



PERSEKUTUAN MAJIKAN-MAJIKAN MALAYSIA
MALAYSIAN EMPLOYERS FEDERATION



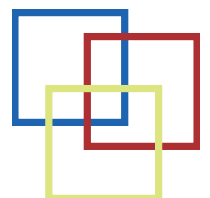
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Business responsibility on preventing and addressing forced labour in Malaysia

Training facilitator's guide



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Background

This **training facilitators' guide** is intended to complement the ILO-MEF employers' guide entitled *Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for employers*. It is part of the Malaysian employers' toolkit on preventing and addressing forced labour developed by the International Labour Organization (ILO) in collaboration with the Malaysian Employers Federation (MEF). The resource package includes:

- An **employers' guide** providing practical guidance for employers on how to identify risks of forced labour in company recruitment and employment practices, and how to effectively prevent, address and manage these risks.
- A **training guide for facilitators** to enable them to deliver interactive training to employers and companies to take practical action to assess, identify and manage risks of forced labour in company operations and its supply chains.
- A **fact sheet** that provides employers with quick facts about forced labour and means to address them.

This **training guide** includes a sample training agenda and five training modules:

- **Module 1:** What is forced labour.
- **Module 2:** Why preventing forced labour makes business sense.
- **Module 3:** Relevant laws and policies on forced labour and related offenses.
- **Module 4:** Addressing the risks of forced labour in company operations.
- **Module 5:** Employers' actions against forced labour.

The structure and key learning points of these five modules are designed to match the structure and contents of the five chapters of the **Employers' Guide**, which will serve as the main reference resource. The training programme is built around a series of lectures, group exercises, discussions, as well as case studies, and intends to draw on the experience of participants for interactive sharing and discussions. The training modules can be delivered either as a one full day session or as a few separate sessions.

NOTE ON TERMINOLOGIES USED IN THE GUIDE

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

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



Sample training agenda

Training programme for employers

Business responsibility on preventing and addressing forced labour in Malaysia

Time	Content
8:30-9:00	Registration
9:00-9:45	Introductory session <ul style="list-style-type: none">• Introduction of participants and their expectations from the trainings• Quiz: Assessment of prior knowledge on forced labour• Slide presentation: Background and objectives of the training
9:45-10:45	Module 1: What is forced labour <ul style="list-style-type: none">• Slide presentation 1: What is forced labour• Brainstorming: Issues and challenges faced by employers in the recruitment and employment of migrant workers in Malaysia• Exercise 1: Identifying elements and indicators of forced labour
10:45-11:00	Break
11:00-12:30	Module 2: Why preventing forced labour makes business sense <ul style="list-style-type: none">• Slide presentation 2: Business case for combatting forced labour• Exercise 2: Mapping of employers' interest in combating forced labour

12:30 – 13:30	Lunch
13:30 – 14:30	<p>Module 3: Relevant laws and policies on forced labour and related offenses</p> <ul style="list-style-type: none"> • Slide presentation 3: International, regional and Malaysian legal framework on forced labour • Exercise 3: Identify labour law violations and forced labour offences
14:30 – 15:30	<p>Module 4: Guiding principles on addressing, preventing and eliminating forced labour in company operations</p> <ul style="list-style-type: none"> • Slide presentation 4: Introduction to guidelines and checklist for assessing risks of forced labour in recruitment and employment practices • Exercise 4: Assessing risks of forced labour
15:30-15:45	Break
15:45-17:15	<p>Module 5. Actions by employers against forced labour</p> <ul style="list-style-type: none"> • Slide presentation 5: How to manage risks of forced labour Company level action and the role of employers’ organizations • Exercise 5: Action planning
17:15-17:30	<p>Workshop evaluation</p> <ul style="list-style-type: none"> • Wrap-up and closing remarks



Introductory session



Learning objectives

- Level off participants' expectations from the training and discuss the training contents and objectives.
- Build rapport among participants and the training facilitator.
- Assess the knowledge of the participants on forced labour prior to the actual training.



Methodology

1. Ask participants to introduce themselves and to share their expectations from the training in one to two sentences.
2. Present training objectives and training agenda (Slide presentation - Intro). Explain which of the expectations will be met. Encourage participants to participate actively in the activities and to ask questions or share their thoughts on the topics.
3. Distribute Quiz 1 and explain to the participants that the objective of the quiz is to determine their prior knowledge about forced labour.
4. Continue the slide presentation on background and extent of the forced labour situation in Malaysia, and link to the objectives of the training.



Materials

- **Slide presentation:** Training background and objectives.
- **Quiz 1** - Assessment of prior knowledge on forced labour.



Suggested duration

45 minutes



Highlights for Slide presentation: Training background and objectives

Background of the training

In a globalized economy, with active trade relations with other countries, there is a challenge for Malaysia to remain competitive while practicing sustainable and responsible business practices.

“

In the ILO's Declaration of Philadelphia of 1944, the international community recognized that "labour is not a commodity". Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity.

”

In short, economic development is not undertaken for its own sake but to improve the lives of human beings; international labour standards are there to ensure that it remains focused on improving human life and dignity.

Micro- and small and medium-sized enterprises, especially those in the informal sector and that only deal

with local markets, often encounter compliance issues. Most are not part of formal business organizations and therefore do not receive any form of assistance on capacity building or awareness. Needless to say, regardless of business size, if a business practices forced labour, it will have an impact on the overall reputation of Malaysian employers. Such necessitate therefore that capacity building and awareness raising initiatives for employers should have a mechanism of reaching different types of employers.

As of September 2018, there are about 1.89 million registered migrant workers, constituting about 12 per cent of total employment in the country.ⁱ However, it is believed that the figures could be much higher if the undocumented migrant workers are included, and estimates suggest that there are 3 - 4 million migrant workers in Malaysia, which would constitute 20 - 30 per cent of the country's workforce.ⁱⁱ

In recent years, allegations have surfaced that migrant workers in Malaysia are facing exploitation. A

ⁱ Ministry of Home Affairs: as cited by Ng, M.S. "No 3rd parties in recruitment" in the Malaysia Reserve Online, 30 Oct. 2018.

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

2014 report by Verité found that as many as one in three migrant workers in Malaysia's electronics sector were working under conditions of forced labour. The US State Department, which grades countries according to their efforts to curb trafficking, has ranked Malaysia on the Tier 2 watchlist of its Trafficking in Persons (TiP) 2019 report, pointing to forced labour, child labour and sex trafficking issues.

With the various public reports and the media allegations of forced labour situation in Malaysia, it challenges the business sector to demonstrate that it can do better and to pro-actively address these issues that lead to hostile perceptions and depicts businesses in a bad light.

International buyers and leading brands are imposing various standards for Malaysian manufacturers and suppliers for fear of reputational damage. Thus, it is becoming much-needed for companies to comply with the ILO core labour standards including prohibition of forced labour.

While various efforts are being undertaken by the Malaysian Government that demonstrates its commitment to address forced labour in Malaysia, limited mechanisms and resources exist to provide guidance and assist companies to manage these issues. Employers of migrant workers are dealing with multiple responsibilities: they have to adhere to the rules, regulations and changing

policies of the Government, while ensuring workers' productivity to contribute to the growth, profitability and stability of the company.

They also have to comply with buyers' expectations and ensure the rights and welfare of all workers are well taken care of to avoid allegations of abuse or exploitation that will damage the reputation and negatively impact the business.

Objective of the training

- Improve the reputation of Malaysian employers in complying with labour standards and laws.
- Strengthen the capacity of employers including MEF and related industry associations to tackle forced labour at the workplace effectively.
- Provide resources, information and guidance to Malaysian employers on preventing and addressing forced labour in their business and employment practices.

Training agenda

Similar to page 2-3 of this manual.



TIPS to the facilitator for quizzes!

Online tools such as Classmarker.com are available. You can customize exams, provide time limits and generate reports. The tool is user-friendly and trainees can access the link to the exams with internet connection/mobile data.

Quiz 1 – Pre-Test (10 minutes)

1. Does forced labour only occur in developing countries?

- A. Yes B. No

2. All work that violates labour laws are considered forced labour.

- A. True B. False

3. Forced labour is a criminal offence in Malaysia.

- A. Yes B. No

4. When migrant workers have voluntarily signed the employment contract, regardless that complete information about the employment was not given, the workers' consent is deemed to be informed and voluntary.

- A. True B. False

5. Sub-standard working and living conditions on their own are sufficient to determine the existence of a forced labour situation.

- A. True B. False

6. Mariam is from Indonesia. She works as a waitress in a local restaurant in Kuala Lumpur and is required to work for 11 hours a day, 6 days in a week without overtime pay and earns less than the minimum wage. Outside working hours, she is free to move around and contact her friends. She also keeps her own passport and other legal documents and her living and working conditions are satisfactory. Is Mariam a victim of forced labour?

