).

Source: Bengtson 2021; see also Low 2020.

**Question:** Should the employer pay for the cost of passport application as this seems like personal property?

**Answer:** According to the ILO “General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs” (ILO 2019), related costs of recruitment such as passport application fees should not be paid by workers. unless an exception duly authorized by the Government after consultation with workers (MTUC) and employers’ organization (MEF). For example, it may be observed that Ethiopia, which has ratified the ILO Private Employment Agencies Convention, 1997 (No. 181), has included passport application fees as an item to be paid by workers and has reported it to the ILO.

Specifically, according to the ILO “General Principles ...” (please see page 29 for the full context):

12. When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process: ...

“vii. Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers’ employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

It may also be noted that the Responsible Business Alliance includes new passport issuance or renewal as a cost item not to be paid by workers. However, passport replacement cost due to loss or fault by the worker can be paid by the worker.

**Question:** We have had customers' social compliance audits where the workers tell the auditors that they are being charged or put into debt by the recruiter. But upon checking with the agent, these are monies loaned to the workers for their travel expenses from their hometown to the city for the recruitment process i.e. housing stay, transport cost. How is this treated?

**Answer:** Recruitment fees or related costs should not be collected from workers directly or indirectly by any recruiters involved in the recruitment process. Loans to cover costs related to recruitment are an indirect way of collecting payments from workers, and are therefore prohibited under the ILO's "General Principles and Operational Guidelines for Fair Recruitment" (ILO 2019).

**Question:** What is the best approach to manage remediation of recruitment fees?

**Answer:** When prevention and due diligence has not taken place or has not resulted in the desired outcome, action should be taken to reimburse costs. There are challenges, however, when receipts or a paper trail have not or could not be kept but expenses have been incurred. There are some guidelines developed by organizations working in this area which the company can refer to for reference.

#### 4.1.3 Fair recruitment practices

- ✓ Provide comprehensive and truthful information about the nature of the job and conditions of work.
- ✓ Comply with laws and regulations in both the source country and in Malaysia, including the applicable bilateral agreement or MOU.
- ✓ Provide workers with a clear and transparent written contract in the language understood by the workers.
- ✓ Ensure that the migrant workers have proper documentation and that all procedures in sources countries are observed.
- ✓ Do not retain workers' identity documents and passport.
- ✓ Hold periodic training for managers, supervisors and staff on fair recruitment practices.

The ILO “General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitments fees and related costs” (ILO 2019) provides further details and guidance.

**Question:** What is the best approach to implementing robust migrant recruitment as company implements fair recruitment policies?

**Answer:** The company should draw up a policy, strategy and action plan to apply due diligence in its labour supply chain and to ensure that it is working only with ethical and fair recruiters. This policy and strategy should be guided by the ILO General Principles and Operational Guidelines for Fair Recruitment and ILO projects can provide feed-back on the development of such policies and plans.

**Question:** What should we do for any sort of fees paid to source agent or recruiter without our prior knowledge or agreement?

**Answer:** It is important for employers to map and understand their recruitment chain from country of origin all the way to Malaysia. Ask your agent questions about their partner agencies and recruiters in the source countries and their practices to avoid surprises in relation to fees. Always only deal with licenced agencies both in Malaysia and in source countries. Identify ethical and fair recruitment agencies, and explore different recruitment options – direct recruitment where permitted, or recruitment through G-to-G arrangement.

**Question:** How do Malaysian employers address issues beyond their control which are inherent in the home country of the workers.

**Answer:** Malaysian employers need to do due diligence to know their recruitment chain and only deal with licensed and reputable agencies both in countries of origin and destination.

**Question:** What is the best approach to implementing robust migrant recruitment for fair recruitment policies?

**Answer:** The company should draw up a policy, strategy and action plan to apply due diligence in its labour supply chain and to ensure that it is working only with ethical and fair recruiters. This policy and strategy should be guided by the ILO “General Principles and Operational Guidelines for Fair Recruitment” (ILO 2019), and ILO projects can provide feedback on the development of such policies and plans.

**Question:** What should we do for any sort of fees paid to source agent or recruiter without our prior knowledge or agreement?

**Answer:** It is important for employers to map and understand their recruitment chain from country of origin all the way to Malaysia. Ask your agent questions about their partner agencies and recruiters in the source countries and their practices to avoid surprises in relation to fees. Always deal only with licenced agencies both in Malaysia and in source countries. Identify ethical and fair recruitment agencies, and explore different recruitment options – direct recruitment where permitted, or through a bilaterally agreed recruitment arrangement

**Question:** How do Malaysian employers address issues beyond their control which are inherent in the home country of the workers.

**Answer:** Malaysian employers need to do due diligence to know their recruitment chain and only deal with licensed and reputable agencies both in countries of origin and destination.

#### *4.1.4 Pre-departure and post-arrival orientation*

This section is adapted from the ILO information booklet “Post-arrival orientation for migrant workers in Malaysia” (ILO 2021c).

- ✓ Prior to departure, workers should be briefed about the country they are going to, the workplace conditions, contract, terms and conditions of employment, accommodation, rights and responsibilities, job requirements and termination.
- ✓ Upon arrival, the employer should check whether the migrant workers have received pre-departure orientation or training and should provide them with post-arrival orientation on any topics not addressed during pre-departure orientation.
- ✓ Post-arrival orientation should take place upon arrival of the workers, before formally beginning employment, and delivered in a language understood by the migrant workers.
- ✓ Post-arrival orientation should include induction into the workplace and the accommodation.
- ✓ Migrant workers should receive a workers’ handbook and any factory regulations in a language they understand.
- ✓ Signs, symbols and other indicators related to health and safety hazards in the workplace and the workers’ hostel should be marked so that migrant workers can understand them.
- ✓ Migrant workers should be paid their regular wage for time spent in orientation training. Employers are encouraged to employ an on-site migrant workers coordinator conversant in both the languages of the migrant workers and the management.

Box 17 lists the contents that should be included in the pre-departure and post-arrival orientation of migrant workers.



**Box 17**  
**Contents of pre-departure and post-arrival orientation**

Pre-departure	Post-arrival
<ul style="list-style-type: none"> <li>• Basic information about the host country: Malaysia</li> <li>• The job requirements and the workplace</li> <li>• Accommodation arrangements, living conditions and health</li> <li>• Travel and repatriation arrangements</li> <li>• Wages and the terms and conditions of employment</li> <li>• Visa, work permit and medical examination requirements</li> <li>• Rights and responsibilities of workers and grievance channels</li> <li>• Information and contacts of embassy or consulate of source country in Malaysia</li> </ul>	<ul style="list-style-type: none"> <li>• Malaysian culture and common practices</li> <li>• Basic local language skills</li> <li>• Company's expectations</li> <li>• Workers' rights, responsibilities and opportunities</li> <li>• Employment contract, visit pass (TE), passport</li> <li>• Applicable laws and regulations – the Do's &amp; Dont's</li> <li>• Finance – how to open a bank account, how the salary is paid and remittances services</li> <li>• Keeping of personal documents and valuables</li> <li>• Working hours and overtime</li> <li>• Workplace policies, rules and regulations</li> <li>• Occupational health and safety requirements</li> <li>• Grievance channels and processes</li> <li>• Medical examination</li> <li>• SOCSO and insurance</li> <li>• General health and hygiene including COVID standard operating procedures (SOP)</li> <li>• Workers' accommodation-facilities, rules</li> <li>• Trade union, workers' committee if any</li> </ul>

#### 4.1.5 Fair and transparent contracts

- ✓ Provide written contracts of employment to all workers in a language they can understand (see box 18).
- ✓ Ensure that employment contracts clearly indicate workers' wages, working hours, rest day and other terms and conditions of work in accordance with the Employment Act 1955.
- ✓ Ensure that migrant workers are treated fairly and equally as local workers and have the same terms and conditions of employment.
- ✓ Ensure that there are no terms in the contract barring workers' rights to join a trade union, if existing.

#### **Box 18** **A fair and transparent contract**

A fair and transparent contract should contain the following:

- Worker's full name, date of birth, nationality and passport number.
- Worker emergency contact information.
- Contract duration and conditions of renewal.
- Place of work.
- Nature of work and the position/category.
- Basic monthly salary and clearly defined regular, overtime, and holiday wage rates including maximum allowable overtime hours in accordance with Malaysian laws and company's code of conduct.
- How and when the salary would be paid.
- Regular working hours, overtime hours, rest days, holidays.
- Bonuses, allowances, and other benefits including medical benefits, and sick, emergency and annual leave.
- Authorized deductions in accordance with the Employment Act and other applicable laws and regulations.
- Accommodation, including any applicable costs.
- Termination of contract including grounds for premature termination by employers and workers.
- Repatriation upon workers completing duration of contract.
- Employers' responsibilities including costs to be borne by employers such as travel, medical, documentation, etc.

See Appendix 5 for a sample employment contract for migrant workers.

**Question:** A migrant worker has signed a contract of employment but without understanding the contract because he cannot understand the language in which the contract is written. To what extent can this situation be considered as forced labour? In order to avoid forced labour, does the company have the obligation to translate the contract into a language understood by the worker?

