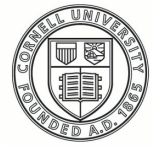
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Foreign Labor Trends: Malaysia

U.S. Department of Labor

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Foreign Labor Trends

Malaysia

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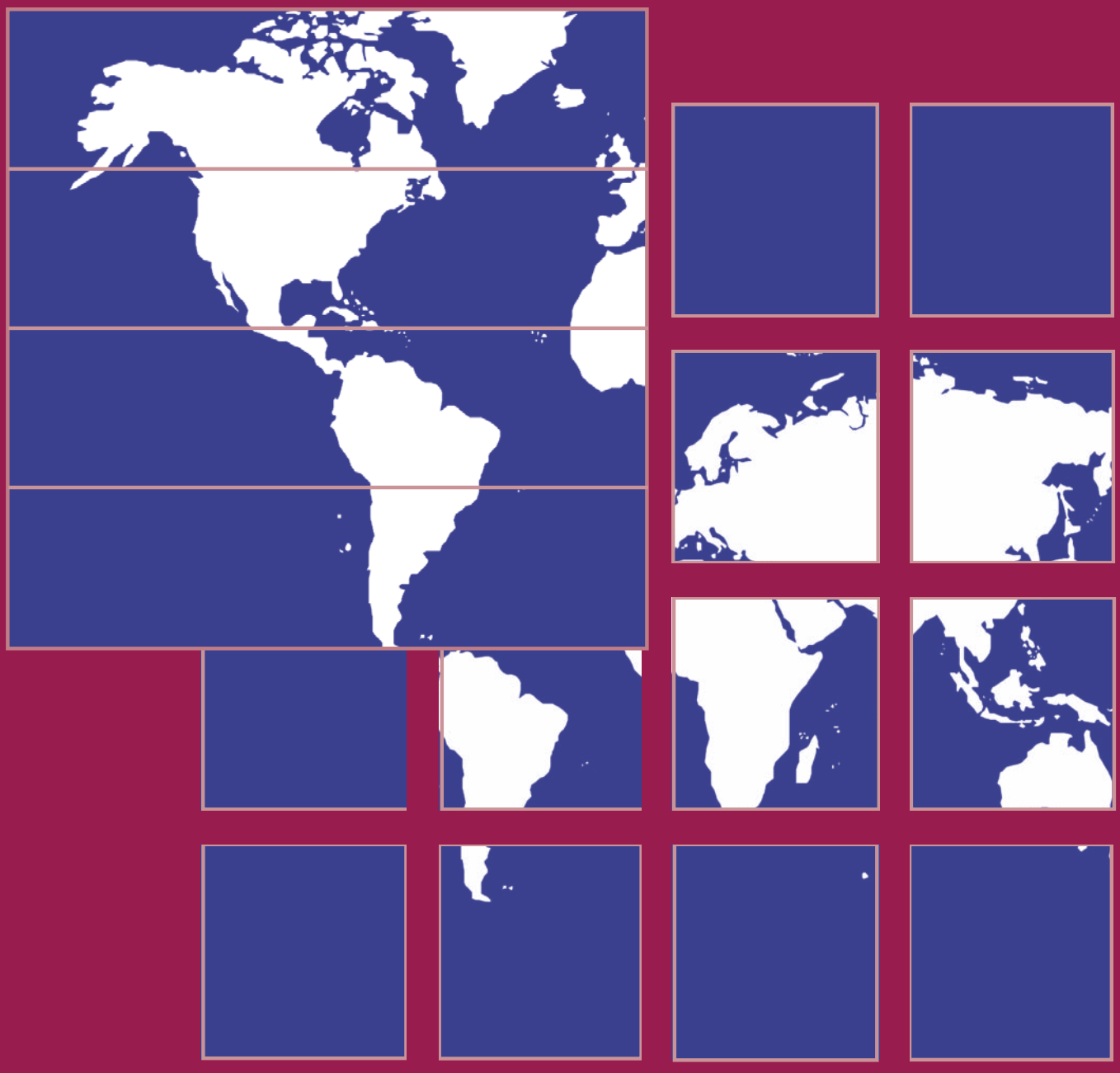

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KEY LABOR INDICATORS

Malaysia 2002

	INDICATOR	2000	2001	% CHANGE
1.	Per capita GDP, current prices (US$)[1]	3,848	3,678	-4.4
2.	—, in agriculture (%)	12	14	16.7
3.	—, in manufacturing (%)	46	42	-8.7
4.	—, in services (%)	42	44	4.8
5.	—, (RM)	14,623	13,977	-4.4
6.	Population, total (millions)	23.3	23.8	2.1
		1995	**2000**	
7.	—, major ethnic groups (%)			
	Malay and other native ethnic groups (%)	57.6	62.6	8.7
	Chinese (%)	25.7	24.0	-6.6
	Indian (%)	7.3	7.0	-4.1
	Non-Malaysian citizens (%)	6.3	5.3	-15.9
	Others (%)	3.1	1.1	-64.5
8.	—, in major urban areas (%)	55.1	62.0	12.5
		2000	**2001**	
9.	Birth rate (per thousand population)	24.5	23.5	-4.1
10.	Life expectancy at birth, total	72.6	72.8	0.3
11.	—, male	70.2	70.3	0.1
12.	—, female	75.0	75.2	0.3
13.	Adult literacy rate (%)	93.8	n/a	~
14.	Labor force, civilian, total (millions)	9.6	9.9	3.1
15.	—, male (millions)	n/a	n/a	~
16.	—, female (millions)	n/a	n/a	~
17.	Employment, civilian, total (millions)	9.3	9.5	2.2
18.	—, in industry (%)	36.1	36.0	-0.3
19.	—, in export processing zones (%)	n/a	n/a	~
20.	—, in agriculture (%)	15.2	14.8	-2.6
21.	—, in services (%)	48.7	49.2	1.0
22.	Unemployment rate (%)	3.1	3.6	16.1
23.	Underemployment rate (%)	n/a	n/a	~
		1999	**2000**	
24.	Labor productivity, manufacturing (% change)	9.1	11.1	22.0
		1998	**2001**	
25.	Work-related accidents and illnesses (000)	85.3	90.8	6.5
26.	Days lost from industrial disputes (000)	10.6	6.1	-42.5
27.	Minimum wage rate (RM)[2]	n/a	n/a	~
28.	Minimum wage rate (US$)	n/a	n/a	~