- A. Yes B. No

7. Passport retention is an indicator of forced labour.

- A. True B. False

8. Yati was recruited by the agent to work in a retail shop in Kuala Lumpur and she earns minimum wage. The recruitment agent asked the employer to keep Yati's passport and to only give it back to her for the visa extension. She is not allowed to own a mobile phone but can use the employer's phone to contact her family once a month. She can only go out if accompanied by her employer. Is Yati a potential victim of forced labour?

A. Yes B. No

9. A factory in Penang required all migrant workers to surrender their passport upon arrival and only provided them with the photocopy of the passports. The workers were told that this is a company rule and that they are required to sign a consent form indicating they have voluntarily given the passport to the company as safe keeping. The workers need to get the approval of the management to have access to the passport. Are these indicators of forced labour in this example?

A. Yes B. No

10. Linda voluntarily agreed and signed a contract to work in a factory assembling mobile phones. After 3 months, her mother back home in the Philippines was sick and she told her employer that she needed to leave her job to return home immediately. Her employer did not allow her to leave as she has not completed the duration of the contract nor has resigned according to the terms of the contract consistent with the national law. Does this amount to forced labour?

A. Yes B. No

11. Zury was recruited to work in a manufacturing plant in Malaysia. She voluntarily accepted the job offer. Upon arrival, the terms of employment were significantly different from what the contract she signed indicated. She wanted to leave but was forced to stay as she was not able to compensate the employer for the cost in recruiting her. Does this amount to a situation of forced labour?

A. Yes B. No

12. Malaysia has been ranked by the US State Department, which grades countries according to their efforts to curb trafficking, as Tier 2 Watchlist in its Trafficking in Persons (TiP) 2019 report, due to the issues of forced labour and human trafficking.

A. True B. False

13. Forced labour is only an issue for small businesses and the informal sector. It is not possible to have issues of forced labour for multinational companies as they always have better working conditions and higher wages for their employees.

A. True B. False

14. It is the responsibility of Government alone to enact and enforce laws and regulations to eliminate forced labour. Businesses have no other responsibilities in preventing and addressing the issues but only to comply with the laws and regulations?

A. True B. False

15. Forced labour in Malaysia only occurs in the agricultural sector or domestic work where workers are isolated. It does not happen in other sectors like construction or the manufacturing sector.

A. True B. False

Answer guide for Quiz 1

1. B	6. B	11. A
2. B	7. A	12. A
3. A	8. A	13. B
4. B	9. A	14. B
5. B	10. B	15. B

Module 1: What is forced labour



Learning objectives

- Know what constitutes forced labour and the elements of forced labour.
- Be able to distinguish between forced labour, human trafficking and sub-standard working conditions.
- An insight into the forced labour situation in Malaysia and its close linkage with migration including trends and characteristics and contributing factors.
- Sharing practical experiences on issues and challenges faced by employers in the recruitment and employment of migrant workers.



Methodology

1. Show **Video 1** (1 min and 20 sec).
2. Explain that Video 1 showed a situation of forced labour and will be revisited in discussing **slide presentation 1**. Present/lecture about the definitions and situations of forced labour using **slide presentation 1**.
3. Ask participants to share their practical experiences and thoughts on issues and challenges faced by employers in the recruitment and employment of migrant workers. The purpose of this activity is to understand the context of Malaysia and determine concrete issues that may be tackled in the succeeding sessions.
4. Group the participants for **Group exercise 1** on identifying elements of forced labour.



Materials

- Video 1: **Lured by a job, trapped in forced labour** <https://www.youtube.com/watch?v=pD0IT6q08bU>
- Slide presentation 1: What is forced labour.
- Handout 1(a) - Case study: Elements of forced labour.
- Handout 1(b) - Response guide to case study.
- Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers (Chapter 1).



Suggested duration

60 minutes



Highlights for Slide presentation 1 – What is forced labour

After watching the forced labour video, explain that not all labour violations are considered forced labour but the video did show the elements of forced labour.

Forced labour constitutes a severe violation of human rights and restriction of human freedom.¹ The ILO Convention on Forced Labour, 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 voluntarily

”

¹ ILO: *A Global alliance against forced labour*. DG Report, 93rd Session, ILC (Geneva, 2015).

All work or service	Includes all types of work, services and employment regardless of the industry, sector or occupation, and encompasses legal and formal employment as well as illegal and informal employment.
Any person	Refers to adults and children, regardless of the nationality including undocumented migrant workers.
Menace of penalty	Refers to threat of penal sanction or loss of rights or privileges, which include various forms of coercion, deception, violence, intimidation, retention of identity documents, confinement or non-payment of wages, as well as threat to denounce to authorities.
Involuntariness	Refers to the free and informed consent of a worker to enter or exit an employment relationship at any time. Deception in recruitment or coercion in employment undermines and excludes the voluntary offer or consent of the victim.

Although there is no definition of forced labour in Malaysian legislation, forced labour, being a criminal offense is often prosecuted under the Anti-Trafficking in Persons and Smuggling of Migrants Act (ATIPSOM). The relevant laws are currently being reviewed on how to better address the forced labour issue.

Not all labour violations are forced labour

Forced labour cannot be equated with low wages or poor working conditions which may constitute labour laws violations. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of alternative employment. Forced labour has a certain degree of compulsion or threat of penalty and is a severe violation of human rights.

Forced labour is a global issue

Forced labour, modern slavery and human trafficking exist in all regions of the world and in many economic sectors. The Asia and Pacific region predominates in the numbers of victims of forced labour.



The Malaysian situation

In Malaysia, forced labour allegations are generally linked to recruitment and employment of migrant workers or workers from the rural areas.

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

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

Other important topics to cover in this session covered in the slide presentation and employers' guide

- Discuss factors that contribute to forced labour in Malaysia.
- Discuss issues and challenges face by employers in the recruitment and employment of migrant workers.

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

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

An international legal framework on social standards ensures a level playing field in the global economy. It helps governments and employers to avoid the temptation of lowering labour standards in the belief that this could give them a greater comparative advantage in international trade.

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.

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

ILO's eleven indicators of forced labour

(see the employers' guide for a detailed description of each indicator and tips on how to prevent such practice).

- Abuse of vulnerability.
- Deception.
- Restriction of movement.
- Isolation.
- Physical and sexual violence.
- Intimidation and threats.
- Retention of identity documents.
- Withholding of wages.
- Debt bondage.
- Abusive working and living conditions.
- Excessive overtime.

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

Exercise 1: Identify elements and indicators of forced labour

Objectives:

- To be able to identify the main elements of forced labour, and to assess whether the workplace practices constitute forced labour situations.

Approximate duration:

40 minutes

Task and arrangement:

- Divide participants into groups of 4 - 8 to work on this exercise.
- Give each group 1pc. of flipchart paper and 1pc. of marker pen.
- Give participants a copy of **Handout 1(a): Case study** to read, discuss, and prepare a 10 minutes group presentation.
- Each group has 30 - 40 minutes for discussion and 10 minutes for presentation.
- Each group to appoint a rapporteur to present the group output at the plenary.

When the groups have finished discussing after 30 minutes:

- Reconvene in plenary. Rapporteurs will present their case study responses.
- Facilitator will facilitate the discussion and invite other participants to comment.
- Participant would be given **Handout 1(b): Response to case study** at this stage.
- After presentation by all groups, facilitator will add points not mentioned and present the key learning points outlined in **Handout 1(b)** highlighting the points raised in the presentations by the groups.

Note on rapporteur selection:

As there are a number of group exercises in this training, it is advisable that each participant could take up the role of the rapporteur at least once for the entire training.

Round-up the discussion:

- The ILO indicators of forced labour are derived from the theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). They are based upon the definition of forced labour specified in the ILO Forced Labour Convention, 1930 (No. 29).
- The indicators serve as red flags or warning signs, which can help in assessing recruitment and employment practices to identify situations of forced labour. The presence of a single indicator may in some cases imply the existence of forced labour. However, in most cases, there is a need to look for several indicators or elements of forced labour to determine whether workers are working involuntarily under a threat of a penalty.

Handout 1(a): Case study 1

Rahman was recruited by a recruitment agent in Bangladesh who promised him a job as a waiter in a restaurant in Kuala Lumpur with a monthly salary of US\$500. He paid a hefty recruitment fee and travel expenses which he agreed were to be deducted from his monthly wages. He is a bit worried but excited about his new job as it will be his first overseas travel to a migrant country. He does not have much knowledge about Malaysia.

Upon arrival, Rahman was sent to a palm oil estate in a remote area in Sarawak, and was told that his job is to cut the oil palm and keep the estate clean and clear. He was also asked to sign a contract in Bahasa Malaysia which he does not understand, and no explanation was given to him about the content of the contract.

The employer told Rahman he has to surrender his passport, the passport will only be given to him for the visa extension. Rahman was told by the employer he has paid more than RM5,000 to recruit Rahman to work in his estate for 3 years, thus Rahman cannot leave the employment before completing the 3-year term, or he has to compensate him for the recruitment cost incurred. Rahman was also told that if he ever leaves the place without his passport, he would be arrested by the police or an

immigration officer and be put in jail. Rahman has no alternative but to stay with the estate job.

