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### **Turning the Tide: Malaysia's Campaign Against Forced Labour in Foreign Worker Management**

Foreign workers play a crucial role in Malaysia's diverse industries and the global supply chain, contributing significantly to sectors such as manufacturing, agriculture, construction, and services. The management of foreign workers, however, can present various challenges. Recently, a famous noodle establishment found themselves in hot soup for making unlawful deductions from their employees' salaries, such as for taking sick leave, toilet breaks, and even utensil damage. In the past, even large multinational companies have found themselves embroiled in allegations such as allowing excessive overtime, unpaid wages, withholding foreign workers' pay and passports, etc.

Foreign workers are more vulnerable to exploitation, forced labour in particular, due to factors such as legal restrictions, language barriers, lack of knowledge about labour laws, social isolation, discrimination, and limited access to legal recourse. Such transgressions against foreign workers not only

violate human rights but also damage Malaysia's standing as a member of the global community.

### **Improving Labour Standards in Malaysia**

Malaysia has taken conscious steps to improve its labour standards. The 2016 Labor Consistency Plan, that was entered between Malaysia and the United States, required various amendments to Malaysian labour laws, a key component of the Trans-Pacific Partnership Agreement (“**TPPA**”). The plan aimed to align Malaysia's labour standards with those set by the International Labour Organisation (“**ILO**”), with a focus on eradicating forced labour and other labour abuses such as discrimination. Although the TPPA did not materialise, Malaysia has persisted in its efforts to enhance labour standards.

An essential development was the recent amendment to the Employment Act of 1955. When the amendments were tabled to Parliament, the Minister highlighted that the primary objective of the amendments was to align Malaysia's labour laws with ILO standards.<sup>1</sup> The definition of forced labour has since been broadened to encompass any actions that impose restrictions on employees, including foreign workers.

In 2021, Malaysia launched a National Action Plan on Forced Labour (2021-2025), a framework for national efforts to eliminate forced labour<sup>2</sup> through the ‘4Ps’ strategy – prevention of forced labour by raising awareness among foreign workers and employees, protection of victims, prosecution of perpetrators, and partnership between domestic stakeholders and international organisations with different mandates, skills, and specialisations that are able to tackle the issue of forced labour.

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<sup>1</sup> Explanatory Statement – The Employment (Amendment) Bill 2021

<sup>2</sup> [https://www.ilo.org/asia/media-centre/news/WCMS\\_829873/lang--en/index.htm](https://www.ilo.org/asia/media-centre/news/WCMS_829873/lang--en/index.htm)

In 2022, Malaysia deposited the instrument of ratification of the Protocol of 2014 to the Forced Labour Convention (“**the Protocol**”) 1930, with the Director-General of the ILO. With this, Malaysia became the second ASEAN member state to ratify the Protocol.<sup>3</sup> Under the Protocol, the measures to be taken shall include:<sup>4</sup>

- a) educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced labour;
- b) educating and informing employers, in order to prevent their becoming involved in forced labour practices;
- c) undertaking efforts to ensure that:
  - (i) the coverage and enforcement of legislation relevant to the prevention of forced labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and
  - (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;
- d) protecting persons, particularly foreign workers, from possible abusive and fraudulent practices during the recruitment and placement process;

<sup>3</sup> [https://www.kln.gov.my/web/che\\_geneva/news-from-mission/-/blogs/malaysia-s-ratification-of-the-protocol-of-2014-to-the-forced-labour-convention-1930?\\_33\\_redirect=%2Fweb%2Fche\\_geneva%2Fevents%3Fp\\_auth%3DLLifCxza%26p\\_p\\_id%3D49%26p\\_p\\_lifecycle%3D1%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26\\_49\\_struts\\_action%3D%252Fmy\\_sites%252Fview%26\\_49\\_groupId%3D34301%26\\_49\\_privateLayout%3Dfalse](https://www.kln.gov.my/web/che_geneva/news-from-mission/-/blogs/malaysia-s-ratification-of-the-protocol-of-2014-to-the-forced-labour-convention-1930?_33_redirect=%2Fweb%2Fche_geneva%2Fevents%3Fp_auth%3DLLifCxza%26p_p_id%3D49%26p_p_lifecycle%3D1%26p_p_state%3Dnormal%26p_p_mode%3Dview%26_49_struts_action%3D%252Fmy_sites%252Fview%26_49_groupId%3D34301%26_49_privateLayout%3Dfalse)

<sup>4</sup> [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

- e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced labour; and
- f) addressing the root causes and factors that heighten the risks of forced labour.

In line with its commitment under the Protocol, the Ministry of Human Resources released a set of guidelines identifying forced labour practices. These guidelines serve as a valuable tool for employers, employees, and enforcement agencies in recognising and combatting the exploitation of workers (including foreign workers) who may be subjected to forced labour.<sup>5</sup> The 11 indicators in the guidelines mirror the 11 indicators of forced labour published by the ILO,<sup>6</sup> i.e.:

- a) Abuse of Vulnerability: Exploiting an individual's vulnerable position, such as economic hardship, lack of education, or immigration status, to compel them to work.
- b) Deception: Providing false information or promises to recruit individuals for work under false pretences.
- c) Restriction of Movement: Imposing restrictions on workers' freedom of movement, such as confiscating passports or identification documents, to control their ability to leave the workplace or return home.
- d) Isolation: Isolating workers from their families, communities, or support networks to prevent

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<sup>5</sup> Garis Panduan Mencegah Dan Membasmi Amalan Buruh Paksa Di Tempat Pekerjaan (Versi Tahun 2023)

<sup>6</sup> [https://webapps.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_203832.pdf](https://webapps.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf)

them from seeking assistance or reporting abuses.

- e) Physical and Sexual Violence: Subjecting workers to physical or sexual violence or threats thereof to coerce them into working or submitting to exploitative conditions.
- f) Intimidation and Threats: Using threats, coercion, or intimidation to force compliance with work demands or preventing workers from asserting their rights.
- g) Retention of Identity Documents: Withholding workers' identification documents or other personal belongings to restrict their freedom and control their ability to leave the workplace.
- h) Debt Bondage: Forcing workers to work to repay debts, often through inflated fees, interest rates, or expenses, which may never be fully repaid.
- i) Withholding Wages: Failing to pay workers their rightful wages or withholding payment to maintain control over them.
- j) Excessive Working Hours: Imposing excessively long working hours or unrealistic production quotas on workers, leading to exhaustion and involuntary servitude.
- k) Abusive Working and Living Conditions: Subjecting workers to harsh or inhumane working and living conditions, including inadequate housing, sanitation, and safety measures, to exploit their labour for profit.

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In addition, it is now mandatory for employers who intend to employ foreign workers to adhere completely with the Employees' Minimum Standards of Housing, Accommodation and Amenities Act 1990 in providing proper housing and amenities for their workers.

**Conclusion**

While Malaysia has made significant strides in combating issues associated with the management of foreign workers, challenges remain in effectively implementing and enforcing labour standards. This is likely to see an increase in inspections by authorities, leading to fines and prosecution to errant employers.

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