[1] Figures were provided in Malaysian ringgits (RM) and were then converted to US$ and divided by total population.

[2] Malaysia has no national minimum wage.

Malaysia 2002

	INDICATOR	2000	2001	% CHANGE
		1999	**2000**	
29.	Average monthly earnings, manufacturing (US$)	365	403	10.4
30.	Hourly compensation costs for production workers in manufacturing (RM)	n/a	n/a	~
31.	—, (US$)	n/a	n/a	~
32.	Hourly compensation costs for laborers (US$)	n/a	n/a	~
33.	—, clerical (US$)	n/a	n/a	~
34.	—, mechanic (US$)	n/a	n/a	~
35.	—, commercial assistant (US$)	n/a	n/a	~
36.	Supplementary benefits as % of manufacturing earnings	n/a	n/a	~
37.	Average hours worked per week	n/a	n/a	~
38.	Unionization of labor (%)	8.15	8.26	1.3
39.	Average personal income per year at current prices (US$)	n/a	n/a	~
40.	Average disposable income after taxes and withholding (US$)	n/a	n/a	~
41.	Percent of population beneath poverty level	8.5	5.5	-35.3
		2000	**2001**	
42.	Consumer price index (%)	1.6	1.4	-12.5

_____
n/a = not available

Exchange rate: US$ 1= 3.80 Malaysian ringgits (RM) during 1999, 2000, and 2001.

Sources: Department of Statistics Malaysia (http://www.statistics.gov.my); Ghani, Rohayu Abd., Rasidah Arshad, Fazli Idris, Rozhan Othman, Noreha Halid, June M. L. Poon, and Ayu Trisna, "Salary and Wages in Malaysia," (http://www.lib.unb.ca/Texts/JCIM/vol4_2/ghani.pdf); *Key Indicators of the Labour Market 2001-2002*, International Labour Office; LABORSTA, International Labour Office (http://laborsta.ilo.org); Malaysian Population Census 2000; Ministry of Finance Economic Report 2001/2002; Ministry of Human Resources, Malaysia (http://www1.jaring.my/ksm/index.html); Malaysian Trades Union Congress (http://www.mtuc.org.my); "Reported Accidents to SOSCO from 1993-1998," National Institute of Occupational Safety and Health (http://www.jaring.my/NIOSH/mosh/OSH.htm); and *The Eighth Malaysia Plan 2001-2005*, Economic Planning Unit, Prime Minister's Department (http://www.epu.jpm.my/rm8/front_rm8.html).

SUMMARY

Malaysia is a federation of 13 states and three territories with a parliamentary system of government based on multi-party elections. The National Front coalition has held power for over 40 years, led by Prime Minister Mahathir Mohamad since 1981. The king is the head of state and the nominal head of the armed forces, but his role in the government is largely ceremonial. On April 25, 2002, Syed Sirajuddin Syed Putra Jamalullail was installed as king, following the death of Sultan Salahuddin Abdul Aziz Shah in November 2001.

Malaysia has a tripartite labor system. The Ministry of Human Resources formulates labor policy and implements and enforces the labor law. In addition, the trade union federations and employers organizations represent their constituents regarding labor matters by giving advice and guidance, as well as actively participating on government advisory commissions.

There are 591 unions in Malaysia, with a membership of approximately 800,000. However, the Government continues to receive criticism of its longstanding policies regarding freedom of association and the right to organize. These policies prohibit the formation of unions in "pioneer industries" during the first 10 years of operation and ban national unions from representing workers in the electronic sector.

While Malaysia has recovered from the Asian economic and financial crisis of 1997, it only experienced minor growth (0.4 percent) in 2001 as a result of the global economic slowdown. The country's industrial output contracted for 11 months before showing a 2.9 percent year-on-year increase in February 2002. The unemployment rate stood at 3.6 percent in 2001, the highest level in 10 years.

The country has a labor force of 9.9 million, of which migrant labor constitutes approximately 20 percent. Due to the world economic slowdown and increased unemployment in 2001, the Government of Malaysia revised its policy on foreign workers so that priority would be given to Malaysians seeking employment. The Government has limited documented workers to a three year stay and is cracking down on unregistered foreign workers, with new amendments to the Immigration Act calling for harsh penalties.