Rahman is housed in a workers' quarter, together with five other migrant workers, on top of the debt owed for recruitment fees and travel expenses, Rahman was told that he had to pay for lodging and food which will also be deducted from his monthly salary. He was told that due to the debt and expenses incurred (lodging and food), he would not receive his monthly salary for the first six months, and only at 50 per cent for the remaining period of the contract. However, his salary would be kept by the employer and would only be given to him upon his completing the term of employment and prior to departure to his home country.

Under his contract of employment, Rahman would be paid a monthly salary of RM900, he has to work from 7am to 5pm, six days a week regardless of weekends or public holidays. His monthly pay would be further deducted if he does not turn up for work, even if he is sick. However, he is given a weekly rest day.

Due to the remoteness of the estate, Rahman is not able to leave the place or contact anybody outside the estate, there is neither public transport nor a signal for a mobile phone. Once a month, the employer will take Rahman and the other workers to a nearby town, which is more than 100km away from the estate for shopping of essential items, but they would be accompanied by the employer or his representatives at all time, and their shopping would be paid by the employers which would be deducted from their month salary.

Rahman is a victim of forced labour in this scenario! **Identify the different elements or indicators of forced labour, with reference to the definition of forced labour particularly what are the threats or menace of penalty and the lack of free and informed consent - involuntariness.**

Participants may refer to the ILO's indicators of forced labour which will be shown on screen during the exercise.

Handout 1(b): Response to case study 1

The ILO Convention on Forced Labour, 1930 (No. 29) defined forced labour as:

“...all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

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

- **All work or service** includes all types of work, services and employment regardless of the industry, sector or occupation, and encompasses legal and formal employment as well as illegal and informal employment.
- **Any person** refers to adults and children, regardless of the nationality including undocumented migrant workers.
- **Menace of penalty** refers to threat of penal sanction or loss of rights or privileges, which include various forms of coercion, deception, violence, intimidation, retention of identity documents, confinement or non-payment of wages, as well as threat to denounce to authorities.
- **Voluntary** refers to the free and informed consent of a worker to enter or exit an employment relationship at any time. Deception in recruitment or coercion in employment undermines and excludes the voluntary offer or consent of the victim.

In this case, the elements or indicators of forced labour include:

1. Deceptive recruitment

- Rahman was given a false promise, he was promised a job as waiter in a restaurant with a monthly salary of US\$500, but upon arrival, he was sent to the palm oil estate.
- He was also asked to sign the employment contract which he does not understand, and no explanation was given to him about the content of the contract.
- He is unable to leave as (i) he is not able to pay the compensation; (ii) the estate is isolated; (iii) his passport was seized; and (iv) he would be arrested by the authorities and put in jail if he leaves without a passport; (v) his wages had been withheld.

2. Abuse of vulnerability

- Rahman is a migrant worker who came to a migrant country to seek a living, has no alternative living options, no knowledge of the local situation, he is in a vulnerable position.
- Even though the mere fact of being in a vulnerable position does not necessarily lead a person into forced labour, the employer in this case has clearly taken advantage of Rahman's vulnerability by (i) retaining his passport; (ii) imposing exploiting working conditions – long working hours (ten hours) without payment of overtime, no annual leave, sick leave or public holiday, lower than minimum wage pay; (iii) Deducting and withholding his wages; and (iv) restricting his movement, etc.
- There is no free and informed consent and Rahman is under a certain degree of threat and coercion as his salary would be deducted if he does not turn up to work even when he is sick.

3. Isolation

- Rahman is placed in a remote estate, more than 100 km from the nearest town, with no phone signal and transport, which indirectly denied him contact with the outside world, and restricting his ability to leave.

4. Restriction of movement

The following elements have been directly or indirectly restricting:

- Rahman's freedom of movement and ability to leave.
- The location of the estate which is more than 100km from the nearest town – remote and isolated.
- The retention of his passport.
- Withholding of his wages until he completes the three-year term.
- He is accompanied and monitored by the employer at all times when they take him to town for shopping of essential items.

5. Retention of identity documents

The employer kept Rahman's passport and would only give it for the visa extension. Rahman is unable to access his passport, if he leaves without the passport, he would be arrested by the police or an immigration officer and be put in jail.

6. Deduction and withholding of wages

- The employer is withholding the wages of Rahman until he completes the three-year term.
- Rahman would feel obliged to remain despite the exploitative working conditions.
- As the intention of the employer is to compel him to remain, and deny him the opportunity to leave, this points to forced labour practices.

7. Debt bondage

- Rahman is in debt with his employers for the hefty recruitment fee and travel expenses which would be deducted from his monthly wages.
- His lodging and food, shopping of essential items as well as absence from work which would be deducted from his monthly salary may give rise to debt bondage, especially when he has no salary for the first six months and only at 50 per cent for the remaining period.

The scenario fulfils all the elements of forced labour.

There is clearly **no free and informed consent** - deceptive recruitment.

There is also a **menace of penalty**, i.e. elements of threat and coercion - deceptive recruitment, abuse of vulnerability, retention of passport, isolation, restriction of movement, withholding of wages, and debt bondage.

Module 2: Why preventing forced labour makes business sense



Learning objectives

- To increase understanding and appreciation among employers on why they should engage and take actions in addressing, preventing and eliminating the risk of forced labour in company operations.



Methodology

1. Show the [video from the Thomson Reuter Foundation youtube video of Trust Conference: Role of business in eradicating forced labour](#)
2. Present [slide presentation 2](#) on the business case of combating forced labour.
3. Conduct [group exercise 2](#) on mapping of employers interest in combating forced labour. It may be done in 45 minutes if done as a plenary session, provided the plenary consists of 10-15 persons. If done as group work, allow at least 30 minutes for the group discussion and ten minutes to each group for the plenary presentation, followed by further plenary discussion.



Materials

- Video: [Thomson Reuter Foundation youtube video of Trust Conference: Role of business in eradicating forced labour](https://www.youtube.com/watch?v=PPie0lnxyn4) (<https://www.youtube.com/watch?v=PPie0lnxyn4>).
- Slide presentation 2: Business case of combating forced labour.
- Handout 2(a): Mapping of employers interest in combating forced labour.
- Handout 2(b): Example of mapping's response.
- Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers (Chapter 2).



Suggested duration

90 minutes



Highlights for Slide presentation 2: Business case of combating forced labour

Forced labour poses a significant risk for employers and business owners of both small enterprises and multinational corporations with complex supply chain and outsourcing operations.

It is thus important that employers and business owners respect their legal obligations on prohibition of forced labour under national laws and regulations as well as fundamental Conventions including the elimination of forced labour.

Refer to Chapter 2 of the employers' guide for details.

Avoid lawsuits and risks of criminal prosecution

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, failing which can lead to criminal prosecutions and sanctions.

For example, read about employer investigated for forced labour offences (Box 2 of the employers' guide).

Build reputation and brand image

Due to increased lobbying and media exposures, consumers, buyers, and civil society are becoming more aware and concerned about human rights abuses, including forced labour.

Company image and reputation can be adversely affected by allegations or finding of forced labour in its operations, and the reputational cost is high, reflected through decline in sales and share prices, or even loss of business. For example, see Box 3 of the employers' guide.

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

- attract better talent;
- be perceived as providing more value, which often allows them to charge a premium;
- have customers who are more loyal; and
- have higher market value as it is believed that such companies will deliver sustained earnings and future growth.³

Managing risk in the supply chain

Increased globalization has opened up economies, and supply chains are lengthening and growing across countries. Companies, especially the multinationals, have raised forced labour and other human rights abuses as significant issues within the global supply chain, increasingly imposing demands and standards on their suppliers.

The Human Rights Outlook 2017 identified mandatory reporting: disclosure and due diligence as one of the top 10 human rights issues for businesses in 2017.⁴ The US, UK and Australia (in the process) passed legislation which required companies to disclose how they are addressing forced labour in supply chains. Thus, more companies globally will be obliged to publicly disclose how they and their supply chains respect human rights, and will only purchase from businesses that respect and can provide proof of specific criteria, including the non-use of forced labour.

³ IFC; SAI: *Measure & improve your labour standards performance: Performance standard 2 handbook for labour and working conditions*. (New York, 2010)

⁴ Verisk Maplecroft, *Human rights outlook 2017*.

Companies in Malaysia, especially those within the global supply chain are required to ensure that they are free from forced labour or any human rights violations. See example of company's response to forced labour allegations (Box 4 of the employers' guide).

Meet buyers' expectations

Global buyers and big brands are increasingly devising codes of conducts and sourcing policies on how their suppliers should treat their employees to ensure their products, including the supply chains, are free from forced labour and human rights abuses.