**Answer:** All workers should have written contracts in a language that they can easily understand, specifying their rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour. The company thus has the obligation to ensure that the contract is written in or translated into a language understood by the workers.

**Question:** Do bond clauses that require an employee to work for a specified period of employment violate international human rights standards?

**Answer:** Bond clauses normally bind the employee to remain under the employment of the company for a minimum period of time. A key principle of the ILO Forced Labour Convention, 1930 (No. 29) is that all work relationships should be founded on mutual consent of contracting parties. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stressed that the right of workers to free choice of employment is inalienable, and that both parties must be free to leave the work relationship at any moment, subject to reasonable notice in accordance with the national law or a collective agreement; however, the parties may be required to pay compensation for the damage resulting from the early termination of a fixed-term contract.

## ► 4.2 During employment

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

### *4.2.1 Wage payments*

- ✓ Pay wages regularly and directly to the workers' bank account (Sections 18, 19 and 25 of the Employment Act 1955).
- ✓ Comply with national minimum wage requirements.
- ✓ Create a standardized wage system and pay slip that provides workers with clear and transparent information on wages, including hours worked, wage rates, overtime, and any lawful deductions.
- ✓ Keep an accurate record of wage payments and calculations.
- ✓ Pay wages not later than the seventh day of the last day of the wage period, and avoid non-payment or delayed payment that may have the effect of binding workers to employment. When a delay is unavoidable, the permission of the Director General of Labour must be obtained (Section 19 of the Employment Act 1955).

### *4.2.2 Wage deductions and in-kind payments*

- ✓ Deception in wage payments, wage advances, and loans to workers shall not be used as a mean to bind workers to employment. Making enticement, false promises or false advertising to deceive a worker should be prohibited.
- ✓ No deduction from wages shall be made with the aim of indebting a worker and binding him or her to employment. Only deductions authorized by law are permissible (Section 24 of Employment Act 1955).

- ✓ Any authorized and permissible deduction, including goods and services, meals and accommodation, shall not exceed 50 per cent of the monthly wages of the workers, and the worker shall be informed of the details of the deductions.
- ✓ Payments in kind in any form, including goods or services, accommodation, vouchers or coupons, shall not be used as payment of wages. Workers shall not be compelled to purchase goods or services from any particular store or service provider assigned by employers.

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

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

Even if the employer has paid the levy for the migrant worker, requiring repayment of the levy attributable to the unfulfilled part of the contract should not be allowed, as no fees or costs for recruitment should be charged directly or indirectly to workers.

#### 4.2.3 *Loans and advance payments to workers*

- ✓ Workers shall not be held in debt-bondage or forced to work to pay off an actually incurred or inherited debt.
- ✓ Any advances provided to workers shall be in accordance with the Employment Act 1955,<sup>21</sup> and the employer should make sure they do not put workers in a situation where they feel forced to work to repay the loan.

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<sup>21</sup> See Section 22: Limitation on Advances and Section 27: Interest on Advance Forbidden.

**Question:** Under what conditions is it acceptable to require a deposit from the worker for uniforms?

**Answer:** Deposits of a reasonable amount do not constitute forced labour if they do not deter workers from leaving. The workers should be informed of the conditions for return of the deposit, such as that the uniform should be returned in reasonable condition.

**Question:** Some companies are offering loans to employee as part of the employee care programme. How can companies make sure that this good initiative does not turn into something negative such as bonded labour, or obstruction to freedom of movement?

**Answer:** The policy should clarify that wage advances and loans to workers should not be used as a means to bind them to the employment. Advances, and loans and deductions from wages made for the repayment, should not exceed the limits prescribed by the Employment Act 1955. Workers should be informed of the terms and conditions surrounding the granting and repayment of advances and loans.

#### 4.2.4 Working hours, rest days, holiday and leave entitlement

- ✓ Never use threats or sanctions to force workers to work additional hours beyond their normal hours of employment.
- ✓ Workers shall not be forced to work overtime above the limits stipulated in the Employment Act 1955, and under the menace of a penalty, for example the threat of dismissal. The Employment Act 1955 stipulates that:
  - o The total working hours, including overtime, shall not exceed 12 hours in one day.<sup>22</sup>
  - o The number of overtime working hours shall not exceed 104 hours in one month.<sup>23</sup>

<sup>22</sup> Section 60A (7): Except in the circumstances described in paragraph (2)(a),(b), (c), (d) and (e), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.

<sup>23</sup> The Employment (Limitation of Overtime Work) Regulations 1980.

- ✓ Workers shall be given appropriate rest time and rest day in accordance with the Employment Act 1955.<sup>24</sup>
- ✓ Make sure that the workers are entitled to paid holiday, annual leave and sick leave in accordance with company regulations or at least as provided under the Employment Act 1955.<sup>25</sup>
- ✓ If workers are required to work overtime, on a rest day or public holiday, employers should make sure they are paid accordingly, and not less than the provision in the Employment Act 1955.
- ✓ Make information about working hours, overtime, rest day and other conditions of work available to human resource personnel, supervisory staff and workers, clarifying what is and is not allowed under the law.
- ✓ Distribute copies of company policies and make sure all workers understand the relevant provisions.
- ✓ Identify and reward good practice.

**Question:** If the workers have volunteered to do overtime work in excess of the limits permitted by the law because they want the extra income, will that be considered as forced labour?

**Answer:** This should not be allowed. A company's overtime policy should comply with the applicable laws and regulations and collective agreement, if any. An employer that allows a worker to work beyond the prescribed limit without the approval of the Director General of Labour commits an offence under the Employment Act and on conviction may be imposed with a fine of up to MYR 10,000 per offence.

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<sup>24</sup> Section 60A (1): An employee shall not be required to work for more than 5 consecutive hours without a minimum of 30 minutes break. Section 59: All employees shall be allowed a rest day in each week of work.

<sup>25</sup> All employees shall be entitled to at least:

Section 60D: 11 paid gazetted public holidays.

Section 60E: 8 to 16 days paid annual leave depending on years of service.

Section 60F: 14 – 22 days of paid medical leave and up to 60 days if hospitalized.

#### 4.2.5 *Disciplinary and grievance measures*

- ✓ Establish a strict policy on preventing violence, abuse and coercion, and train all relevant personnel on their respective roles and responsibilities under the policy.
- ✓ Disciplinary measures should not include sanctions that result in an obligation to work.
- ✓ Establish a formal mechanism for migrant workers to lodge complaints and seek remedy without fear, including mechanisms to report violations anonymously, taking into consideration language and cultural barriers.
- ✓ Consider engaging an independent third party to handle workers' grievances.
- ✓ Workers should not be penalized directly or indirectly for making a complaint against the company.

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

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

#### 4.2.6 *Passports and personal possessions*

- ✓ Do not confiscate or force workers to surrender passports or personal documents. Such practices are prohibited under the Passports Act 1966, as indicated in Chapter 3.
- ✓ Employers should retain only copies of the worker's passport and work visas or permits in the worker's file, and workers should keep the originals.
- ✓ Employers should provide a safe place for workers to keep passports or personal documents and valuable items, for example a safe or a secure cabinet with a lock or access code that workers can access any time. For security reasons, some companies set a specific time for access to lockers. This practice is widely used and encouraged.



- ✓ If migrant workers specifically request the employer to keep their documents for safekeeping, the employer should develop relevant written procedures and designate a focal person to ensure that workers have access to the documents upon request, and without restrictions.
- ✓ Employers should inform workers of these procedures and the name of the focal person during post-arrival orientation or before the procedures are enacted.

**Question:** If a worker has requested or voluntarily given the passport to the employer for safekeeping, is it an indication of forced labour?

**Answer:** Employers are encouraged to provide a safe place for workers to keep their valuables. If the workers give their passports to the employer, that employer must make sure the worker can access the passport without the need to obtain the employer's permission.

**Question:** A company provides a locker facility in the factory for migrant workers to store their passports and valuables. The key to open the locker is kept by the individual migrant worker. However, to access the locker area, the worker must register with the security guard on duty and write his or her name in the logbook. Is this practice in line with international labour standards?

**Answer:** It is a good practice on the part of a company to provide lockers for migrant workers to store their passports and valuables. As a basic principle, the passport should be in the possession of the migrant worker, and if it is stored in the locker the worker must have access to the locker at any time and for whatever reason, and there should be no constraints on the ability of the workers to leave the company. The fact that the lockers are located at the factory and secured by the security guard may indicate a restriction and raises questions about the actual possibility for the worker to have full access to his or her passport in practice. The company should consider installing private lockers at workers' hostel or in their own rooms for safe keeping of their valuables.

#### 4.2.7 Freedom of movement

- ✓ If accommodation is provided, the employer should make sure that workers' movement is not restricted outside working hours.
- ✓ Any form of coercion shall not be used to physically confine or imprison workers at the workplace or dormitory.
- ✓ Employers should not lock the doors to the workplace (even during work hours) or dormitories/hostels to prevent workers from leaving, or use penalties to enforce a curfew, or hire security guards to restrict workers' movement.
- ✓ Employers should ensure that workers are free to move around, during or outside working hours, as long as they are observing the rules and regulations of the workplace and the workers' accommodation.