Malaysia has developed a social safety net program that protects workers against loss of income due to sickness, injury, old age, and death. However, the country has no unemployment compensation program in place. The Employees Provident Fund (EPF) is a compulsory savings scheme, aimed at ensuring monies for its members for retirement, housing, education, and medical treatment. Members have complained of receiving low dividends from their EPF accounts and have criticized the Government for requiring that the majority of investments be placed in government securities and allowing no investment in foreign countries.

In 2001, the Constitution was amended to prohibit gender discrimination in Malaysia. In addition, the Government has instituted a voluntary Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. Only one percent of registered companies have adopted the code. While there have been calls for sexual harassment legislation to be formulated and implemented, employers have criticized such legislation as being restrictive to the management of labor relations.

DESCRIPTION OF LABOR INSTITUTIONS

Government

The Ministry of Human Resources is the lead Malaysian government agency on labor issues. Its mission is "to develop a competitive workforce in an environment of industrial harmony and social justice." The Ministry is responsible for formulating labor policy, as well as monitoring compliance with and implementation of the Constitution and the labor law, which govern labor management relations, child labor, forced labor, hours of work, and occupational safety and health. As part of the Ministry, the Industrial Court sets principles and guidelines for labor law in the private sector through its decisions and awards. Additionally, the Ministry promotes both job creation and job-related training. Dr. Fong Chan Onn holds the position of Minister of Human Resources.

In performing its tasks, the Ministry solicits and receives advice from other government agencies, as well as from the representatives of employers and workers. The National Labor Advisory Council (NLAC) is a tripartite organization which meets on a regular basis to discuss issues pertaining to labor and manpower and to make recommendations to the Minister of Human Resources with a view to fostering a harmonious industrial relations environment. The National Council for Occupational Safety and Health (NCOSH) is a tripartite body which studies matters regarding the safety, health, and welfare of employees in the workplace. In addition, the National Vocational Training Council is working to establish a coordinated and comprehensive system of vocational and industrial training.

The Ministry of Human Resources actively participates in the International Labor Organization (ILO) and has a Labor Attache stationed in Geneva. The Ministry also manages responsibilities associated with Malaysia's participation in the Association of the South East Asian Nations (ASEAN) and the Asia Pacific Economic Cooperation (APEC) forum on labor and social issues.

Employers

The Malaysia Employers Federation (MEF) is the central organization of private sector employers. It was originally founded in 1959 as the Federation of Malaya Industrial & Commercial Employers' Consultative Association but subsequently changed its name to the Malayan Employers' Consultative Association (MECA). In 1977, MECA was renamed the Malaysia Employers Federation. The MEF represents more than 10 sectoral employers associations and 3,480 corporations, comprising all types of economic activity.

The primary function of the MEF is to promote and safeguard the rights and interests of employers. It provides members with advice, guidance, and assistance in regards to the labor law and industrial relations matters and has created an Industrial Relations Panel, comprised of personnel and industrial relations practitioners, to formulate industrial relations policies. The MEF assists members in negotiating collective agreements, may represent members at Industrial Court hearings, and can make representations on behalf of members at the Labor Courts. Additionally, the Federation conducts training courses on a regular basis.

The MEF is a member of NLAC, NCOSH, and the board of the Employees Provident Fund (EPF). The Federation also participates in the Social Security Organization (SOSCO), the National Productivity Corporation, and the Human Resources Development Council. In addition, the MEF takes part in international activities, including participation in the ILO, the International Organization of Employers (IOE), and the ASEAN Confederation of Employers (ACE).

Trade Unions

The Malaysian Trades Union Congress (MTUC) is the most representative workers' organization in the country. Founded in 1949, MTUC is the oldest trade union federation in Malaysia and represents roughly 500,000 workers from all major industries and sectors. It has three main objectives: (1) to promote the interest of its affiliate unions to improve the economic and social conditions of workers; (2) to ensure that policies are developed and action taken towards ensuring full employment and establishing a minimum wage, a legal maximum working week of 44 hours, and training centers for workers; and (3) to establish Social Security measures that provide retirement benefits, as well as protection against sickness, unemployment, old age, and injury. MTUC is actively involved in organizing workers, helping unions obtain recognition, and assisting unions in their negotiations with management. Its Industrial Relations Committee examines trends in industrial relations, amendments to labor legislation, and suggests methods to improve the industrial relations' position of workers. MTUC also takes part in the government's advisory councils, such as NLAC, and represents Malaysia's labor interests at the ILO.

The National Union of Plantation Workers (NUPW) is an affiliate of MTUC but also is a member of NLAC. It was created in 1954 with the merger of the Alor Gajah Labor Union, the Johor State Plantation Workers Union, the Malacca Estate Workers Union, the Malayan Estate Workers Union, and the Plantation Workers' Union of Malaya. It represents 50,000 workers, most of whom are ethnic Indians. A primary objective of NUPW is to improve the quality of life of plantation workers to be achieved through industrial relations and collective bargaining. In 2001, NUPW and the Malaysian Agricultural Producers Association (MAPA) for the first time negotiated a minimum monthly wage for palm oil harvesters and mill workers.

The Congress of Unions of Employees in the Public and Civil Services (CUEPACS) is a federation of 130 public sector employee trade unions at the national and state levels. It was previously affiliated with the Malaysian Labor Organization (MLO), which was disbanded in 1996. Its largest member is the National Union of the Teaching Profession (NUTP), which represents 105,000 teachers. CUEPACS negotiates annually with the Public Service Department regarding wages for civil servants, with their recommendations being sent to Parliament for final wage determination. Additionally, it participates in NLAC and is on the board of the Employee Provident Fund. CUEPACS also takes part in ILO activities.