Companies and suppliers thus need to ensure there are no forced labour practices in their operations, including that of their supply chains, as findings of forced labour could lead to potential suspension or termination of supplier contracts with global buyers that value their reputation as responsible companies.

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

See example of Apple's supplier Code of Conduct (Box 5 of the employers' guide).

Avoid risks of trade barriers

All World Trade Organization (WTO) member governments are committed to internationally recognized core standards — freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination).

There have been increasing trade agreements and policies incorporating labour and social provisions, including prohibition of forced labour with which the countries need to comply to continue the trade relations and enjoy certain trade advantages conferred.

Attract socially responsible investment

Respect of fundamental labour rights, including the elimination of forced labour, can help companies attract socially responsible investment, access to international funding resources and build long-term business relationships with responsible buyers. Many international investors, including the largest pension funds, only invest in companies that meet certain standards.

Investors are increasingly concerned about the labour standards of the entities they invest in, including their supply chains, allegations of forced labour and human trafficking thus can significantly threaten investor relations and jeopardize access to public funds.

See Box 6 of the employers' guide for report on forced labour in the Malaysian electronics industry.

Level the playing field and prevent unfair competition

Forced labour practices can affect the playing field when unscrupulous employers use forced or child labour to suppress labour costs to gain price advantage in the open market to the detriment of the law-abiding employers and enterprises in the same industry, who face unfair competition from those who operate outside the law.

Improve productivity and competitiveness

A comparative cost-benefit analysis of implementing labour standards suggests that organizations benefit significantly by enforcing labour standards as this would translate into higher productivity and enhanced organizational competitiveness and survival as workers experience job satisfaction, safe and healthy working conditions and an environment which reduces rates of industrial accidents, medical costs and sick leave.

Furthermore, employers benefit from implementing enhanced labour standards through lower employee turnover rates and improved cooperation and understanding between workers and their employers resulting in a stable and positive labour relations environment that is devoid of work stoppages due to industrial actions and loss of production.⁵

Corporate social responsibility (CSR) and responsible business initiatives

Corporate social responsibility (CSR) is a voluntary, enterprise-driven initiative that refers to activities that are considered to exceed compliance with the law.⁶ Despite being voluntary, most global brands and buyers now have adopted a CSR code in one form or another, and most of these codes 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 and as a reason for terminating suppliers' contracts.

⁵ M. Samuel, 2014. "Compliance with labour rights and international labour standards: Implications for workplace productivity and competitiveness." *Mediterranean Journal of Social Sciences*, Vol5. No.9. pp.89.

⁶ ILO: *InFocus initiative on corporate social responsibility (CSR)*, Governing Body, 295th Session (Geneva, 2006).

Exercise 2: Mapping employers' interests in combating forced labour⁷

Objectives

- To sensitize employers to the fact that some employers benefit from forced labour practices, and pose risks to the others.
- To provide employers with a framework of good reasons for taking action to combat forced labour.

Approximate time

45 minutes if done as a plenary session, provided the plenary consists of 10-15 persons. If done as a group work, allow at least 30 minutes for the group discussion and 10 to 15 minutes to each group for plenary presentation, followed by further plenary discussion.

Materials and tools

- Handout 2(a): Mapping of employers' interest in combating forced labour.
- Handout 2(b): Example of mapping's response.
- Flipchart and marker pen.

Task and arrangement

Participants should be exposed to examples of forced labour in the earlier session prior to this exercise.

- Facilitator will share the objective of the exercise and methodology.
- Participants may be divided up into groups of 4 - 6 to work on this exercise, or discuss in plenary for small group of participants.
- Give each group 1pc. of flipchart and 1pc. of marker pen.
- Give participants **Handout 2(a): Mapping of employers' interest in combating forced labour**.
- Ask participants to consider the spectrum given, with the assumption that employers have different interests.
- If this exercise is done in groups, one group can be assigned to work with employers on the left side of the spectrum and another to work with employers on the right side. A third group might be created to work with employers in the centre, i.e. those having no interest one way or the other in relation to forced labour.
- Each group to appoint a presenter to present and share the map developed.
- Each group is given 30 minutes to work on the exercise.

⁷ Adapted from ILO: *Training materials for a global alliance against forced labour: Activity 16. Mapping employers' interests in fighting contemporary forms of forced labour*. (Geneva, 2006).

- Reconvene the plenary after 30 minutes when the groups are ready.
- Each group to introduce their map with the three reasons listed.
- Facilitator to invite other participants to provide comments or inputs for discussion.
- Participants to be given **Handout 2(b): Example of mapping's response** at this stage.
- Facilitator to add points not mentioned by the groups and discuss any further questions raised.

Round up discussion

The map developed through this exercise can be used to point at the idea that employers of certain types have distinct and particular interests in working for the elimination of forced labour. The map can also be used to identify and prioritize targets for employer group intervention.

Handout 2(a): Mapping of employers' interest in combating forced labour

Task 1

Participants to consider the spectrum below, with the assumption that employers have differing interests.



Task 2

Participants to list three reasons each why certain employers would have an interest on the left side of the spectrum and why others would have an interest on the right side of the spectrum.

Task 3

For the three reasons developed in Task 2, participants to list the type of employers that might be associated with employers on the left-hand side of the spectrum and with those on the right, together with a quantitative indication for each type of employer.

Examples of type of employers and quantitative indication:

Type of employers	Quantitative indication
Informal sector	Mostly
Rural employers	Many
Urban employers	Some
Small and micro employers	Few
SMEs	Extremely few
Large businesses	Almost all
MNE	All
Employers with international interest	

Example of map template

Reasons why some employers have an interest in continuing forced labour practices	Type of employers/ business	Quantitative indication
1.		

2.		
3.		
Reasons why some employers have an interest in eliminating forced labour practices	Type of employers/ business	Quantitative indication

Handout 2(b): Examples of mapping's response

Task 2

For example:

The reasons why some employers have an interest in continuing forced labour practices include:

- to gain higher profit from cheaper costs of production;
- they benefit indirectly by getting cheap goods made with forced labour and selling them at a high profit; and
- to get the maximum value and protect self-interest as they have incurred high costs in recruiting the workers.

The reasons why some employers have an interest in ending forced labour practices include:

- improved workers' engagement thus promoting productivity;
- they face unfair competition from competitors who use forced labour;
- they face challenges to their reputation in markets that have heard of forced labour practices in the country/sector/region where the employer is located;
- they find such practices morally unacceptable;
- to avoid legal sanctions;
- they face expectations from their buyers that have zero tolerance on forced labour; and
- to avoid infringing their buyers' code of conduct.

Task 3

Reasons why some employers have an interest in continuing forced labour practices.

Reasons why some employers have an interest in continuing forced labour practices	Type of employers/business	Quantitative indication
1. They benefit directly from forced labour practices with cheaper costs of production.	Informal sector and rural employers	Mostly
	SMEs	Mostly
	MNE or large employers	Very few
	Employers with international interests	Extremely few
2. Lack of enforcement especially in isolated locations.	MNE or large employers	Few
	Informal sector and rural employers	Mostly
	SMEs and micro-employers	Mostly
3. They want to get the maximum value and protect their self-interest as they have incurred high costs in recruitment of the workers.	Informal sector and rural employers	Mostly
	SMEs and micro employers	Mostly
	MNE or large employers	Few
	Employers with international interests	Extremely few

Reasons why some employers have an interest in eliminating forced labour practices	Type of employers/ business	Quantitative indication
1. They face unfair competition from competitors who use forced labour.	Informal sector and rural employers	Few
	SME	Some
	Large employers	Some
	Employers with international interest	Many
2. Reputation and brand image	Informal sector and rural employers	Extremely few
	SME	Some
	Large employers	Many
	Employers with international interest	Almost all
3. Avoid risk of prosecution	All types of employers	All

Working from these results, participants could consider how the perceived or real interests of employers less interested in ending forced labour can be altered.



Module 3: Relevant laws and policies on forced labour and related offenses



Learning objectives

- Be familiar with relevant international and regional instruments related to forced labour.
- Know the relevant laws and regulations in Malaysia related to recruitment and employment of migrant workers that impact aspects of forced labour.



Methodology

1. Discuss **slide presentation 3**: International, regional and Malaysian legal framework on forced labour.
2. Engage the participants through **exercise 3**: Identifying labour laws violations and forced labour offences.



Materials

- Slide presentation 3: International, regional and Malaysian legal framework on forced labour.
- Handout 3(a): Case study 2.
- Handout 3(b): Response to case study 2.
- Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers (Chapter 3).



Suggested duration

60 minutes



Highlights for Slide presentation 3: International, regional and Malaysian legal framework on forced labour

International legal framework

ILO Conventions, Protocol and Recommendations

- Forced Labour Convention, 1930 (No. 29).
- Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).
- Forced Labour (Supplementary measures) Recommendation, 2014 (No. 203).
- Abolition of Forced Labour Convention, 1957 (No. 105).

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.
- The elimination of discrimination in respect of employment and occupation.