**Question:** Are restrictions of movement, such as requiring home quarantine during the COVID-19 pandemic, considered an indicator of forced labour?

**Answer:** "Emergency" is defined as "a sudden and usually unforeseen event that calls for immediate measures to minimize its adverse consequences". UN policy on COVID-19 (<https://www.un.org/en/coronavirus>) highlights that emergency and security measures, if needed, must be temporary, proportional and aimed at protecting people. Movement restrictions and quarantine requirements during this pandemic that are in line with this – temporary, proportional and aimed at protecting people – are not considered indicators of forced labour. Movement restrictions should be aligned to government policies and standard operating procedures (SOP), and not solely based on what the employer decides to do. The employer should also communicate to the workers the situation, why it is happening and the government policy that needs to be followed. Aside from making sure that other forced labour indicators are not present, employers should also ensure that their quarantined workers have access to telephones or internet that would enable them to contact people from outside the quarantine facility.

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

**Answer:** Forced labour is characterized by the threat of a penalty and concerns work or service that is undertaken involuntarily; thus, if there is no threat of a penalty and work is undertaken voluntarily, and workers are free to enter and exit, then there is no forced labour. Similarly, posting security guards at factory exits for security reasons is not to be considered forced labour. However, the inappropriate use of security personnel could be an indication of forced labour and should therefore be treated with caution or avoided.

#### *4.2.8 Accommodation and health*

Under the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446) and its regulations, the employer-provided accommodation to migrant workers must be clean, safe, and provided with basic amenities including water, electricity, hygiene, safety measures and with reasonable living space.

- ✓ Employers should provide workers with information about accommodation, any cost involved and transport options to and from the factory prior to the workers' departure from the source country.
- ✓ Employers should develop rules and regulations concerning the accommodation provided, and migrant workers should be able to choose whether or not to live in that accommodation.
- ✓ Employers should ensure that migrant workers receive proper medical attention in the event of illness.
- ✓ Employers should make sure that workers are aware of the COVID-19 SOP, including social distancing and isolation rules.
- ✓ Employers should ensure that all workers are given the opportunity to be vaccinated.

**Question:** Due to health and hygiene issues in the workers' hostel, can the company close the kitchen facility, ban workers from cooking and set up a canteen operated by a third-party provider so that workers must buy the cooked food from the canteen instead of cooking for themselves?

**Answer:** The company may set up a canteen at the hostel, but a kitchen facility is one of the minimum facilities to be provided to workers in accordance with the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 (Act 446). The workers should have the choice of cooking or of buying the food at the canteen or at other places. The company shall not restrict the workers to only buying their food at the canteen. To keep and monitor the health and hygiene of the workers' hostel, the company should develop and enforce the rules in accordance with the requirements in Act 446, conduct regular inspections, and keep inspection records to ensure the facilities are well kept accordingly.

#### 4.2.9 *Retention of workers*

Instead of imposing restrictions to prevent workers from leaving or absconding, the best practice would be a proactive worker retention strategy – creating a fair and happy workplace with trust and respect, clear expectations and good communication (see box 19). Employers are encouraged to engage with workers to understand their needs and wants, minimize misunderstandings and address concerns with specific responses. This can be started with a good post-arrival and workplace induction programme (as indicated in box 17) and implemented through an ongoing workers' engagement and communication programme.

### **Box 19**

#### **High worker retention with improved welfare and trust**

Company AA, small manufacturers of cleanroom surgical and ambidextrous gloves in Selangor, with fewer than 40 workers including a few migrant workers from Bangladesh, India and Nepal, exports its products to Germany, the United Kingdom and the United States. The company has a high retention rate: the average working period for each worker is six to seven years, with some workers having served more than ten years. According to the Executive Director, this high retention rate is due to the company treating its workers well, with good benefits and fair pay.

The company rented an approved house for its migrant workers, with all facilities (electricity, water supply, fan, furniture) provided at the company's cost, and workers are free to move around. The company also provides lockers for the migrant workers to keep their passports and valuables. Lunch is provided for all workers at the factory.

Normal working hours for each worker is eight hours a day, with up to four hours of overtime when required. In response to workers' requests for more overtime work and restricted by statutory limits, the company adjusted the basic pay of workers to increase their overall take-home pay. During the strict movement control order (MCO) in 2021 where glovemakers were not permitted to operate for two to three weeks, the company continued to pay salaries to all its workers.

The company practises performance pay wages and awards workers with increments in accordance with their performance rating. It also organizes company trips for all workers including migrant workers at the company's expense as a reward for their hard work.

The company's actions show that positive steps towards workers' benefits and labour rights improvements have improved worker retention. The company strongly believes that all workers are an asset of the company and should be treated fairly and equally, and it will continue to build trust with the workers.

Source: Interview with the company, 30 March 2021.

#### 4.2.10 Freedom to join a trade union

- ✓ Migrant workers should have the right to join a union of their choice.
- ✓ Employers should not directly or indirectly prevent migrant workers from joining a union or participating in union activities.

**Question:** Can migrant workers organize a trade union or hold an elected position in a trade union?

**Answer:** Under the Trade Union Act 1959, migrant workers can join a trade union of their choice and the employer shall not prevent migrant workers from joining the union. However, migrant workers are not permitted to organize a trade union of their own or hold an elected leadership position in a trade union. To protect the rights of migrant workers, employers are encouraged to facilitate setting up a migrant worker's committee in the workplace, represented and elected by the migrant workers. The management should have regular meetings with the committee to better understand their issues and build trust and understanding.



## ► 4.3 Post-employment

Upon expiration of the contract, or if for any reason the contract is terminated prematurely, forced labour practices could emerge in the termination and repatriation phase. The guidelines below for employers describe how to eliminate deception and coercion in post-employment practices including termination, dismissal, resignation and repatriation.



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### 4.3.1 Termination of employment

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

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

*(a) Summary dismissal by employers*

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

*(b) Premature termination by workers for cause*

- ✓ Workers may terminate the contract prematurely without notice or penalty in the event of harassment, abuse or other serious violation of their rights by the employers including failure to pay wages, or if the contractual terms and conditions of employment have changed from the terms and conditions originally agreed upon in the signed contract without the prior consent of the worker.
- ✓ Workers should be able to terminate the contract prematurely without notice or penalty in the event of serious ill health (as certified by an independent doctor), and in accordance with the Employment Act, employers' terms and conditions or other applicable laws and regulations.
- ✓ Workers should be able to terminate the contract of employment prematurely due to extenuating circumstances such as the death or serious illness of a family member or other family emergency (with satisfactory proof to be provided to employers).



*(c) Premature termination by workers without cause*

If migrant workers voluntarily terminate the contract of employment prematurely without providing reasonable notice and without the fault of the employer, for example through a change of mind or change of job, the workers must pay the employer the notice period as stipulated in the contract.

*(d) Premature termination by employers without cause*

If employers terminate the contract prematurely without the fault of the workers, the employers have to give notice or pay the notice period as well as any applicable termination benefits or compensation in accordance with the Employment Act or employers' terms and conditions of employment. Employers shall also pay for the cost of repatriation of the workers.

*4.3.2 Final wages*

- ✓ Upon termination of employment, the migrant workers should receive all outstanding remuneration, including wages, bonus and overtime pay, or other benefits for work performed, including severance payments normally due, prior to repatriation.
- ✓ Employers may make a deduction for any outstanding payment due to them, for instance authorized and permissible deductions for meals, accommodation or services or notice payments as stipulated in Employment Act or terms and conditions of employment if workers terminate their contract prematurely without cause and without notice.

**Question:** Can an employer hold back the final salary of migrant workers to compensate for the high recruitment cost incurred when the migrant workers decide to leave the employment or change employer prior to completing the term of the employment contract?

**Answer:** Employers should not deduct or hold back the migrant worker salary to compensate for the recruitment cost incurred when the worker decides to leave the employment prior to completing the term of the contract. The only deduction which may be permissible is the termination notice payment if the worker fails to give the required notice as stipulated in the contract, and if the termination is not the employer's fault. In some circumstances, for example if the termination is due to illness of the worker or family member, the employer should be considerate and not require the worker to pay for the notice.

#### 4.3.3 Repatriation

- ✓ Upon completion of the employment contract, the employers should pay for the cost of the workers' return airfare to the source country as part of the repatriation process.
- ✓ For premature termination, employers should consider paying for the cost of repatriation on a case-by-case basis, if the premature termination is due to the employer's breach of the terms and conditions of contract or without the fault of worker, as indicated in section 4.3.1 above.
- ✓ Employers shall not be responsible for the cost of repatriation for summary dismissal or premature termination by workers without cause as indicated in section 4.3.1 above.

**Question:** The employment contract of the worker provides that the employer will pay for the repatriation cost upon the worker's completion of the term of the two-year contract. At the end of the two years, the migrant worker asks for an extension of the contract as he wants to continue working for the company. The company agrees, renews his work permit and extends his contract for another two years. However, the worker wants to take a short break to visit his family in Nepal before resuming the extended contract. Is the employer obliged to pay for the travel expenses of the worker to visit his family in Nepal?