DEMOGRAPHY AND THE LABOR FORCE

In mid-2001, the population of Malaysia numbered 23.8 million, with 33 percent under the age of 15. It is projected that the population will grow to 33.7 million in 2025. The labor force increased from 9.6 million in 2000 to 9.9 million in 2001.

Migrant labor makes up approximately 20 percent of the Malaysian workforce. The country currently has between 1.7 million to two million foreign workers, of whom 770,000 are legal. The foreign workers are primarily from Indonesia, the Philippines, Bangladesh, Burma, Thailand, and India. They are employed in factories, in the construction industry, and on plantations. Others work in small businesses in Malaysia's informal sector. Female immigrants typically are employed as domestic servants.

In 2001, the Government revised its policy regarding foreign workers so that job priorities would be given to Malaysians in the face of the world economic slowdown. Previously, documented foreign workers in the manufacturing, construction, and services industries were allowed to work for six years in the country, and those working on plantations were given a

seven year work permit. Now, registered foreign workers, with the exception of domestic servants, only may stay in Malaysia three years. In October 2001, the Government announced plans to deport approximately 300,000 foreign workers.

The Government of Malaysia also is cracking down on undocumented immigrants, following some violent incidents earlier this year. In addition, the Government is concerned with terrorism, noting that rebels from the Philippines have sought refuge in Sabah and that Indonesian Islamic militants have been found to have ties to Malaysia. Shipping is restricted to designated seaways, allowing officials to check for smugglers. Illegal squatter homes have been demolished, and thousands of illegal immigrants were deported between January and April 2002. The Government has instituted an amnesty period, in which undocumented immigrants can surrender to authorities without facing punishment before deportation. The amnesty period is expected to last until the Immigration Act is revised by Parliament. The proposed amendments call for whipping, jailing, or heavy fines to be imposed on immigrants found to be undocumented.

There also are significant numbers of Malaysian working abroad, although the numbers are not as high as other Southeast Asian countries. The principal host country is Singapore. While some Malaysian workers are housed in Singapore by their employers, a significant number commute daily from Johor Bahru, near the border.

ECONOMIC GROWTH AND EMPLOYMENT

Malaysia is an advanced developing country that became known during the 1990s as one of the fast-growing Asian "tiger economies," averaging 8 percent annual economic growth for nearly a decade. However, Malaysia was hit hard by the 1997 Asian financial and economic crisis, and the economy contracted by 7.4 percent in 1998. During that year, the Government adopted stimulative fiscal and monetary policies to promote economic recovery and established institutions to recapitalize distressed financial institutions and to remove nonperforming loans from the banking system. The economy recovered, posting an economic growth rate of 6.1 percent in 1999 and 8.3 percent in 2000. Due to a worldwide economic slowdown and a resulting drop in exports, the Malaysian economy grew only by 0.4 percent in 2001.

Manufacturing sales dropped 7.2 percent, from RM 333.4 billion (US$87.4 billion) in 2000 to RM 309.4 billion (US$81.4 billion) in 2001. The decrease was primarily due to low global demand for electrical and electronic products. Beginning in March 2001, Malaysia's total industrial output experienced 11 months of contraction but showed a yearly increase of 2.9 percent in February 2002. While the mining sector contracted 1.3 percent, the manufacturing and electricity sectors registered a growth of 3.8 percent in February 2002. In 2001, the service industry accounted for 49.6 percent of Malaysia's gross domestic product (GDP), manufacturing for 31.5 percent, agriculture for 8.6 percent, mining for 6.9 percent, and construction for 3.4 percent.

In 2000, the unemployment rate stood at 3.1 percent. In 2001, the jobless rate increased to 3.6 percent, the highest level in Malaysia in 10 years. Approximately 38,000 workers were retrenched in 2001. From January to May 4, 2002, another 11,754 workers were retrenched, of whom 9,434 were employed in the manufacturing sector. Most employers cited reduction for demand of their product, company reorganization, and closure as the reasons for retrenchment.

INVESTMENT

The Government of Malaysia encourages foreign direct investment, especially in export-oriented manufacturing and the high-tech industries. However, the Government has considerable discretionary control in approving investment projects. The Malaysian Industrial Development Authority (MIDA) screens all domestic and foreign proposals for manufacturing projects. MIDA determines project approval by reviewing various criteria: the size of the investment, the export-orientation of production, the percentage of local equity participation, the type of financing, the ability of existing and planned infrastructure to support the project, and the existence of a local or foreign market for the output. Applications for investment in other sectors are handled by the relevant government agency. Investment regulations are specified in the Promotion of Investments Act of 1986 and the Industrial Coordination Act of 1975.

The United States is the largest foreign direct investor in Malaysia. In 2001, the Government of Malaysia approved U.S. companies to invest approximately US$870 million, representing 13.4 percent of total approvals for the year. Japan was second, with US$865 million in approved investments.

Table 1: Approved Foreign Investment in Malaysia, 2000-2001 (U.S. dollars, millions)

Country	2000	2001	Total (2000-2001)
1. United States	1,972	870	2,842
2. Japan	758	865	1,623
3. China	100	781	881
4. Singapore	468	574	1,042
5. Netherlands	572	572	1,144

Source: Malaysian Industrial Development Authority (http://www.mida.gov.my).