The Palermo Protocol

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

UN Guiding Principles on Business and Human Rights (UNGPs) United Nations Sustainable Development Goals (SDGs) 8.7



Regional framework

- ASEAN Declaration and Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and its Plan of Action.
- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.
- ASEAN's Labour Ministers Work Programme 2016 - 2020.
- Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime.

Malaysian legal framework

Federal Constitution

The Malaysian Constitution prohibits slavery and all forms of forced labour in Malaysia.⁸ All persons, including foreigners and migrant workers, documented or undocumented, are entitled to constitutional rights in Malaysia.⁹

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

The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM Act) is the specific legislation that addresses human trafficking. This Act provides for criminal action to be instituted for involvement in trafficking of persons. It defines exploitation as all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.

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

⁸ Federal Constitution, amended to 2009, art. 6.

⁹ 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.

**Passports Act 1966
(Act 150)**

The Passports Act 1966 outlines that only those with lawful authority (an immigration officer, police officer or officer of customs) can hold the passport issued in the name of another person. 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 both.

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

The Penal Code criminalizes kidnapping, abduction including importing, exporting, removing, buying, selling or disposing of any person as a slave or forced labour, and offenders shall be punished with imprisonment for a term which may extend to one year or with fine or both.¹⁰

**Immigration Act
1959/63 (Act 155)**

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

**Employment Act
1955 (Act 265)**

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

**Private Employment
Agencies
(Amendment) Act
2017**

The amendment that took effect from 1 February 2018 expands the enforcement provisions on private employment agencies to include recruitment of migrant workers including migrant domestic workers (referred to in the law as foreign domestic maids), in addition to placement of Malaysian workers in local or overseas positions.

¹⁰ Section 359 to 374 of the Penal Code (Act 574), Chapter XV1.

**Occupational
Health and Safety
Act 1994**

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

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

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

**Employers
Undertaking**

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

Exercise 3: Identify elements of labour law violations and forced labour offences

Objectives

- To understand what constitutes forced labour and its elements.
- To be able to differentiate between poor working conditions which constitute labour laws violations and situations of criminal forced labour practices.

Approximate time

40 minutes

Materials and tools

- Flipchart paper and marker pens.
- Handout 3(a): Case study 2.
- Handout 3(b): Response to case study 2.

Task and arrangements

- Participants may either be divided up into groups to work on this exercise, or work/discuss in plenary of a small group.
- Participants to be given **Handout 3(a): Case study 2** to read and discuss among their respective group.
- Each group to be given 30 minutes to discuss the case study within the group.
- Each group to appoint a rapporteur for sharing in plenary (if time allows).
- Reconvene after 30 minutes when the groups are ready.
- **Handout 3(b): Response to case study 2** to be given at this stage for further discussion.
- Facilitator to invite groups to share their views on each of the questions, discuss and explain the answers.
- Alternatively, facilitator may discuss in plenary and invite sharing of views among participants instead of group presentations.

Round up discussion

When individually assessed, most practices of forced labour constitute violations of labour laws (e.g. violations of minimum wage, working time, or OSH standards). However, finding of one or more indicators of forced labour should lead to closer scrutiny whether these practices fulfil the elements of **menace of penalty** and **involuntariness**, i.e. restrict workers ability to leave their jobs. If workers are trapped in jobs into which they were coerced or deceived and which they cannot leave, the situation constitutes criminal forced labour.

Handout 3(a): Case study 2

Modernfit operates a factory in a small town in Johor producing bedroom furniture for export to Europe and the US. It has 120 workers, among which 100 of them are migrant workers from Bangladesh and Nepal. The factory operates 16 hours a day from 7am to 11pm, seven days a week, and the workers are scheduled to work on two shifts either from 7.00am - 7pm or from 11am to 11pm.

The current minimum wage is RM1000 a month. The workers are paid a daily wage of RM30 for the first eight hours and RM5 an hour for the next four hours, irrespective of weekdays, weekends, or public holidays. The workers receive their wages once a month but on a no-work-no-pay basis. Most workers in Modernfit work 12 hours a day including four hours overtime, six days a week.

The production floor usually is dusty and noisy with very loud machine noise, and people have to shout if they want to talk to one another. There are no noise or dust protectors and no air conditioning, only a few ceiling fans are fitted, and the room temperature can go up to 34 degrees sometimes.

The migrant workers are housed in a workers' quarter provided by Modernfit management, next to the factory, with eight workers sharing a small room that should only fit four people. There are kitchen facilities for workers to prepare their own food, but water and electricity supplies

are limited and unreliable. Workers are sometimes left without water or electricity for a few days before the utility services are resumed. However, the workers are free to move around after work and to decide if they want to work on any particular day.

1. Based on the above scenario, does it involve labour laws violations? Identify and list the elements of violations to the Employment Act 1955 and other related laws and regulations. Does the above also constitute forced labour practices?

2. Due to the complaint made by workers about the dust, noise and heat in the production floor, the unreliability of water and electricity supply in workers' quarters, and the fact that many workers are falling sick and not able to work, Modernfit management has decided to add more ceiling fans in the production floor, fix up the water and the electricity supply in the workers' quarters, and supply earplugs and masks to the workers. In order to recover the expenses incurred, Modernfit has decided to deduct RM50 from each worker each month to pay for the earplugs and masks. The deduction was made without consultation or agreement by workers. Is this a violation to the Employment Act 1955? Does this constitute forced labour practices?

3. Due to the increasing orders and to meet the deadline, Modernfit recently issued a new rule that requires all workers to work a minimum of 14 hours a day, six days a week to achieve the minimum daily target set by their supervisor before leaving the workplace, or their daily wages will be deducted accordingly. Is this violation to the laws? Does it constitute forced labour practices?

4. There are no shops around the factory or the workers' quarter, the nearest town is about 60 km away, but there is no public transport to get there, the only way to get to the town is by private taxi which costs more than RM200 for a return journey. The only practical option for the workers to buy their grocery, meat, vegetables and other essentials is from the sundry store operated by the management of Modernfit, at prices that are on average three times more expensive than the market rate. However, the workers do not have to pay cash at the sundry store as their spending would be deducted from their wages each month. Every month RM200 would be deducted from the workers' wages for accommodation, up to RM600 for grocery expenses, and other deductions such as failure to

achieve the minimum daily target, complete the 14 hours working hours a day, or work less than six days a week. At the end of each month, the workers would receive a pay slip which only show the wages earned and the total deduction, without any record or details of the deductions. Very often the workers are left with nothing at the end of the month, or even become indebted to the company. Is this forced labour practices?

Note: For the purposes of this case study, the assumption is that workers work 26 days per month (six days or 48 hours per week of normal working hours).

Handout 3(b): Response to case study 2

Question 1:

Law violations

- The workers earn less than minimum wage if they work eight hours a day, six days a week. Assuming they work 26 days a month, they only earn RM780 which is less than the minimum wage of RM1,000 a month.
- Violations to Employment Act 1955:
 - No-work-no-pay means there is no paid annual leave, sick leave, rest day or public holiday.
 - No overtime pay, workers should be entitled to 1.5 times their hourly rate for overtime, which should be more than RM5 an hour.
 - No rest day or holiday pay even if they work on those days.
- There may be violations to the Occupational Health and Safety Act 1994 for the level of noise and dust, and that there should be some protection for the workers such as wearing a mask and ear plugs.
- Violations to the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990.

Provided the worker can terminate the contract at any time without the menace of penalty, despite the violations to the laws, the workers have voluntarily entered into the employment and are free to leave. Thus this is not a forced labour scenario.

Question 2:

Section 24 of the Employment Act 1955 provides that only lawful deductions can be made from workers' wages. The earplugs and masks are considered protective equipment for the performance of the work by the workers (to fulfil the requirements under the OSH laws), it is not a lawful deduction as provided under the Act. It should be the responsibility of the employer to provide protective equipment to facilitate the performance of the work by workers. Modernfit has violated Section 24 of the Employment Act 1955. However, there is no element of menace of penalty, so there is no forced labour practice.

Question 3:

This scenario involves the same violations as in Question 1, in addition, the new rule requires closer assessment. The workers are required to work a minimum of 14 hours a day, six days a week, which means six hours overtime a day, and 156 hours overtime a month (assuming 26 work days) which is exceeding the limit of overtime permitted under the Employment Act 1955.

In addition to the excessive overtime, the workers also face a financial penalty of wage deduction if they do not work to fulfil the 14 hours a day, six days a week or achieve the daily minimum set target. According to the ILO supervisory bodies, excessive overtime constitutes forced labour when **workers have to work more overtime than is allowed under the national law** and they work **under some form of threat**; or they **cannot earn at least the minimum wage without working overtime**.¹¹

These three factors are all present in the above scenario, and therefore the situation meets the criteria of forced labour as defined by ILO Convention No. 29.

¹¹ ILO; *Eradication of forced labour: General survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105)*, para 132. (Geneva, 2007).