**Answer:** The employer is only obliged to pay for the repatriation cost when the worker completes the employment contract and returns to his home country. The employer has no obligation to pay for the worker's travel expenses when he is taking leave to visit his family. In this scenario where the worker has completed his initial two-year contract with the employer, it will be good practice for the employer to consider paying his travel expenses as he will be back to continue working for the employer for another two years. This will not only save the employer's cost of recruiting and training a new worker, but will also build loyalty, satisfaction and trust with the worker that would result in a happier workforce, higher productivity and higher worker retention.



# 5. Employer's action against forced labour

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Given the intensified international focus on eliminating forced labour, child labour and human trafficking, improving labour rights and conditions and putting in place import bans for human rights violations, businesses should have protocols in place to ensure compliance with applicable regulatory controls and to mitigate the risk of penalties or repercussions should violations be discovered.

## ► 5.1 Taking action against force labour in company operations and across the supply chain

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For a company to deal effectively with forced labour, it is important for the management to first understand what forced labour is, the context in Malaysia, why it is relevant to the company and how it manifests itself at enterprise level and within the supply chain. Chapters 1 and 2 of this Guide provide this information.

In addition, while it is important to know the company's legal obligations under Malaysia's laws and regulations related to forced labour and human trafficking (Chapter 3), an understanding of international and regional legal frameworks (Appendix 1) as well as the policies of importing countries (Appendix 2), buyer sourcing policies and supplier codes of conduct (Appendix 4) are equally key, especially for companies supplying the international market. Most of these policies and codes of conduct require their suppliers to meet core labour standards and human rights laws, which may be stricter than the obligations under Malaysian laws and regulations. Non-compliance with or violations of such policies or code of conduct could result in suspension, import bans or termination of supplier contracts, with consequent loss of business.

These are the starting points and prerequisites for a company to raise awareness and take effective action to ensure that its own operations and those across its supply chains are free from forced labour.



### 5.1.1 *Developing a company policy prohibiting forced labour*

Strictly prohibiting forced labour and human trafficking in all company operations is essential in addressing these issues. A corporate code of conduct is increasingly used by companies as a tool to help ensure that labour practices in their operations and those of their suppliers are legally compliant. These codes are formal statements of principle that govern the conduct of an enterprise and usually cover issues related to responsible business practices which include ethics, human rights, labour, environmental and community practices, among others. They are particularly common in export industries including rubber glove manufacturing. The statement, policy or code of conduct, whether a comprehensive document or a brief statement, is a way for companies formally (though voluntarily) to commit themselves to responsible business practices, including prohibition of forced labour.

Developing a company statement, policy or code does not have to be difficult. A number of initiatives provide free advice on the steps to take if a company decides to do so.<sup>26</sup> Some of the steps include:

- (a) conducting an assessment of the company and business partners to determine the degree to which both adhere to national laws and are consistent with industry good practice;
- (b) establishing a company-wide working group to develop a draft code that expresses the company's commitment to good and responsible labour practice including prohibition of forced labour;
- (c) organizing internal consultations on the draft and subsequently consulting with appropriate external partners or stakeholders;
- (d) finalizing the code and presenting it to management for endorsement; and
- (e) communicating and sharing the code with staff, business partners, business associations, employers' organizations, the media, and other stakeholders including workers and their representatives, that it applies to all levels of the company's operation and supply chains.

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<sup>26</sup> For further information on developing company guidelines, see Stronger Together 2016; IFC and SAI 2010; the Global Reporting Initiative website ([globalreporting.org](http://globalreporting.org)).

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

The guidelines provided in Chapter 4 above can be used in drafting the forced labour provisions of the code. Appendix 4 provides a list of selected company policies and codes of conduct that include forced labour provisions. You may also contact the MRC for advice.

### *5.1.2 Implementing the policy*

Whether a company has developed its own code of conduct or is obliged to abide by the buyers' sourcing policy, having a policy is just the first step. Implementing the policy and ensuring that the company and its suppliers operate to the newly established standard can be a much harder task. Here are a few suggestions (adapted from ILO 2007a) for recommended action:

#### *(a) Internal audit*

One way that companies can implement their code of conduct and ensure their compliance with the laws and core labour standards is through internal audit of existing labour practices. An audit can help the company identify its level of compliance with the new code and determine whether there is forced labour in its operations. The more thorough an audit is, the better it will be in identifying situations of forced labour and trafficking. When these cases are detected early and resolved quickly, not only is there lower risk of penalty but such action can also be used as good publicity. The audit can be done internally or by hiring a third-party auditor. You may refer to the checklist in Appendix 6 to internally assess the risks of forced labour and identify good practices in your operation and supply chains.

Most rubber glove producers in Malaysia are subscribing to third-party social auditing. According to the MARGMA, its members have agreed to register with Sedex and undergo the SMETA audit. The SMETA's measurement criteria is in line with the Ethical Trading Initiative (ETI) Base Code and focuses on the pillars of labour, health, safety and environment to determine good business ethics (*The Edge Markets* 2021).



*(b) Adoption into company recruitment and employment practices*

The code of conduct or the newly endorsed policy must be adopted into company recruitment and employment practices to ensure that the risk of forced labour is minimized. This includes conducting pre-selection due diligence of recruitment agencies, terms and conditions of employment concerning working hours, overtime, payment of wages, advances and deductions, holding of personal documents, and restriction of movement of workers, as well as termination of contract and repatriation practices as stipulated in Chapter 4 of this Guide.

*(c) Staff briefing and training*

It is important that the company introduces the newly developed code of conduct or policy to the staff, demonstrating the company's commitment to the code or policy. Staff briefing and training are essential for human resource personnel and supervisors and other relevant staff, and involve workers at all levels on their role in implementing the policy, particularly how to identify, report and address forced labour. This would enable effective implementation of the policy and consistent levels of compliance across the company.

Training on forced labour and trafficking in persons can be conducted alone or it can be integrated into other programmes. Alternatively, the company may send the staff for external training. The Department of Labour (JTKSM), the MRC, the MARGMA and the MEF conduct and organize training programmes and webinars on forced labour and responsible supply chains to assist employers understand, address and prevent forced labour in their operations. For example, the MRC conducted the SMETA training series webinar on "Ethical Trade and Responsible Supply Chain" on 23–24 February 2022 for its members, and the MARGMA in partnership with the ILO conducted a series of webinars on "Understanding, Identifying and Preventing Forced Labour in the Rubber Glove Manufacturing Sector" for its members from 7 to 9 March 2022. Companies may contact them for assistance in planning and delivering training.

*(d) Communicating with stakeholders*

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

*(e) Application to suppliers and subcontractors*

Compliance with the code should be made a condition of business and integrated into contracts with suppliers, subcontractors and relevant business partners such as the recruitment agencies, and used as a condition of evaluation, selection and maintenance as a supplier to the company. Suggested steps (adapted from ILO 2007b) to address risks of forced labour in the supply chain include:

- ✓ **Screening prospective suppliers** for if they comply with the code. This includes checking conditions and practices at the premises of the potential supplier.
- ✓ **Communicating the requirements to the suppliers** that forced labour will not be tolerated, and explain company sourcing policies, code of conduct, monitoring procedures and consequences of non-compliance. Chapter 4 of this Guide, which provides information on how to eliminate risks of forced labour in company operations, can be a useful reference when communicating the above points to the suppliers.
- ✓ **Contracts with suppliers** should set out the basic labour conditions, specifically the prohibition of forced labour and trafficking in persons. The consequences of breaching the conditions, including the possible termination of the contract, should be stated clearly to avoid confusion.

- ✓ **Understanding the suppliers.** It is important to look at how the company's own actions impact on supply chain working conditions. For example, if companies make last minute orders or force suppliers to meet unrealistic deadlines, this may result in suppliers forcing their workers to work excessive hours. By undertaking an assessment of a factory's capacity, companies can ensure that the supplier will be able to meet the deadline set without having to resort to forced overtime.
- ✓ **Monitoring and working with suppliers to improve conditions.** If forced labour is detected, it is not necessary to immediately abandon the supplier. Instead, the supplier should be given time and support to remove the indicators of forced labour and to comply with the requirements. A corrective plan should be developed and implemented with the supplier (see box 20).
- ✓ **Warning and dropping suppliers that fail to improve.** If a supplier does not make serious efforts to improve the situation after it was detected; for example, if the corrective plan is not implemented in the agreed time frame or there are repeated violations, the company should terminate the contract and drop that supplier.



**Box 20****Ansell's response on its supplier involvement in forced labour**

Following media reporting on one company's involvement in forced labour practices, Ansell, one of the major customers of the company, reinstated its stand that it does not tolerate any breaches of its Labour Standards Policy, Human Rights Statement or Supplier Code of Conduct.

Instead of terminating the contract instantly, Ansell worked with the company to improve its labour practices, including conducting third-party audits. Its statement on the Company indicated:

In line with the advice of human rights and labour experts, Ansell's preferred practice is to work with suppliers to achieve meaningful improvement, thereby ensuring secure employment and improved conditions for workers, rather than reactively cancelling supplier contracts in response to specific events or allegations ... However, if a supplier fails to undertake corrective actions and is not seeking to achieve improved outcomes in good faith, we will terminate the relationship.