Table 2: Foreign Investment by Sector, 2000-2001 (U.S. dollars, millions)

Sector	2000	2001	Total (2000-2001)
1. Electronics	2,687	2,479	5,166
2. Paper	56	812	868
3. Non-Metal	402	420	822
4. Chemicals	154	163	317
5. Scientific	---	138	138
6. Food Mfg.	141	134	275
7. Transport	72	129	201
8. Other	1,699	541	2,240
Total	5,211	4,816	10,027

Source: Malaysian Industrial Development Authority (http://www.mida.gov.my).

SOCIAL SAFETY NET

Government programs protect Malaysian workers against loss of income due to sickness, injury, old age or death. There are no welfare or unemployment compensation programs other than statutory termination benefits.

Employees Provident Fund

The Employees Provident Fund (EPF) is a compulsory savings scheme in Malaysia. First established in October 1951, it is the world's oldest national provident fund. Its primary aim is to ensure its members security and well being in old age. Additionally, members may use part of their EPF savings for their housing, education, and medical needs.

Participation in the EPF is mandatory for private sector employees and non-pensionable public sector employees. Foreign workers and expatriates earning less than RM 2,500 (US$657.89) per month also are required to contribute to the EPF, with the exception of foreign domestic servants. Coverage is voluntary for the self-employed, domestic servants, seamen, and pensioners. In 2001, there were 10.1 million contributors to the EPF. Employers contribute 12 percent of the employee's wages for Malaysian workers and RM 5 (US$1.32) per foreign worker and expatriate. All employees are required to commit 11 percent of their monthly earnings to the EPF. Self-employed persons pay between RM 50 to RM 5,000 (US$13.16 to $1,315.79).

Each EPF account is subdivided into three subaccounts: retirement, housing and education, and medical. Sixty percent of contributions go into the retirement account, 30 percent into the housing and education fund, and 10 percent into the medical fund. Members can request 30 percent of their retirement savings at age 50. They are allowed to withdraw the full amount of the retirement account at age 55 but may do so earlier for the following reasons: death of the member; physical or mental incapacitation that prevents the member from engaging in employment; or leaving Malaysia permanently. Payments under the retirement scheme can be given in a lump sum, as an annual dividend, as an annuity, or can be paid periodically. At any time, members may use their housing/education savings to purchase a home or pay school fees, and at age 50, they can receive any remaining funds left in the account. A member also may withdraw contributions to his/her medical fund for medical treatment subject to the approval by a medical board. As of January 2002, members may opt to transfer not more than 50 percent of their savings from Account 1 (retirement) into a new Account 4, which permits members to make monthly withdrawals over a 20-year period on reaching age 55.

Under the EPF Act of 1991, no less than 70 percent of EPF total investments must be placed in government securities. The EPF also is allowed to invest in equity, debentures and loans, the money market, and property. No investment is allowed in foreign countries. In 2001, members complained of low dividends, which were primarily due to the economic crisis and the large amount of investment in low-yielding government bonds and securities.

Social Security Benefits

The Social Security Organization (SOSCO) administers, implements, and enforces the Employees' Social Security Act and the Employees' Social Security (General Regulations). SOSCO provides coverage to eligible employees through the Invalidity Pension Scheme and the Employment Injury Insurance Scheme. Coverage is compulsory for Malaysian workers and permanent residents employed under a contract of service or apprenticeship and earning RM

2,000 (US$526.32) per month or below. Government employees and self-employed persons are exempted.

The Invalidity Pension Scheme provides coverage to employees against disability and death unrelated to employment. The employer and employee equally contribute 0.5 percent of the employee's wages to this program. To receive a pension, the worker must have an incurable disease or permanent disability that incapacitated him/her before the age of 55. The employee also must have contributed to the scheme at least 24 of the last 40 months or for at least two-thirds of the months (with a minimum of 24 payments) since he/she was first covered under the scheme and the date of notification to SOSCO. The pension is equal to 50 percent of the worker's earnings, plus an extra 1 percent for each year of contributions over 24 months. Full pensioners receive at least a minimum payment of RM 171.43 (US$45.11) per month. In addition, the employee may be entitled to receive a constant attendant allowance, totaling 40 percent of the pension but not to exceed RM 500 (US$131.58) per month.

Under the Invalidity Pension Scheme, a worker can receive a reduced pension equal to 50 percent of the worker's wages if he/she has made monthly contributions for at least one-third of the months (with a minimum of 24 payments) between initial coverage and SOSCO's notification date. Employees who do not qualify for the invalidity pension but who have made 12 contributions are eligible to receive a grant worth the total amount of payments paid plus interest. The Invalid Pension Scheme also provides for rehabilitation benefits, survivors benefits, and a funeral grant.

The Employment Injury Insurance Scheme covers eligible employees against occupational accidents and illnesses, including those arising during commutes to, from, and for work. The employer pays 1.25 percent of the worker's wages to this plan. Workers receive free treatment at SOSCO panel clinics or government hospitals but must show (1) identification or an accident report and (2) a letter from his/her employer or an Occupational Diseases form. The scheme provides temporary disability benefits to workers who have been certified by a doctor as unfit to work for not less than four days. The benefit is equivalent to 80 percent of the worker's average daily wage, with a minimum of RM 10 (US$2.63) and a maximum of RM 52 (US$13.68) given. Employees who are certified by a medical board as permanently disabled (20 percent or greater) due to an occupational injury are entitled to receive permanent disability benefits. If the disability is 100 percent, the worker will be paid 90 percent of his/her average daily wage, not to be less than RM 10 (US$2.63). An employee may continue to work while receiving this benefit. Additionally, the Employment Injury Insurance Scheme provides a constant attendant allowance, rehabilitation benefits, survivor benefits, and a funeral grant.