Question 4:

As indicated previously, Section 24 of the Employment Act 1955 provides that no deductions shall be made by an employer from the wages of an employee otherwise than in accordance with the Act. Here Modernfit made deductions for:

- Accommodation.
- Grocery shopping.
- Penalties.

Deductions for grocery shopping at the sundry shops operated by the employer and penalties are not one of the permissible deductions under Section 24 of the Employment Act 1955, nor did Modernfit seek permission of the Director General of Labour for such deductions -Section 24(7). Even though deductions for accommodation, food or services is a lawful deduction, it must be made at the request of the workers and with the permission of the Director General of Labour (Section 24(4)(e). There is no such request or permission in this scenario. Furthermore, the total of the deduction shall not exceed 50 per cent of workers' salary for that month - Section 24(8).

Modernfit has violated Section 24 of the Employment Act 1955 for making unlawful deduction of workers' wages.

The isolation of the factory and the workers' quarter and the lack of affordable public transport to the town, combined with the inflated prices of the sundry store operated by the management, the lack of transparency in wage deductions which may involve manipulation of workers' wages, and the below minimum wage pay, etc. puts workers at high risk of incurring debt to the employer, Modernfit, and it can lead to debt bondage, a recognized form of forced labour.

Module 4: Addressing the risks of forced labour in company operations



Learning objectives

- Introduction to the guiding principles and best practices on eliminating forced labour in company operations and supply chains.
- Assessing risk of forced labour using the Red Flag Checklist.



Methodology

1. Discuss **slide presentation 4**: Introduction to guidelines and checklist for assessing risks of forced labour in pre-employment, during-employment and post-employment practices.
2. Engage participants to actively participate to **Exercise 4**: Assessing risks of forced labour.



Materials

- Slide presentation 4: Introduction to guidelines and checklist for assessing risks of forced labour in recruitment and employment practices.
- Handout 4(a): Case study 4.
- Handout 4(b): Response to case study 4.
- Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers (Chapter 5).



Suggested duration

60 minutes

Highlights for Slide presentation 4: Introduction to guidelines and checklist for assessing risks of forced labour in recruitment and employment practices

A. Pre-employment

Many challenges in managing migrant workers stem from issues that arise even before the employment, such as 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 of both the source and host country before reaching the employer. Forced labour could emerge as a consequence of deceptive or coercive recruitment practices. Employers thus should have clearly defined and transparent procedures for managing the recruitment of migrant workers.

Employers could directly hire migrant workers in the source country which minimize the role of the agent, thereby helping to control costs and minimize the risks of deception practices. Alternatively, employers may choose to engage a recruitment agency for the entire process of recruitment.

The following are the main elements of fair recruitment to prevent and eliminate deception and coercion during the recruitment practices. Please refer to Chapter 4 of the employers' guide for more information.

Recruiting migrant workers through recruitment or employment agencies If an employer decides to engage recruitment or employment agencies, employers must conduct pre-selection due diligence and regular audits of recruitment agencies or other sub-agents involved in recruitment and placement of migrant workers in both the source country and Malaysia.

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

Fair recruitment practices Always provide comprehensive and truthful information about the nature of the job and conditions of work, and hold periodic training for managers, supervisors and workers on good recruitment practices.

Pre-departure and post-arrival orientation Refer to **Contents of the pre-departure and post-arrival orientation** in the pp.37 of the employers' guide.

Fair and transparent contracts

- Provide written contracts of employment to all workers in a language that they can easily understand.
- Ensure that employment contracts clearly indicate workers' wages, working hours, rest day and other terms and conditions of work in accordance to the Employment Act 1955.
- Ensure migrant workers are treated fairly and equally as local workers and having the same terms and conditions of employment.

Refer to the employers' guide for elements of a fair and transparent contract (pp. 38-39) and a sample of the employment contract (pp. 83-87).

A. During employment

Once workers have entered into employment, forced labour practices may emerge if coercive practices are used. Please refer to Chapter 4 of the employers' guide for detailed description and tips of each of the following issues to consider during employment:

1. Wage payments;
2. Wages deductions and in-kind payments;
3. Loans and advance payments to employees;
4. Working hours, rest day, holiday and leave entitlement;
5. Disciplinary and grievances measures;
6. Passports and personal possessions;
7. Freedom of movement;
8. Accommodation and health; and
9. Workers' retention.

A. Post-employment

Upon expiration of a contract, or for any reason, the contract is terminated prematurely, forced labour practices could emerge in the termination and repatriation phase. The following are some of the main elements to be considered in preventing and eliminating deception and coercion in post-employment practices including termination, dismissal, resignation and repatriation. Refer to Chapter 4 of the employers' guide for details.

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, that they must have a valid permit issued by the Immigration Department to stay in Malaysia, the employment contract of migrant workers usually is a fixed term contract and subject to the duration of the visa/permit.

As employers usually incur high costs in the recruitment of migrant workers, they would expect the workers to honour the duration of the contract, usually between two to three years. On the other hand, the migrant workers may also incur expenses in gaining the employment in Malaysia, some safeguard should be in place to protect both the interests of employers and workers. In addition to the standard notice of termination by either party in accordance to the Employment Act or the terms and conditions of the contract, they should also have clear provisions for premature termination by either party, to determine if there is a valid reason for termination even beyond the contract terms (i.e. violation of law by one party), and penalty or compensation, if applicable to ensure fairness for both parties.

- Summary dismissal by employers.
- Premature termination by workers.
- Premature termination by employers.

**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.

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 on a case by case basis for the cost of repatriation.

Exercise 4: **Assessing risks of forced labour in your business**

Objectives

To learn how to assess and identify risks of forced labour in pre-employment, during employment and post-employment practices by using the guiding principles and the checklist for assessing compliance (Chapter 4 and Appendix V of the employers' guide, respectively) as practical compliance checklists.

Approximate time

40 minutes.

Materials and tools

- Checklist for assessing compliance in Appendix V of the employers' guide.
- Flipchart papers and marker pens.
- Handout 4(a).
- Handout 4(b).

Tasks and arrangements

Participants have already been introduced to the fair recruitment and employment guidelines and potential good practices, as well as the compliance checklist before this exercise.

- Facilitator to share the objectives and methodology of the exercise.
- Participants to be divided up into groups of 3 – 6 persons.
- Some of the group to work on question 1 and the other half to work on question 2.
- Each group are given 30 minutes to prepare a list of questions to respond to the issues raised in the case in Handout 4(a).
- Appoint a rapporteur to present in plenary for five minutes.
- Reconvene in plenary after 30 minutes when the groups are ready.
- Each group to introduce their list of questions and other responses.
- Facilitator to facilitate the discussion and invite other participants to ask questions or comment on the presentations.
- Handout 4(b) to be distributed to participants at this stage.
- Facilitator to add points not mentioned by the groups, with reference to handout 4(b): Response to exercise 4.

Round up the discussion

Preventing and addressing forced labour in company practices requires careful monitoring of recruitment, employment and sourcing practices. The guiding principles in Chapter 4 of the employers' guide and the checklist for assessing compliance in Appendix V of the guide can be used as a practical checklist for reviewing practices both in one's own company and its supplier companies.

Handout 4(a): Case study 3

Assessing risks of forced labour in your operations

You are the human resource manager of East Tech, a company located in Klang Valley, producing electronic parts for mobile phones and computers for exports to the US and EU. The total workforce in the company is around 120, and more than 80 per cent are migrant workers, mostly from Nepal and India. Due to the media reports about forced labour allegations in Malaysia, most of the buyers are very concerned and stressed about their zero tolerance to forced labour. Some of them have issued their sourcing policies and Suppliers' Code of Conduct to the company. The management has informed all the heads of departments and managers to ensure that the company or its suppliers would not be involved in any forced labour practices.

The company has recently received more orders from customers in Europe, but 30 of the migrant workers are due to go back to their home countries in two months. You have been instructed by the management to engage an employment agency to recruit 50 migrant workers to fill the vacancies and to meet the increased demand. You have contacted a few employment agencies and are due to meet them to decide which agency to engage for such assignment.

Question 1.

Risk of forced labour in recruitment practices - engaging a recruitment agency

A new recruitment agency comes to meet you with a proposal. She said her agency can help your company to recruit migrant workers from Nepal at 20 per cent lower cost than what other suppliers in the market are offering, and that the migrant workers would arrive within two months from the signing of the contract between the company and her agency. While cost comparison and short processing time are the important criteria to consider when selecting the recruitment agency, there are other criteria and questions you should ask to ensure that your company will not be exposed to reputational risk by engaging a recruitment agency that is involved in deceptive or coercive practices.

Review the guiding principles and best practices in Chapter 4 of the **employers' guide**, and make a list of questions you should ask the recruitment agency before accepting her proposal.

Question 2.