Source: Ansell 2021.

### *5.1.3 Handling forced labour-related complaints*

Handling of forced labour related complaints can be part of the worker grievance procedure (see box 21). All companies should have an internal procedure for dealing with worker grievances and complaints. An effective procedure for handling grievances allows for swift and flexible handling of complaints, and can play an important part in cultivating good management-worker relations. Measures should be established to ensure that workers do not suffer disciplinary action for reporting grievances.

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

To ensure impartiality, some companies engage independent third parties to provide functioning, confidential and external grievance mechanisms (such as helplines) to workers. For example, as part of its enhancement effort, the rubber glove maker Supermax established a migrant workers' committee and put in place a whistleblowing channel administered by an independent third party that will report directly to the board of directors.

### **Box 21**

#### **Guidelines for developing a grievance procedure**

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

Source: Adapted from CAMFEBA and ILO 2013.

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

#### *5.1.4 Monitoring and corrective action*

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

#### *5.1.5 Documentation*

It is also important for the company to document self-assessment or audit findings and any corrective action taken, to enable progress to be tracked and identify improvements.

#### *5.1.6 Working with others*

The company may work in partnership with other companies, industry association or employers' organization in its effort to address forced labour, including developing an industry-wide approach to forced labour or participating in a collective policy statement by an industry association or group of companies. For example, the MARGMA code of conduct and the SMETA audit apply to all their members, and the MRC provides members with opportunities to exchange information, learn from each other and develop good practice together.

Some of the initiatives can be taken by companies include the following:

- ✓ Support and work in partnership with the Government and other stakeholders in the implementation of the National Action Plan on Forced Labour, including participating in the national programmes and awareness-raising campaign, and cooperating with local authorities and labour inspectors.
- ✓ Cooperate with the MRC, the MARGMA and other rubber products companies to promote best practice at the industry level, including innovative means to reward companies for good practice.

- ✓ Collaborate with the MRC, the MARGMA or other companies in the rubber industry and develop an industry-wide approach to forced labour (see box 22).
- ✓ Encourage national and international events among business actors, identifying potential problem areas and sharing good practices.
- ✓ Build networks with other companies in the rubber industry and use those networks to exchange information and experience in handling workers' issues to avoid allegations of forced labour practices.
- ✓ Utilize the services and training provided by the MRC, the MARGMA or Department of Labour, or seek technical guidance from the ILO Helpdesk for Business on International Labour Standards.

### **Box 22**

#### **Ten principles for business leaders to combat forced labour and trafficking**

1. Have a clear and transparent company policy, setting out the measures taken to prevent forced labour and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains.
2. Train auditors, human resource and compliance officers in means to identify forced labour in practice, and to seek appropriate remedies.
3. Provide regular information to shareholders and potential investors, attracting them to products and services where there is a clear and sustainable commitment to ethical business practice including prevention of forced labour.
4. Promote agreements and codes of conduct by industrial sector (such as in agriculture, construction and textiles), identifying the areas where there is risk of forced labour, and take appropriate remedial measures.
5. Treat migrant workers in the same manner as other workers and in accordance with the law. Monitor carefully the agencies that provide contract labour, especially across borders, blacklisting those known to have used abusive practices and forced labour.

**Box 22**

**Ten principles for business leaders to combat forced labour and trafficking**

6. Ensure that all workers have written employment contracts, in a language that they can easily understand, specifying their responsibilities and rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour.
7. Encourage national and international events among business actors, identifying potential problem areas and sharing good practice.
8. Contribute to programmes and projects to assist, through vocational training and other appropriate measures, the victims of forced labour and trafficking.
9. Build bridges between governments, workers, law enforcement agencies and labour inspectorates, promoting cooperation in action against forced labour and trafficking.
10. Find innovative means to reward good practice, in conjunction with the media.

Source: ILO 2008.



## ► 5.2 The roles of industry associations in combatting forced labour

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Employers and Business Membership Organizations (EBMOs) can be a key player in the efforts to eliminate forced labour. At the global level, EBMOs have supported the adoption of ILO Convention No. 29 against forced labour and the promotion of the ILO Declaration on Fundamental Principles and Rights at Work. The International Organisation of Employers (IOE) has adopted global policies and developed guidance and tools to support its members in addressing forced labour (IOE 2010).<sup>27</sup>

The MRC, the MARGMA, the Malaysia Rubber Products Manufacturers Association (MRPMA), the Malaysian Estate Owners' Association (MEOA), and the East Malaysia Planters Association (EMPA) are some of the leading EBMOs in the rubber and rubber products industry in Malaysia.

Some of the initiatives or actions that can be taken by EBMOs in the rubber and rubber products industry in combatting forced labour in the rubber industry are listed below.

### *5.2.1 Developing a strategy or action plan*

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

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<sup>27</sup> The IOE is one of the main representative private-sector organizations in the world. It has over 150 national employers' organization members globally (as at May 2022). It is the Employers' secretariat at the International Labour Conference (ILC) and participates actively in social and labour policy debate at the ILO, across the UN and the multilateral system, and in the G20. The MEF is a member of the IOE.

### *5.2.2 Providing information and advice*

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

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

At a basic level, enterprises will want to know about the law and relevant provisions in the labour and criminal codes; information about the international legal framework on forced labour; sourcing policies of global buyers and importing countries; and latest government policy on forced labour. The MRC and the MARGMA provide relevant information to support and assist members in addressing forced labour practices.

EBMOs can encourage members to become more aware of the policies of their suppliers and offer advice on combatting forced labour. This can be done person-to-person through the focal point; or the EBMO can provide a platform to facilitate sharing issues of interest, challenges and exchange of ideas between members. In such a way, businesses will be supported to take proactive measures to detect, deter and deal with forced labour within their own operations and supply chains, and have a platform for sharing challenges and good practice. Companies can learn a great deal from each other. The EBMO can collect, document and disseminate examples of good practice among its members.

### *5.2.3 Raising awareness and providing training*

EBMOs can play a leading role in raising awareness and providing relevant training on forced labour to its member employers. An EBMO can organize or collaborate with the ILO, the Department of Labour or other EBMOs to arrange national workshops, symposiums, seminars, webinars or training and outreach programme for employers, including employers of small estates or small factories outside Kuala Lumpur. This will not only raise awareness and provide information to employers but encourage dialogue between the EBMO and its members, and among members themselves on addressing and preventing forced labour in their operations.

These initiatives and programmes to raise awareness, knowledge and understanding of forced labour would be in support of the National Action Plan on Forced Labour.

### *5.2.4 Promoting good practices and compliance with laws and regulations*

In addition to focusing on forced labour, EBMOs can also play the wider role of promoting good practices and compliance with Malaysia's laws and regulations by raising awareness, providing information, advice and conducting training on critical labour issues including child labour, forced labour, equality and non-discrimination, freedom of association, collective bargaining and workplace cooperation, among others. The collecting, sharing and disseminating of good practices among the EMBO member companies would be an effective measure.

In November 2021 the MARGMA, in declaring its commitment to upholding environmental, social and governance (ESG) compliance, promoting ethical and fair business practices, enhancing its code of conduct on social compliance, and creating awareness and supporting members through webinars and training on labour compliance (*The Star* 2021).

### *5.2.5 Policy influence*

A key role of EBMOs is engaging government in legislative reforms and policy development. It is important that social partners, including EBMOs, are included in the development of state policies with regard to forced labour and should receive the support needed in fulfilling expectations placed on business. Participation in legislative reforms and policy development ensures that employers' perspectives, particularly policy related to employers in the rubber industry, are represented throughout negotiations. For example, in September 2019, faced with the growing demand for rubber gloves and the critical shortage of workers, the MARGMA advocated for the lifting of the freeze on the intake of migrant workers to meet the growing demand. It also met with the MOHR to discuss strategies and actions when the US Customs and Border Protection banned the import of Malaysian rubber gloves from a few of its members in 2020 and 2021.

In addition to the industry EBMOs, the MEF, the central and umbrella organization representing the voice and interest of private-sector employers in Malaysia, has been very pro-active in advocating for fair policies with regard to the management of migrant workers. It has provided valuable inputs, comments and suggestions for government policies from time to time, and often leads the industries group in proposing the employers' perspective. The EBMOs in the rubber and rubber products industry are encouraged to collaborate and join forces with the MEF in advocating for a conducive eco-system and fair policies in the recruitment and employment of migrant workers that protect both the interest of employers and the rights of the migrant workers.

### *5.2.6 Collaboration and engaging with others*

It is strategic for EBMOs in the rubber and rubber products industry to collaborate with other organizations or stakeholders when addressing forced labour, for support and assistance as well as sharing of information; these would include the Government, national and international NGOs, United Nations agencies such as the ILO, the IOM and the IOE, and workers' organizations.