Worker's Compensation for Foreign Workers

Foreign workers are covered for both employment and non-employment injury under the Workmen's Compensation Act of 1952 and the Workmen's Compensation (Foreign Worker's Scheme) (Insurance) Order 1993. All foreign workers who earn RM 500 (US$131.58) or less per month or who are manual workers are required to participate. Under the Foreign Worker's Scheme, the employer is required to contribute RM 86 (US$22.63) per year for each foreign worker. An employer found guilty of deducting a worker's wages for the payment of the insurance premium will be fined RM 5,000 (US$1,315.79) and/or imprisoned for one year. If an employer is convicted of not having bought workmen's compensation, he/she faces a fine of RM 20,000 (US$5,263.16) and/or imprisonment for two years. Failure to notify the Ministry of Human Resources in the event of an accident is an offense punishable by a fine of RM 5,000 (US$1,315.79) for the first occurrence and RM 10,000 (US$2,631.58) for the second.

WORKER RIGHTS

Freedom of Association

Workers have the right to form or join trade unions, with the exception of "confidential" and "managerial and executive" employees, the police, and the military. While no law prevents foreign workers from joining a union, the Immigration Department places conditions on their work permits that effectively bars them from union participation. As of January 2002, Malaysia has 591 unions, with a total membership of 792,096.

The Industrial Relations Act and the Trade Unions Act are the two major laws governing industrial relations and trade union activities in Malaysia. The former regulates employer and trade union relations and provides for the prevention and settlement of labor disputes, while the latter act governs the formation, organization, election of officers, and finances of unions. The Trade Unions Act prevents unions from representing workers from different trades, occupations, or industries. It also requires unions to register with the Department of Trade Union Affairs of the Ministry of Human Resources and gives the Director General of Trade Unions the authority to deny registration. The Department of Trade Union Affairs also conducts inspections of trade unions, including membership and competency checks, and can withdraw the registration of a trade union in some circumstances. In 1998, over 206 unions were issued notices threatening de-registration for failing to submit reports of their accounts but no unions have reported being de-registered. In addition, the Minister of Human Resources can suspend for up to 6 months any trade union deemed being used for purposes prejudicial to or incompatible with security or public order.

Malaysia has a longstanding de facto ban on the formation of a national trade union in the electronics sector, the country's largest industry. The Government has proclaimed electronics to be a "pioneer industry" and prohibits the unionization of a "pioneer" company during its first 10 years.[3] In addition, the Department of Labor determined that electronic products are different from electrical products, thus preventing the national Electrical Industry Workers' Union (EIWU) from organizing the electronics industry. In February 2000, the Minister for Human Resources stated that employers should not obstruct the formation of enterprise-based unions, but in 2001, only 8 were in existence in the electronics sector. According to government officials, national unionization of the electronics industry would lead to a disruption in the economy if the workers decided to go on strike. The electronics sector employs 300,000 to 400,000 workers in the country.

[3] There are 25 activities for which enterprises are eligible for pioneer status under the Promotion of Investments Act 1986: (1) agricultural production; (2) integrated agriculture; (3) processing of agricultural produce; (4) forestry and forestry products; (5) manufacture of rubber products; (6) manufacture of palm and palm kernel oil products and their derivatives; (7) manufacture of chemicals and petrochemicals; (8) manufacture of pharmaceutical and related products; (9) manufacture of wood and wood products; (10) manufacture of pulp, paper, and paperboard; (11) manufacture of textile and textile products; (12) manufacture of clay-based, sand-based, and other non-metallic mineral products; (13) manufacture of iron and steel; (14) manufacture of non-ferrous metals and their products; (15) manufacture of machinery and machinery products; (16) manufacture of transport equipment, components, and accessories; (17) supporting products/services, including maintenance and repair of aircraft and aircraft components; (18) manufacture of of electrical and electronic products and components and parts; (19) manufacture of professional, medical, scientific and measuring devices/parts; (20) manufacture of photographic, cinematographic, video, and optical goods; (21) manufacture of plastic products; (22) miscellaneous, including musical instruments, toys, and fire fighting equipment; (23) hotel business and tourist industry; (24) film industry; and (25) infrastructure.

Although strikes are legal, the right to strike is restricted. The Industrial Relations Act requires unions and management to notify the Ministry of Human Resources that a dispute exists before a strike may occur. The Ministry's Industrial Relations Department then will attempt to conciliate, but if conciliation fails to achieve a settlement, the Minister of Human Resources has the power to refer the dispute to the Industrial Court. Strikes are prohibited while the dispute is before the Industrial Court. Additionally, two-thirds of union members must vote in favor of having a strike, rather than the internationally recognized standard of 50 percent. Unions also are not allowed to strike on issues of union recognition or of illegal firings. Strikes are extremely rare, and there were no strikes reported during the year.

The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively, and collective bargaining is widespread in sectors where labor is organized. In 2001, approximately 2,071 collective agreements were enforced, covering 827,759 workers. Over 370 collective agreement were given cognizance by the Industrial Court, of which 207 were in the manufacturing sector.

