



Definition and Legal Background - Forced and Bonded Labour (Malaysia)

There is no forced, bonded or trafficked labour

Workers are employed of their own free will and all workers have a signed contract and understand the terms and conditions of their contract. These conditions must comply with basic labour standards such as minimum wage and standard working hours. The right to freedom of movement is not restricted in any way. Where advances and loans are used these are legal, transparent, in the interests of workers and the repayment terms are fair.

- EF Respect for Workers Principle , Principle 4

DEFINITIONS & LEGAL BACKGROUND (INTERNATIONAL)

Forced labour is defined as:

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

Source: ILO Forced Labour Convention (1930) (C29), Article 2(1)

The International Labour Organisation (ILO) has developed a list of indicators to show what elements suggest a worker is in a situation of forced labour.

The **11 indicators** are:

- 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

On a case-by-case basis, there could be one or more indicators present in a forced labour situation. For more information on these indicators, please refer to [ILO Indicators of Forced Labour \(2012\)](#).



Bonded labour/Debt bondage is defined in the *United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956*, under Section 1, Article 1(a) as:

“... the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”

LEGAL BACKGROUND - MALAYSIA

Some of Malaysia’s national laws and regulations that govern issues of forced / bonded labour are Passport Act 1966, Anti-Trafficking in Persons & Smuggling of Migrants (ATIPSOM – Amendment 2010), Employees’ Minimum Standards of Housing, Accommodations and Amenities (Accommodation and Centralized Accommodation) Regulations 2020.

The [Ministry of Human Resources](#) (MOHR) has also developed the [Employers Undertaking](#) that outlines the legal obligations of employers of foreign workers. Part VI of the Undertaking requires that employers do not hold and keep the passports of foreign workers in accordance with the Passports Act 1966 [Act 150]. More information on the Undertaking (in Malay) can be found on the [MOHR website](#). Moreover, employers are to provide lockers for the safekeeping of passports as stipulated in the Employees’ Minimum Standards of Housing, Accommodations and Amenities (Accommodation and Centralized Accommodation) Regulations 2020.

Third National Action Plan on Anti-Trafficking in Persons 2021-2025 (NAPTIP 3.0)

In 2021, the Ministry of Home Affairs launched NAPTIP 3.0 to eradicate human trafficking in the country. NAPTIP 3.0 comprises of four pillars - prevention, prosecution and enforcement, protection and partnership.

National Action Plan on Forced Labour (NAPFL) 2021-2025

MOHR also launched the NAPFL which focuses on awareness, enforcement, labour migration as well as access to remedy and support services with the aim to eliminate forced labour in Malaysia by 2030. The NAPFL sets out actions to be carried out by government, employer and worker organisations as well as civil society. Legal compliance and enforcement related to forced labour will be improved and migration management, including recruitment practices, strengthened. Victims of forced labour will be provided with improved access to remedy, support and protective services. In addition, awareness and understanding of forced labour will be enhanced amongst workers, employers and the government, young people and the general public.

Passports Act 1966

A passport is a document issued by a sovereign nation in the name of its citizen. 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.

Passport retention is an offence under Section 12(1)(f):

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



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

Trafficking victims can also become victims of forced labour when they are placed in exploitative work situations. Under the ATIPSOM 2010, Section 2, trafficking in persons is defined as:

"... all actions involved in acquitting or maintaining the labour or service of a person through coercion, and includes the acts of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this act"

Additionally, any person, who traffics in persons (not being a child), for the purpose of exploitation, by one or more of these means ("threat", "use of force", "abduction", "fraud", "deception or abuse of power", "abuse of the position of vulnerability") – commits an offence and shall be convicted of imprisonment for a term not less than 3 years but not exceeding 20 years, and liable to a fine

Sourced: ATIPSOM 2010, Section 13

Employees' Minimum Standards of Housing, Accommodations and Amenities (Accommodation and Centralized Accommodation) Regulations 2020

Employers are to provide lockers at employees' accommodation for personal passport safekeeping. The regulation under Section 4 (1)(c) states that:

"Any employer ... shall provide an accommodation ... with the following basic amenities which shall not be shared ... A locked cupboard of not less than 0.35 metres length, 0.35 metres width and 0.9 metres height, for the safe custody of the employees' valuables including passport which may be accessible by the employees at any time."

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