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

## ► 5.3 Who to contact for support in Malaysia

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Malaysian Rubber Council  
(MRC)



Malaysian Rubber Glove  
Manufacturers Association (MARGMA)



MALAYSIAN EMPLOYERS FEDERATION

Malaysian Employers Federation  
(MEF)



KEMENTERIAN  
SUMBER MANUSIA

Ministry of Human Resources  
(MOHR)



International  
Labour  
Organization

International Labour Organization  
(ILO)

### Websites

<https://www.myrubbercouncil.com>

<https://www.margma.com.my>

<https://www.mef.org.my>

<https://www.mohr.gov.my>

<https://www.ilo.org>



# Appendix 1

## International and regional instruments on forced labour and trafficking in persons

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### A1.1 International framework



#### **ILO Conventions, Protocol and Recommendations on forced labour**

**Forced Labour Convention, 1930 (No. 29):** Convention No. 29 has a broad scope and aims at suppressing all forms of forced or compulsory labour. It defines forced labour, identifies certain exceptions, and requires ILO Member States to make illegal exaction of forced or compulsory labour punishable as a penal offence. Malaysia ratified the Convention in 1957.

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

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

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

**Abolition of Forced Labour Convention, 1957 (No. 105):** Convention No.105 focuses in its scope to address exaction of forced labour in five specific cases, most of which relate to state-imposed forced labour.



**ILO 1998 Declaration on Fundamental Principles and Rights at work**

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

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

The overall aim of the Declaration is to promote a safe and healthy working environment. Adopted in 1998, it commits all ILO Member States to respect and promote the above four fundamental principles and rights, whether or not they have ratified the relevant Conventions. Companies are also expected to uphold the standards in these core Conventions.





### UN Protocol

Trafficking in persons is prohibited in the **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Palermo or Trafficking Protocol)**, supplementing the **UN Convention against Transnational Organized Crime (UNTOC)**. Malaysia ratified the Protocol in February 2009. The concept of forced labour is closely related to the concept of trafficking in persons. Trafficking in persons is often understood as a process which leads to different exploitative outcomes, one of which is forced labour.



### UN Guiding Principles on Business and Human Rights (UNGPs)

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



### United Nations Sustainable Development Goals (SDGs) 8.7

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

## A1.2 Regional framework



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

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



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

The **Declaration on the Protection and Promotion of the Rights of Migrant Workers** was adopted by the ASEAN heads of state in Cebu in 2007. The Committee on the Implementation of the Declaration (ACMW) was set up as a follow-up, and the annual **ASEAN Forum on Migrant Labour (AFML)** was established to develop recommendations for implementation of the Declaration (see ASEAN 2017).



**ASEAN Consensus on the Protection and the Promotion of the Rights of Migrant Workers:** The **ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers**, signed by the ASEAN leaders at the 31st ASEAN Summit in November 2017, shows the political will and commitment of ASEAN leaders to safeguard the rights of migrant workers in the region (see ASEAN 2017).



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

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

# Appendix 2

## Human rights due diligence and forced labour policies of major importing countries of Malaysian rubber products

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The information on human rights due diligence in this Appendix is taken from IOE 2022 as well as IOE and KAS 2021.



### Australia

On 1 January 2019, the **Modern Slavery Act 2018** came into effect, heralding a new mandatory modern slavery reporting requirement for companies operating in Australia with a minimum annual consolidated revenue of Australian \$100 million to report on the risks of modern slavery in their operations and supply chains, and actions taken to address those risks.



## Canada

In July 2020, Canada's **Customs Tariff** was amended to prohibit the importation of goods that are mined, manufactured or produced wholly or in part by forced labour into the country.

The Canadian Government is proposing new modern slavery disclosure legislation to address and prevent forced labour in the global supply chains. Businesses and government institutions subject to the Act would be required to prepare an annual report that outlines the steps taken to prevent and reduce the risk that forced labour is being used in the production of goods by the business, or in the production of goods imported into Canada.



## European Union (EU)

The EU Commission is preparing a new legislative instrument to effectively ban products made by forced labour from entering the EU market. This instrument will cover goods produced both inside and outside the EU, combining a ban with a robust enforcement framework.

On 12 July 2021, the EU published guidance on **“due diligence for EU businesses to address the risk of forced labour in their operations and supply chains”**. The non-binding guidance seeks to provide European companies with practical advice on the implementation of effective human rights due diligence practices to address forced labour risks in their supply chains.

On 23 February 2022, the EU Commission published its proposal on corporate due diligence in supply chains. The proposal will be discussed and possibly amended by the European Parliament and EU Member governments. After its adoption, EU Member States will have two years to transpose the Directive into national legislation.

The Directive will apply to large companies (with worldwide net turnover of €150 million or more and more than 500 workers, or worldwide net turnover of €40 million or more and more than 250 workers for high-impact sectors (such as textiles, agriculture and mining) operating inside and outside the EU. SMEs will be excluded from the due diligence duty.



## France

In February 2017, the French Parliament adopted a **Corporate Duty of Vigilance** (*devoir de vigilance*), an obligation for large companies headquartered in France, with at least 5,000 workers, to conduct human rights due diligence. Companies meeting that description will be required to establish and implement a vigilance plan which focuses on “severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks” for its operations, as well as those of its subsidiaries.



## Germany

In June 2021, the German Parliament passed the mandatory human rights due diligence **Act on Corporate Due Diligence in Supply Chains** that will enter into force in 2023 to initially cover companies with 3,000 or more workers, and companies with 1,000 or more workers from 2024 onwards.



## Japan

After the launch of a **National Action Plan** (NAP) on **Business and Human Rights** (BHR) in October 2020, the Japanese government is drafting a guideline for human rights due diligence to help companies detect and prevent human rights violations in their supply chains. The Japanese NAP expects Japanese corporations, regardless of sizes and sectors, to respect internationally recognized human rights, introduce a process of human rights due diligence, and resolve issues through grievance mechanisms, among others.

Keidanren, the Japan Business Federation, has started to update and strengthen its human rights guidelines for member companies and has developed a handbook to encourage them to carry out human rights’ due diligence.



### Norway

On 10 June 2021, the Norwegian Parliament adopted the **Act on Business Transparency and Work** with fundamental human rights and decent work, also known as the **Transparency Law**. The law covers all large and mid-size companies headquartered or having a physical presence in Norway and extends to all foreign companies selling products and services in Norway. The Act, which is based on the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises, mandates the companies to implement due diligence assessments, and to report on how they address and prevent human rights risks.



### Spain

The Spanish Government is proposing a new law on the **Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities**. The law, which is largely based on the draft EU Directive on corporate due diligence in global supply chains (see above), requires Spanish transnational companies to undertake human rights and environmental due diligence in their supply chains.



### Switzerland

The counterproposal to the **Responsible Business Initiative (RBI)** for legislative change that introduces mandatory human rights due diligence is expected to enter into force in 2022. It focuses on reporting requirements and specific due diligence obligations where companies must identify potential risks throughout their business relationships and activities and take effective measures to address potentially negative impacts.



## United Kingdom

Section 54 of the **Modern Slavery Act 2015** (MSA) imposes a duty on companies in the United Kingdom with a turnover of £36 million or over to prepare an annual slavery and human trafficking statement detailing the steps taken to prevent slavery and human trafficking in any of its supply chains or any part of its own business.



## United States

Section 307 of the **Tariff Act of 1930** prohibits the importation of goods into the United States that are made wholly or in part by forced labour, which includes convict labour, indentured labour, and forced or indentured child labour.

The **Trade Facilitation and Trade Enforcement Act 2015**, enacted in 2016, states that all importing companies must conduct supply chain due diligence to prove to Customs and Border protection (CBP) that their products were not made using forced labour.

- ▶ CBP may receive allegations of forced labour from a variety of sources, including news reports and tips from the public or trade community. CBP may also self-initiate an investigation into the use of forced labour in any given supply chain.
- ▶ A Withhold Release Order (WRO) will be issued by CBP when it is reasonable to believe that the goods imported were made with forced labour.
- ▶ In the event that a WRO is issued, importers will have three months to obtain release from the WRO by providing a certificate of origin and a detailed statement, such as a supply chain audit report, demonstrating that the subject products were not produced using forced labour. The Commissioner will make a finding after getting sufficient information.

The **California Transparency in Supply Chains Act 2010** requires companies with an annual global gross turnover exceeding US\$100,000,000 to make certain disclosures and provide consumers with information regarding their efforts to eliminate slavery and human trafficking from their supply chains in order for consumers to make better and informed purchasing choices.