Risks of forced labour in engaging a supplier

Due to the increased orders from Europe, the current workforce would not be able to meet the demand of the customers. The company values the relations with the customers and want to make sure it can supply the required volume of goods within the timeline requested. The production manager came to see you. He told you that he was instructed by the management to source a local supplier that can produce the goods at a competitive rate to complement company production so to meet customers' demand, while maintaining the profit for the company.

The production manager told you he has met three suppliers, and **Supplier B** seems to be the most competitive as it can produce the required unit of goods at the rates 30 per cent lower than the other suppliers. However, as the management has recently stressed about the no-forced labour policy, the production manager wants to know how to ensure that supplier B is not involved in any forced labour practices so as not to expose the company to any reputational risk.

Review the guiding principles in Chapter 4 of the employers' guide, and make a list of questions for the production manager to ask **Supplier B** before accepting his proposal.

Handout 4(b): Response to case study 3

All products of East Tech are for export to the US and the EU, and the customers have expressed concern about allegations of forced labour in Malaysia. They have issued sourcing policies and a code of conduct and stressed their zero tolerance policy toward forced labour. The management of East Tech informed all heads of departments and managers to ensure there is no risk of forced labour in the company operations or its suppliers. Thus careful vetting of potential suppliers is important before entering into a business relationship. Unusually cheap offers from a potential new supplier should alert the company to check whether this company carries out its business in full compliance with the law. It is thus advisable for the company to have a sourcing policy or practice that includes a labour and social clause, including the prohibition of child and forced labour.

The guiding principles in Chapter 4 and the Checklist on compliance in Appendix V of the **Employers' Guide** can be used as tools for assessing risks of forced labour in recruitment, employment and sourcing practices of one's own company, or those of one's supplier companies.



Checklist for assessing compliance¹²

A YES or DON'T KNOW answer to any of the questions in **RED** indicate that the issue should be given attention for further consideration, or needs to be addressed to prevent potential allegations of forced labour.

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

The complete checklist for assessing compliance contains questions for recruitment agencies and company management and internal departments and includes all stages from pre-employment, during employment and post-employment (Appendix V of the employers' guide).

However, for this case study, some of the key questions for East Tech to ask the recruitment agency include these questions in the succeeding checklist. (Note that this is not the complete checklist. See employer's guide for the copy of the complete checklist.)

¹² Adapted from ILO; VCCI: *Preventing forced labour in the textile and garment supply chain in Vietnam: Guide for employers. Annex 1: Red flags checklist for compliance assessment* (Hanoi, 2016).

Assessment of pre-employment practices			
Pre-employment practices	Yes	No	Don't know
Recruiting migrant workers through recruitment or employment agencies			
Background check			
1. Are you aware of the recruitment agency's policies and practices?			
2. Is the agency licensed?			
3. Is the agency a member of a national or international employment agencies association that have received certification for ethical recruitment practices from reputable certification bodies?			
Cost structure			
4. Is the fee structure of the agent in line with the market rate?			
5. Is the fee charged to you inclusive of all recruitment costs - work permit, migrant worker's levy, medical, air ticket, agency fee and related documentation?			
6. Is the agent charging any recruitment fees to the workers?			
7. Is the fee charged by the agent to the worker in accordance to the rules and regulations of the country of origin?			
8. Does the agent provide loans to worker who cannot afford the recruitment fee?			

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

Pre-departure and post-arrival orientation

19. Has the worker attended the pre-departure orientation before leaving the source country?			
20. Have you seen the content of the pre-departure orientation?			
21. Does your company provide post-arrival orientation to all migrant workers upon their arrival in Malaysia?			
22. Is the post-arrival orientation provided in the local language of the worker?			
23. Is the time spent on post-arrival orientation training considered working hours and paid?			
24. Does the company have an on-site coordinator who is conversant in both the local language as well as the language of the worker?			

Fair and transparent contract

25. Is a written contract of employment provided to the worker in a language she/he can understand?			
26. Does the employment contract clearly indicate worker's wages, working hours, rest day and other terms and conditions of employment in accordance to the Employment Act 1955 and other relevant laws?			
27. Are migrant workers treated fairly and equally in a similar manner as local workers and do they have the same terms and conditions of employment?			

Module 5: Employers' actions against forced labour



Learning objectives

- To know what actions can be taken by companies in addressing, preventing and eliminating the risk of forced labour.
- To gain an understanding of company policy and codes of conduct and how to develop and implement such measures.
- To gain an understanding of the role of employers' organizations in combating forced labour and how it could support their members.



Methodology

1. Discuss **slide presentation 5**: Employers' actions against forced labour.
2. Engage participants for **exercise 5**: Action planning.



Materials

- Slide presentation 5: Employers' actions against forced labour.
- Handout 5(a): Action planning.
- Handout 5(b): Response to action planning.
- Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for Malaysian employers (Chapter 5).



Suggested duration

90 minutes



Highlights for Slide presentation 5: Employers' actions against forced labour

Company level action against forced labour

Understand what is forced labour

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 addressing or preventing forced labour is relevant to the company and how forced labour manifests itself at the enterprise level and within the supply chain.

It is also important to know the employers' legal obligations under Malaysian laws and regulations related to forced labour and human trafficking, and the penalty for violations.

Know buyers' code of conduct and sourcing policies

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



Developing a company policy addressing and preventing forced labour

The statement, policy or code of conduct, either a comprehensive document or a brief statement is a means for companies to formally (though voluntarily) commit themselves to responsible business practices including prohibition of forced labour.

A number of initiatives provide free advice on the steps to take if a company decides to do so.¹³ Some of the steps include:

- Conducting an assessment of the company and business partners to determine the degree to which both adhere to national laws and are consistent with industry good practice;
- Establishing a company-wide working group to develop a draft code that expresses the company's commitment to good and responsible labour practices including prohibition of forced labour;
- Organizing internal consultations on the draft and subsequently consulting with appropriate external partners or stakeholders;
- Finalising the code, present to management for endorsement; and
- Communicating and sharing with staff, business partners, business associations, employers' organizations, the media, and other stakeholders, including workers and their representatives that it applies to all levels of a company's operations and supply chains.

The guidelines provided in Chapter 4 of the employer's guide will be useful in drafting the forced labour provisions of the company policies or codes of conduct. Appendix 3 provides lists of selected company statements, policies and codes of conduct that include forced labour provisions. You may also contact the Malaysian Employers Federation (MEF) or the ILO for advice.

¹³ For further information on developing company guidelines, contact the ILO, MEF, Global Reporting Initiative, Social Accountability International or the handbook and toolkit for the World Bank's International Finance Corporate (IFC) Performance Standard 2.

Implementing the policy

Whether a company has developed its own or received the code from their buyers, having a policy is just the first step. Implementing this policy and ensuring the company and its suppliers operate based on the newly established standards could be a much harder task. Refer to Chapter 5 of the employers' guide for details.

- **Internal audit**

You may refer to the checklist for assessing compliance in Appendix V of the employer's guide for reference.

- **Adoption into company recruitment and employment practices.**

- **Staff training.**

- **Communicating with stakeholders.**

- **Application to suppliers and subcontractors.**

Compliance with the code should be made as a condition of business and integrated into contracts with suppliers, subcontractors and relevant business partners such as the recruitment agencies, and used as a condition of evaluation, selection and maintenance as a supplier to the company. Suggested steps to address risks of forced labour in the supply chain include:¹⁴

- **Screening prospective suppliers.**

- **Communicating the requirements 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.**

- **Monitor and working with suppliers to improve conditions.**

- **Warning and dropping suppliers that fail to improve.**

Handling forced labour related complaints

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

¹⁴ Adapted from ILO; *Eliminating child labour - Guides for employers*. (Geneva, 2007).

Monitoring and implementing 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 re-occur.

Documentation

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

Working with others

A company may wish to work in partnership with other companies, industry associations or employers' organizations in its effort to address forced labour, including developing an industry-wide approach to forced labour or participate in a collective policy statement by an employers' organization or group of companies.

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

Employers' organizations and industry associations could be key players in the efforts to eliminate forced labour. At the global level, employers' organizations have supported the adoption of the ILO Convention against forced labour and the promotion of the Declaration on Fundamental Principles and Rights at Work.¹⁵ The International Organization of Employers (IOE) has adopted global policies and developed guidance and tools to support its members in addressing forced labour.¹⁶

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

- Developing a strategy or action plan.
- Providing information and advice.
- Raising awareness and providing training.
- Promoting good practices and compliance to laws and regulations.
- Policy influence.
- Collaboration and engaging with others.

(Refer to Chapter 5 of the employers' guide for detailed description of the initiatives.)

¹⁵ IOE; *Forced labour: Why it is an issue for Employers* (Geneva, 2010).

¹⁶ The International Organization of Employers (IOE) is one of the main representative organizations of the private sector in the world, it consists of 150 national employers' organization members from 140 countries (as of July 2018). It is the employers' secretariat at the International Labour Conference (ILC) and participates actively in social and labour policy debate in the ILO, across the UN and multilateral system, and in the G20. The Malaysian Employers' Federation (MEF) is a member of the IOE.