Notwithstanding, the Government of Malaysia holds that issues of transfer, dismissal, and reinstatement are prerogatives of management and are excluded from collective bargaining. Additionally, Section 15 of the Industrial Relations Act limits the scope of collective bargaining agreements in enterprises having "pioneer status." The ILO repeatedly has found Section 15 to be in violation of ILO Convention No. 98 and has urged for its repeal without delay. According to the ILO, the Government has been promising to repeal this statute since 1994.

Critics assert that the Industrial Court is slow in adjudicating labor disputes, with the backlog of cases allegedly reaching 5,000 in March 2000. Roughly 1,750 cases were carried over from 2000 into 2001. Therefore, the Government increased the number of Industrial Court chairman from nine to 14. By the end of the year, an additional 1,056 cases had been referred to the Industrial Court and only 963 were settled. Over 1,840 cases were left pending. Approximately 111 cases regarded collective agreements. Sixty were brought on the basis of non-compliance, while another 40 were about the terms and conditions of the collective agreements.

The law prohibits anti-union discrimination by employers against union members and organizers, and charges of such discrimination may be filed with the Ministry of Human Resources or the Industrial Court. In 2001, the Industrial Court heard 793 dismissal cases, of which 726 concerned misconduct. Forty-one cases dealt with retrenchment, and 26 were deemed constructive termination. It is unknown if there were any anti-discrimination cases before the Industrial Court during that year.

Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor, and the Government generally enforces the prohibition against forced or compulsory labor.

Malaysia is a source and destination country for trafficking in women and girls for sexual exploitation. Young women from Burma, China, Indonesia, Thailand, and the Philippines are trafficked into Malaysia for sexual exploitation. They often are employed "as guest relations officers," karaoke hostesses, and masseuses. Malaysian women are trafficked to Australia, Canada, Singapore, Hong Kong, Japan, Macau, Taiwan, and the United States. They are almost

exclusively ethnic Chinese. Police and non-governmental organizations (NGOs) believe that Chinese criminal syndicates are behind most of the trafficking in Malaysia.

The Penal Code prohibits the sale or hire of anyone under 21 for purposes of prostitution and interdicts the importing of any woman for purposes of prostitution. Punishment for these offenses include a maximum 10-year prison term or a fine, to be determined at the discretion of the sentencing judge. Without a specific law criminalizing trafficking in persons, the Government has not prosecuted anyone for the specific offense of trafficking.

Status of Child Labor

The Children and Young Persons (Employment) Act prohibits the employment of children below the age of 14 but allows some exceptions, such as light work in a family enterprise, work in public entertainment, and work performed in vocational training institutions or as an apprentice. In such situations, the children may not work more than six hours per day, and if they also are attending school, the combined hours of work and school may not be more than seven hours per day. Children between the ages of 14 and 16 are prohibited from working more than seven hours per day, with a total of eight combined hours of work and school allowed. In addition, children are prohibited from working more than six days per week or at night. The Government ratified ILO Convention No. 138 on minimum age in 1997 and ILO Convention No. 182 on the worst forms of child labor in 2000.

The practice of child labor occurs primarily in agriculture and the informal sector. Most child laborers work informally on plantations, helping their parents in the field, but do not receive a wage. In urban areas, children can be found working in family food businesses, night markets, and small-scale industries. There also is the trafficking of girls for the purpose of sexual exploitation. There is no reliable estimate of the number of child workers in the country. The Government generally enforces child labor provisions in the formal sector, reporting that five child labor cases were prosecuted during the last year. However, government officials do not deny the existence of child labor in family businesses and on plantations.

Non-Discrimination on the Basis of Gender

Women constitute 44 percent of the labor force. Female workers may not be employed for underground work. They also cannot be required to work between 10:00 p.m. to 5:00 a.m. in any agricultural or industrial undertaking unless approved by the Director General of the Labor Department. The Director General generally grants permission for night work, provided that the employer will attend to the safety and health needs of the women workers, including procuring transportation to and from work.

In August 2001, the Malaysian Parliament amended the Constitution to prohibit gender discrimination, and the Government also has instituted a voluntary Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. While the Ministry of Human Resources strongly advocates compliance by employers, only one percent of registered companies in Malaysia had adopted the code by September 2001. The MEF has criticized publicly any attempt to legislate against sexual harassment in the workplace, arguing that government-imposed policies would unduly restrict the management of labor relations.

In 2000, the number of sexual harassment cases reported to the Labor Department in the Ministry of Human Resources was 61, more than double the 29 cases reported in 1999. In August 2001, the Ministry announced the creation of a special unit in the Labor Department to

monitor and investigate discriminatory practices, including sexual harassment, against women in the workplace. However, the Government acknowledges that there are cultural obstacles to women who try to pursue sexual harassment charges.

Female employees are entitled to 60 days of maternity leave and cannot be terminated while taking such leave. They also are eligible to receive a maternity allowance equal to the worker's full rate of pay or RM 6 (US$1.58) per day, whichever is greater. A worker qualifies for the maternity allowance if she has been employed at any time in the previous four months and for a period of not less than 90 days in the nine months prior to her confinement. Women with more than five surviving children are exempt from receiving the maternity allowance. In addition, male employees are granted three days of paternity leave.