# Appendix 3

## ILO tools and other resources for business on forced labour

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- ▶ [Business Responsibility on Addressing and Preventing Forced Labour in Malaysia: A Must-read Guide for Malaysian Employers \(ILO and MEF 2019\)](#)
- ▶ [The ILO Global Business Network on Forced Labour: Due Diligence Toolkit for Fair Recruitment \(ILO 2021b\)](#)
- ▶ [Combating Forced Labour: A Handbook for Employers and Business \(ILO 2015\)](#)
- ▶ [Strengthening Employers' Activities against Forced Labour \(ILO 2008\)](#)
- ▶ [Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking \(UN.GIFT 2010\)](#)
- ▶ [ITUC Guide: How to Combat Forced Labour and Trafficking \(ITUC 2009\)](#)
- ▶ [Eliminating and Preventing Forced Labour: Checkpoints app \(ILO 2016b\)](#)



# Appendix 4

## Industry, company and supplier codes of conduct

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- ▶ Guidance on Operational Practice and Indicators of Forced Labour (Sedex 2017)
- ▶ Responsible Business Alliance Code of Conduct: Version 7.0 (RBA 2021)
- ▶ Ethical Trading Initiative (ETI) Base Code (ETI 2016)
- ▶ amfori BCSI Code of Conduct (amfori 2017)
- ▶ Fair Labor Association Code of Conduct (FLA 2021)
- ▶ Top Glove Corporation Customer Code of Conduct (Top Glove n.d.)
- ▶ Hartalega Social Compliance and Employee Welfare (Hartalega 2021)
- ▶ Ansell Supplier Code of Conduct (Ansell 2022)

# Appendix 5

## Sample of an employment contract

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### EMPLOYMENT CONTRACT

This CONTRACT OF EMPLOYMENT is made on this day.... month of.....20... between..... (Name of employer) (hereinafter referred to as “the Employer”) and.....(Name of worker) (hereinafter referred to as “the Worker”).

#### Worker’s details

Name:

Date and place of birth:

Passport No:

WHEREAS the Employer shall employ the Worker in accordance with the following terms and conditions of this Contract of Employment and subject to the laws, regulations, rules, policies and directives in Malaysia.

#### Job offers

Job title or position:

Place of work:

Job description:

IT IS HEREBY AGREED as follows:

### **1. Duration of this Contract of Employment**

The duration of this Contract of Employment shall be for a period of ..... year(s) commencing on the day of arrival of the Worker in Malaysia until such time as the Contract of Employment is terminated in accordance with the terms and conditions of this contract.

### **2. Wages**

2.1 The Worker shall receive a basic wage of MYR ..... (excluding allowances and overtime). This basic wage shall comply with the national minimum wage.

2.2 Wages shall be paid by the Employer on a monthly basis not later than the seventh day of the following month.

2.3 The monthly wages shall be paid through a bank account in the Worker's name.

### **3. Working Hours**

Working hours shall be eight (8) hours per day or forty-eight (48) hours per week in accordance with the Employment Act 1955 (hereinafter referred to as "EA").

### **4. Overtime**

In the event the Worker, upon request by the Employer, agrees to work in excess of his normal working hours, the Worker shall be paid in accordance with the EA.

### **5. Rest day**

5.1 The Worker shall be entitled to one (1) rest day in each week.

5.2 In the event the Worker, upon request by the employer, agrees to work on such rest day, the worker shall be paid in accordance with the EA.

## 6. Public holiday

6.1 The Worker shall be entitled to eleven (11) paid public holidays in accordance with the EA.

6.2 In the event the Worker, upon request by the employer, agrees to work on such public holiday, the Worker shall be paid the public holiday rate in accordance with the EA.

## 7. Annual leave

The Worker shall be entitled to annual leave in accordance with the EA.

Year of service	Paid annual leave (for every 12 months of continuous service)
Less than two years	8 days
Two years and more but less than five years	12 days
More than five years	16 days

## 8. Levy

The payment of levy shall be borne by the Employer.

## 9. Medical and accident insurance

The Employers shall register the worker with the [Social Security Organization \(SOCSO\)](#) and contribute to the [Employment Injury Scheme](#), and, if applicable, the [Foreign Workers Hospitalization and Surgical Scheme \(FWHS/SKHPPA/SPIKPA\)](#) accordingly.

## 10. Deductions

The Employer is entitled to make a deduction of not more than 50 per cent in a month from the Worker's wages in the event of any monetary advance or permissible deduction in accordance with the EA.

**11. Accommodation**

The Employer shall provide the Worker with reasonable accommodation with basic amenities in accordance with the Workers’ Minimum Standard of Housing, Accommodations and Amenities Act 1990.

**12. Sick leave**

The Worker shall be entitled to paid sick leave in accordance with the EA.

<b>Years of service</b>	<b>Paid annual sick leave (for every 12 months of continuous service)</b>
Less than two years	14 days
Two years and more but less than five years	18 days
More than five years	22 days

**13. Renewal of Worker’s Visit Pass (Temporary Employment)**

13.1 The Employer shall, at its expense, renew the Worker’s Visit Pass (Temporary Employment) three (3) months before the expiry date.

13.2 Any penalty or compound due to the failure of the Employer to do so shall be borne by the Employer.

**14. Air ticket**

The international air ticket from ..... to Malaysia for commencement of work and the air ticket from Malaysia to ..... upon completion of this Contract of Employment shall be borne by the Employer.

## 15. Repatriation

- 15.1 In the event the Worker is to be repatriated before the expiry of this Contract, the Employer shall pay all outstanding wages and payments owed to the Worker subject to the relevant laws, regulations, rules, policies and directives relating to employment in Malaysia.
- 15.2 The repatriation cost of the Worker from his place of work in Malaysia to ..... shall be borne by the Employer under the following circumstances:
- (i) at the completion of this Contract of Employment;
  - (ii) termination of this Contract of Employment by the Employer other than for non-compliance with the terms and conditions of this Contract by the Worker; or
  - (iii) termination of this Contract of Employment by the Worker due to non-compliance with the terms and conditions of this Contract by the Employer.
- 15.3 The Worker shall be responsible for all expenses relating to repatriation under other circumstances that are not mentioned in Clause 15.2.

## 16. Repatriation in the case of death of the worker

In the event of the death of the Worker, the funeral and repatriation of the remains shall be arranged at the expense of the Employer as provided for the Workmen's Compensation Act 1952 [Act 273].

## 17. Termination prior to the expiration of the contract

- 17.1 In the event the Employer intends to terminate this Contract of Employment, the Employer shall give one (1) month notice of his intention to terminate such Contract of Employment or one (1) month wages in lieu of notice to the Worker, and shall provide airfare to ..... for the Worker.
- 17.2 In the event the Worker intends to terminate this Contract of Employment, the Worker shall give one (1) month notice or indemnify one (1) month wages in lieu thereof to the Employer, and the Worker shall bear the cost of airfare to .....

## **18. Restrictions**

18.1 The employment of the Worker is subject to the terms and restrictions of the Visit Pass (Temporary Employment) of the Worker which includes:

- (i) The Worker shall not bring family to live in Malaysia.
- (ii) The Worker shall not marry a local resident or other migrant workers in Malaysia.
- (iii) The Worker shall not change employment during this Contract of Employment period and shall not carry on or do other business.

18.2 The Worker shall not participate in any political activities or activities of those connected with political organizations in Malaysia.

18.3 If the Worker is found by the authority concerned to be creating social problems or engaging in any illegal, subversive or criminal activities, the Worker shall be dismissed from the job and shall be repatriated to ..... at the Worker's own expense.

## **19. Extension and amendment**

The Employer and the Worker may mutually agree that the Contract of Employment be extended or amended, subject to relevant laws, regulations, rules, national policies and directives relating to employment in Malaysia.

## **20. Safekeeping of the passport**

- 20.1 The Employer shall not keep the passport of the Worker.
- 20.2 The Worker shall have possession of his own passport at all times. In the event that the Worker's passport is lost or damaged, the Worker shall bear all related expenses.
- 20.3 The Worker shall submit the passport to the Employer for the following purposes:
- (i) medical check-up;
  - (ii) application for Visit Pass (Temporary Employment);
  - (iii) application for Foreign Worker Identity Card; and
  - (iv) renewal of Visit Pass (Temporary Employment).

The passport shall be returned to the Worker upon completion of these purposes. In the event that the Worker's passport is lost or damaged while in the custody of the Employer for the above-mentioned purposes, the Employer shall bear all related expenses.

## **21. Foreign Worker Identity Card**

The employer shall ensure that each Worker receives the Foreign Worker Identity Card (I-Kad).

## **22. Language of this Contract of Employment**

This Contract of Employment shall be prepared in four (4) original texts, two (2) each in English and language of the country of origin of the Worker.

## **23. Interpretation**

In the event that there is a conflict of interpretation between the English text and any text in any other language used in this Contract of Employment, the English text shall prevail.



**24. Succession**

This Contract of Employment shall be binding on the successor in title, assigns, personnel, or representatives of the parties hereto.

**25. Other terms and conditions**

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

The Employer and the Worker shall read and fully understand this Contract and certify that the terms and conditions together with the application constitute their entire agreement.

IN WITNESS WHERE OF the party names below hereto have voluntarily signed this Contract of Employment on this \_\_\_\_date of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_.

.....  
 (Employer’s Authorized Signature)  
 Name:  
 Designation:  
 NRIC No./Company’s stamp

.....  
 (Worker’s Signature)  
 Name:  
 Passport No.:  
 Emergency Contact No.

.....  
 (Signature of Employer’s witness)

.....  
 (Signature of Worker’s witness)

Name:  
 Address:  
 Contact No:

Name:  
 Address:  
 Contact No:

Source: Adapted from ILO 2021d.