Exercise 5

Action planning

Objectives

To show the employers how to put into practice what they have learned during the training and take actions to ensure their own operations and that the supply chains are free from forced labour.

Approximate time

75 minutes.

Materials and tools

- Flipchart paper and marker pens.
- Handout 5(a): Action planning.
- Handout 5(b): Response to action planning.
- Examples of company's corporate statement, policies and code of conduct.

Tasks and arrangements

- Divide the participants in groups by company, sector or industry.
- Share the objectives of the exercise with participants and distribute **Handout 5(a): Action planning**.
- Ask each group to discuss the questions and write up an action plan for preventing and addressing forced labour in their company's supply chain or location.
- Encourage each group to be as practical as possible in defining measures and steps for preventing and addressing forced labour.
- Each group to prepare a presentation on their action plan and select a spokesperson to present it in plenary for a maximum of five minutes.
- Reconvene in plenary when the groups are ready after 60 minutes.
- Each group to give a brief presentation.
- **Handout 5(b): Response to action planning** can be handed out at this stage.
- After the presentations, invite other participants to ask questions or comment on the presentation and facilitate discussion.

Round up the discussion

- Corporate statements, policies and codes of conduct are increasingly used by companies to demonstrate their commitment to responsible business practices including prohibition of forced labour.¹⁷ These are formal statements of principles that govern the conduct of an enterprise and usually cover issues related to ethical, human rights, labour practices, environmental and community, etc.
- It is important for companies, especially the export oriented or suppliers to the global buyers to have a policy or code of conduct that demonstrates their commitment to responsible business practices including prohibition of forced labour.
- The company policy or corporate code of conduct also serves a tool to guide the conduct of the companies to ensure labour practices in their operations and those of their suppliers are legally compliant and in accordance with the statement or policies.
- For smaller companies, especially suppliers to the MNEs, they may be subjected to the buyers' sourcing policies or buyers' code of conduct, and they buyers may also conduct the audit of their business practices including recruitment and treatment of workers.

¹⁷ The concept of responsible business practices is embedded in the ILO MNE Declaration (5th edition, 2017) that provides guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices. The concept is also centred around other international standards notably OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, IFC Performance Standards, UN Global Compact Principles, and the ISO 26000 Guidance on Social Responsibility.

Handout 5(a)

Part of the case study in Handout 4(a) is produced as follows:

You are the human resource manager of East Tech, a company located in Klang Valley, producing electronic parts for mobile phones and computers for exports to the US and EU. The total workforce in the company is around 120, with more than 80 per cent migrant workers, mostly from Nepal and India.

Due to the media reports about forced labour allegations in Malaysia, most of the buyers are very concerned and have stressed about their zero tolerance to forced labour. Some of them have issued their sourcing policies and suppliers' Code of Conduct to the company.

The management has informed all the heads of departments and managers to ensure that the company or its suppliers would not be involved in any forced labour practices.

The company is looking to expand their market to Australia and New Zealand. The issue of responsible business practices particularly the prohibition of forced labour is becoming important as requirements for export.

With the passing of the legislation in the US, UK and recently in Australia in November 2018 (Modern Slavery Act), which requires companies to disclose how they are addressing forced labour in supply chains, means that buyers from these countries would only source products from suppliers that can demonstrate that they respect the core labour standards including prohibition of forced labour.

In order to demonstrate the company's commitment and compliance as a responsible business that respect core labour standards, the company is looking at some measures of informing the buyers and suppliers of such commitments. The management has instructed you to consider the following:

Questions:

1. In developing company measures that could demonstrate and inform buyers and suppliers of company commitments towards responsible business practices, particularly prohibition of forced labour, what are the issues or actions to be considered?
2. In consideration of the buyers' sourcing policies and their suppliers' code of conduct, do you think it is necessary for the company to develop its own policies, statement or code of conduct?
3. What are the actions required to implement such commitments, including their application to company's suppliers?
4. Your company is a member of MEF. You heard from business associates that MEF is actively involved in the issues of migrant workers and forced labour in Malaysia. What are the services or support you could avail from MEF?

You may refer to Chapter 5 of the employers' guide and the examples of selected companies' statements, policies and suppliers' code of conduct.

Handout 5(b): Response to action planning

1. The issues or actions to be considered in developing a company's measures to inform buyers and suppliers of the company commitment to ensure there is no forced labour practices in your operations and that of your suppliers include:
 - To have a good understanding of **what forced labour is, the context in Malaysia**, the legal obligations under Malaysian laws and regulations related to forced labour and human trafficking, as well as an understanding of international and regional legal frameworks and related initiatives since the company is supplying to the international buyers.
 - **Knowledge of buyers sourcing policies and codes of conduct**, as they might be stricter than the obligations under Malaysian laws and regulations.
 - **Developing company policy strictly prohibiting forced labour** and human trafficking in all company operations.
 - Implementing the policy including the suppliers.
 - Handling complaints and grievances.
 - Monitoring and corrective action.
 - Documentation.
 - Working with others.

The elimination of all forms of forced and compulsory labour (ILO Conventions No. 29 and 105 and the ILO Forced Labour Protocol) is one of the fundamental rights of the ILO Core Conventions. The company may consider other core issues which include:

- Freedom of association and the effective recognition of the right to collective bargaining (Convention No. 87 & No. 98).
- The effective abolition of child labour (Convention No. 138 & No. 182).
- The elimination of discrimination in respect of employment and occupation (Convention No. 100 & No. 111).

In addition to labour and human rights issues, the company may also look at other issues related to responsible business practices such as safety and health, environment, ethics, etc. in developing company measures.

2. East Tech is a medium size company with 120 workers, it is up to the company to decide if it needs a policy or code of conduct related to forced labour. Such policy or code of conduct could take into consideration that:

- It is a supplier to global buyers and the requirement of responsible business practices including prohibition of forced labour is becoming more important. It will be good for the company to have its own policy to demonstrate its commitment.
- Since the release of the Verite's report on forced labour in the electronic sectors, global buyers have imposed various standards on suppliers in Malaysia to ensure their products are not associated with forced labour. A statement or policy of the company would be a formal way of informing the buyers, suppliers and other stakeholders about company commitments towards the elimination of forced labour, and as a responsible employer.
- The company is looking at expanding its market to Australia, which has recently passed the Modern Slavery Act. It requires companies in Australia to disclose the measures taken to prevent forced labour and human trafficking, including those of its overseas suppliers. A company statement or policy of such commitment would be attractive to the potential buyers.
- Even though the company only has 120 workers, it is expanding and would foresee more workers to be recruited to meet the growing demand.
- While developing a company's statement or policy may seem difficult at the beginning, following guidelines and learning from other companies' experiences could help. Here are some of the steps to be considered:

- Assessment of the company practices for compliance to laws and suppliers' code of conduct.
 - Develop a draft code that expresses the company's commitment to good and responsible labour practices including the prohibition of forced labour. It is preferable to develop a policy that covers the core labour issues (core labour standards) and other issues related to responsible business practices such as safety and health, environment, ethics, etc. There are many examples including buyers' supplier code of conduct for reference.
 - Internal and possibly external (other related stakeholder) consultation.
 - Presentation to management and board for endorsement before publishing it.
 - Once finalised and endorsed, make public announcements including communicating and sharing with staff, business partners, buyers, suppliers, media, and other stakeholders, about the new policy and company commitment that applies to all level of the company's operation and supply chains.
3. To implement the company's policy or buyers' codes of conduct, the following are some of the recommendations (with reference to Chapter 5(A)(4) of the employers' guide):
- Internal audit.
 - Adoption into company recruitment and employment practices.
 - Staff training.
 - Communicating with stakeholders.
 - Application to suppliers and subcontractors, the following are the suggested steps and issues to consider:
 - Screening prospective suppliers if they comply with the code;
 - Communicating the requirements to the suppliers;
 - Contracts with suppliers should set out the basic labour conditions, specifically the prohibition of forced labour and trafficking in persons, and the consequences of breaching the conditions;
 - Understanding the suppliers including how their own actions impact on supply chain working conditions;
 - Monitor and working with suppliers to improve conditions; and
 - Warning and dropping suppliers that fail to improve.
 - Monitoring and corrective actions.
 - Handling of complaints and grievances.
 - Documentation.
 - Working with others.
4. The services or support of MEF for the member's companies may include:
- Information, advice and guidance.
 - Awareness raising.
 - Training.
 - Sharing of good practices and legal compliance.
 - Advocating for interest of employers in the recruitment and employment of migrant workers.
 - Others, etc.

Business responsibility on preventing and addressing forced labour in Malaysia

Training facilitator's guide

This guide is intended to be used by facilitators to deliver interactive training to employers on how to take practical actions to assess, identify and manage risks of forced labour in company operations, including supply chains. This complements the ILO-MEF employers' guide entitled *Business responsibility on preventing and addressing forced labour in Malaysia: A must-read guide for employers*.



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