Several cases of abuse of foreign domestic workers have been reported in Malaysia. The majority of such cases involve Indonesian women. The victims claim that their employers subjected them to inhumane living conditions, withheld their salaries, and physically assaulted them. Foreign domestic workers have no protection under Malaysian labor law.

Minimum Wage

Malaysia has no national minimum wage, as the Government prefers to let market forces determine wage rates. However, the Wage Councils Act provides for a minimum wage in those sectors or regions of the country where market-determined wages are insufficient. Under the law, workers who believe that they need the protection of a minimum wage may request that a wage council be established. Currently, catering and hotel workers, shop assistants, cinema workers, and stevedores and cargo handlers have minimum wages set by wage councils. However, the minimum wages set by the wage councils generally do not provide a decent standard of living for a worker and his/her family.

Plantation workers generally receive daily wages or wages based on productivity. In February 2001, NUPW and MAPA agreed on a minimum monthly wage for palm oil plantation workers for the first time. While the plantation workers originally demanded RM 750 (US$197.37), the agreement calls for a basic wage of RM 325 (US$85.53) per month, which is below the poverty line. NUPW asserts that productivity bonuses and other allowances will be added to the basic wage so that plantation workers should receive a monthly remuneration between RM 750 to RM 1225 (US$197.37 to $322.37). Rubber plantation workers still have no minimum wage.

Hours of Work

The Employment Act states that working hours are to be no more than eight hours per day or 48 hours per week and that each workweek must include one full rest day. No employee can be required to work more than 12 hours per day except under special circumstances, and the maximum number of allowable overtime hours is 104 per month, unless the Director General of the Labor Department approves a written request for more overtime by an employer. Overtime work completed on a rest day or public holiday is not included in determining the 104-hour limit. A worker can be required to work overtime in the following circumstances: (1) if the duties performed are defined as an essential service in the Industrial Relations Act or are deemed essential to the defense and security of Malaysia or to the life of the community; (2) if work has to be carried out in any industrial establishment that is essential to the economy; (3) if there is an actual or threatened accident at the place of work; (4) where there is urgent work to be done to machinery or to the facility; and (5) where there is an unforeseeable interruption of work.

Employees receive a rate not less than one and one-half times their normal hourly rate of pay for overtime work on regular work days. Daily or hourly rate employees who work on a rest day are to be given one times their ordinary rate of pay for less than a half-day's work and double time for work that exceeds a half-day. Monthly rated employees receive one-half times or one times their ordinary rate of pay for work on rest days, depending on whether they work less or more than a half day. Workers paid on a hourly, daily, or monthly basis also are entitled to two times their usual rate of pay for work on a public holiday, in addition to holiday pay. If it is overtime work, the employees receive three times their hourly rate of pay. Piece-rated workers are entitled to either two times their hourly rate of pay or two times their ordinary rate per piece for working on rest days, as well as two times their rate per piece and holiday pay for work on public holidays. For overtime on public holidays, piece-rated workers are paid three times their normal rate per piece.

Both annual and sick leave are based on length of service. Workers with less than two years of service are entitled to eight days of annual leave and 14 days of sick leave per year, while those having between two to five years receive yearly 12 days of annual leave and 18 days of sick leave. All workers with more than five years of service are eligible for 16 days of annual leave and 22 days of sick leave. Employees also are entitled to 60 days of sick leave in the aggregate if hospitalization is necessary, with all normal sick days already taken being subtracted from the total.

The Labor Department of the Ministry of Human Resources enforces these standards, but a shortage of inspectors precludes strict enforcement.

Occupational Safety and Health

The Occupational Safety and Health Act (OSH) covers all workers, except those in the maritime industry and the military. The OSH Act is based on the principle of self-regulation, encouraging cooperation, consultation, and participation of both employers and workers to establish effective safety and health policies at the workplace. Employers are required to identify risks and take adequate precautions, including providing safety training to workers. Enterprises with more than five employees must prepare a written safety and health policy and display it at strategic locations throughout the workplace. Companies with more than 40 workers also must establish joint employer-employee safety committees. Employers who violate the OSH Act are subject to a fine not to exceed RM 50,000 (US$13,157.89) and/or imprisonment for up to two years.

Employees must take reasonable care at work and must cooperate with management to create a safe and healthy working environment. Workers also must use the personal protective equipment and must comply with OSH laws and regulations. There are no specific statutory or regulatory provisions that provide for workers to remove themselves from dangerous workplace conditions without arbitrary dismissal. Workers who contravene the above provisions are liable to a fine not to exceed RM 1,000 (US$263.16) and/or imprisonment for up to three months. If the action is intentional, reckless, or negligent, the employee could face a fine of up to RM 20,000 (US$5,263.17) and/or imprisonment not to exceed to two years.

The OSH Act is enforced by the Department of Occupational Safety and Health (DOSH) within the Ministry of Human Resources. DOSH has 500 safety and health officers, who monitor OSH conditions in enterprises throughout the country and advise employers on measures that need to be implemented at their facilities. In 2000, DOSH performed 93,745 safety and health inspections, including 2,214 surprise inspections. Only 20 major hazards were reported. DOSH

also serves as the secretariat for the tripartite National Council for Occupational Safety and Health, which sets policies and coordinates occupational safety and health measures.

In 2001, there were 90,754 occupational accidents and illnesses in Malaysia. According to the Ministry of Human Resources, 14 percent of the industrial accidents occurred on plantations.

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