# Appendix 6

## Checklist for assessing compliance

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The checklist below has been adapted from VCCI and ILO 2016: “Annex +: Red flags checklist for compliance assessment”. It is designed to help employers assess risks of forced labour and identify good practices in their operations and supply chains.

The questions are not intended to serve as an exhaustive list to determine if there is a situation of forced labour or to replace any statutory obligation or mandatory due diligence obligation of employers. However, a YES or DON'T KNOW answer to any of the questions in **RED** indicates that the issue should be given attention for further consideration, or needs to be addressed to prevent potential allegations of forced labour.

A YES to the questions in **BLUE** indicates that the company has good practices in addressing and preventing forced labour in its operations and supply chains.

<b>Assessment of pre-employment practices</b>			
<b>Pre-employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Recruiting foreign workers through recruitment or employment agencies</b>			
<b>Background check</b>			
1. Are you aware of the recruitment agency's policies and practices?			
2. Is the agency licenced?			
3. Is the agency a member of a national or international employment agencies association such as the Malaysian National Association of Employment Agencies (PIKAP) or International Confederation of Private Employment Agencies (CIETT), etc.?			
<b>Cost structure</b>			
4. Is the fee structure of the agent in line with the market rate?			
5. Is the fee charged to you inclusive of all recruitment costs: work permit, foreign worker's levy, medical, air ticket, agency fee and related documentation?			
6. Does the agent charge any recruitment fee to the workers?			
7. Is the fee charged by the agent to the worker in accordance with the rules and regulations of the worker source country?			
8. Does the agent provide loans to worker who cannot afford the recruitment fee?			

<b>Assessment of pre-employment practices</b>			
<b>Pre-employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Recruiting foreign workers through recruitment or employment agencies</b>			
<b>Documentation, procedures and contract</b>			
9. Does the agent adhere to the procedures and documentation of the source country?			
10. Is the employment contract issued in the language understood by the worker?			
11. Are the terms and conditions consistent with employer requirements/standards?			
<b>Passport, travel and medical examination</b>			
12. Is a medical examination conducted?			
13. If yes, is the expenses part of the recruitment cost borne by the employer?			
14. Are the transport and logistic arrangements of the worker part of the recruitment cost borne by the employer?			
15. Did the agent retain or hold the passport of the worker?			
<b>Recruitment fees</b>			
16. Does your company charge any fee or costs related to the recruitment (work permit, levy, agency fee, etc.) to the worker?			

<b>Assessment of pre-employment practices</b>			
<b>Pre-employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Fair recruitment practices</b>			
17. Does the company provide information about the nature of the job and conditions of work to recruitment agencies and/or in the advertisement?			
18. Is any training on good recruitment and employment practice provided to managers and supervisors?			
<b>Pre-departure and post-arrival orientation</b>			
19. Has the worker attended the pre-departure orientation before leaving the source country?			
20. Have you seen the content of the pre-departure orientation?			
21. Does your company provide post-arrival orientation to all foreign workers upon their arrival in Malaysia?			
22. Is the post-arrival orientation provided in the local language of the worker?			
23. Is the time spent on post-orientation training considered as working hours and paid?			
24. Does the company have an onsite coordinator who is conversant in both the local language and the language of the worker?			

<b>Assessment of pre-employment practices</b>			
<b>Pre-employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Fair and transparent contract</b>			
25. Is a written contract of employment provided to the workers in a language they can understand?			
26. Does the employment contract clearly indicate workers' wages, working hours, rest days and other terms and conditions of employment in accordance with the Employment Act 1955?			
27. Are foreign workers treated fairly and equally as local workers and having the same terms and conditions of employment?			
<b>Assessment during employment</b>			
<b>Employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Wage payments</b>			
1. Are the wages of the foreign worker paid regularly and directly to the worker's bank account?			
2. Do the wages of foreign workers comply with national minimum wage requirements?			
3. Is the worker provided with a pay slip showing clear and transparent information on wages i.e. hours worked, wage rates, overtime, and any lawful deduction?			
4. Is the payment of wages in accordance to the Employment Act 1955, i.e. not later than the seventh day of the last day of the wage period?			

Assessment during employment			
Employment practices	Yes	No	Don't know
<b>Wage payments</b>			
5. Does the company keep all records on payroll and calculation of wages?			
<b>Wage reductions and in-kind payments</b>			
6. Does the company pay wages in the form of goods (in-kind) instead of cash?			
7. Is the worker required to purchase goods or services from any particular store or service provider assigned by the company?			
8. Does the company make a deduction from worker's wages?			
9. Have wage deductions been made for any of the following reasons: <ul style="list-style-type: none"> <li>• Fee related to worker's recruitment?</li> <li>• Loss of or damage to tools, material or equipment in the cause of work?</li> <li>• Worker absence due to sickness or authorized leave?</li> </ul>			
<b>Loans and payment of advances</b>			
10. Does the company provide loans or advance payments to workers?			
11. If the answer is Yes to Question 10, is there any contractual term preventing the worker from leaving the employment before repayment of the loan?			
12. Does the company charge any interest on the loan provided to the worker?			

<b>Assessment during employment</b>			
<b>Employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Loans and payment of advances</b>			
13. Does the worker need to place deposits during employment (e.g. for the use of tools, housing, food, etc.)?			
<b>Working hours, overtime, leave and holiday entitlements</b>			
14. Has any worker worked more 12 hours a day including overtime, or more than 104 hours of overtime a month?			
15. Is overtime compulsory?			
16. Do workers need to work overtime to earn the minimum wage?			
17. Are workers given the rest time and weekly rest day in accordance with the Employment Act 1955?			
18. Are workers entitled to paid holiday, annual leave and sick leave in accordance with company regulations or at least as provided under the Employment Act 1955?			
19. Is the company paying overtime, rest days or public holidays not less than provided in the Employment Act 1955 when the worker is required to work on those days?			
20. Does the company have any programme to reward managers, supervisors or workers for good practice?			



Assessment during employment			
Employment practices	Yes	No	Don't know
<b>Disciplinary and grievance policy</b>			
21. Does the company have any written policy, code of conduct or rules and regulations?			
22. If Yes, is there any training given to relevant personnel on their respective roles and responsibilities under the policy?			
23. Is there any measure that enables worker to make a complaint or report an incidence of abuse or violation to the company?			
<b>Passports and personal possessions</b>			
24. Is the foreign worker required to hand over passport or personal documents to the company?			
25. In case a worker requested to have the passport or valuable safeguarded by the company, does the worker have access to such documents and possessions freely, or upon request?			
26. Does the company provide a safe place for workers to keep their passport and valuable items, for example a safe or a secure cabinet?			
27. If Yes, does the worker have access to the safe keeping freely at any time or upon request?			
28. Does the company have policies and procedures for the safe keeping of such documents?			

<b>Assessment during employment</b>			
<b>Employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Freedom of movement</b>			
29. Is accommodation provided to foreign workers?			
30. If Yes, are workers free to move around and go out as they please anywhere at any time outside working hours?			
31. Are the doors to the workplace (even during work hours) or dormitories locked to prevent workers from leaving?			
32. Is a security guard tasked to monitor worker movement at the dormitory?			
<b>Accommodation and health</b>			
33. Are there any rules or regulations concerning the accommodation provided?			
34. Is the worker free to choose if he/she wants to live in the accommodation provided?			
35. Does the company provide medical attention to foreign workers in the event of illness?			

<b>Assessment of post-employment practices</b>			
<b>Post-employment practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Termination of employment</b>			
1. Do foreign and local workers have the same terms on notice of termination?			
2. Can foreign workers terminate the contract of employment before the completion of their term by serving the required notice period?			
<b>Final wages</b>			
3. Does the company make final payments to foreign workers for all outstanding remuneration including wages, bonuses and overtime pay, or other benefits due, prior to repatriation?			
<b>Repatriation</b>			
4. Is the company paying the repatriation cost of the migrant worker upon completion of the employment contract?			
5. Is the company paying the repatriation cost of the foreign worker if he/she needs to terminate the contract prior to completion of term due to illness or family emergency?			

<b>Assessing suppliers' recruitment and employment practices</b>			
<b>Suppliers' practices</b>	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
1. Does the company assess and screen its suppliers with regard to their recruitment and employment practices?			
2. Does the company policy or code of conduct apply to suppliers?			
3. Does the company implement any monitoring procedure with regard to its suppliers?			

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This Guide is a joint initiative of the MRC and the ILO project: “Sustainable Supply Chains to Build Forward Better” (SSCBFB). It aims to provide practical guidance to employers in the rubber industry in Malaysia, particularly those employing migrant workers, on how to identify risks of forced labour in the recruitment, employment and sourcing practices, and how to effectively address, prevent and eliminate these risks.

The Guide is the product of desk research, field interview and employers’ consultation, and is adapted from the ILO/MEF publication Business responsibility on preventing and addressing forced labour in Malaysia (2019). It is particularly useful for existing and potential investors, business owners, directors and senior management of companies in the rubber industry in Malaysia, especially companies that export their products to the global market and want to optimize growth and sustainability. It is also a practical guide for managers and staff responsible for human resources management, as well as social and legal compliance at the enterprise level.

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