

Chapter 8

Human Resources

8.1 Population and Labour Force

Malaysia is a multi racial and multi religious country made up of approximately 24 million people comprising the Bumiputeras (Malays and other indigenous people), Chinese, Indian and Eurasian ethnic groups. With each group retaining its own distinctive customs, religion and culture, Malaysia is a multi lingual country offering a stable social, economic and political infrastructure.

Made up of a labour force who are young, educated, readily trainable and relatively inexpensive, Malaysian workers are reliable and highly responsive to the introduction of new skills, thus making them amenable to the demands of modern technology. Malaysia's labour force is approximately 9.8 million and is estimated to be growing at a rate of 3.0% per annum. (*Source: 8th Malaysia Plan*)

The youthful character of the Malaysian labour force is reflected by the fact that about 34% of the population in 2001 are below the age of 15 years while 62.3% are in the working age group of 15-64 years. During 1995 – 2001 about 1.3 million new entrants joined the labour market. The majority were school leavers who have been educated up to at least the lower secondary level and are conversant in the national language, Bahasa Malaysia and English.

Industrial training is provided for, both within the school system as well as by other public and private industrial training institutes. In 2000, there were more than 31 technical and 47 vocational institutes with facilities comparable to those in developed countries. As part of the program to achieve the growth and distributional objectives of the National Development Policy (NDP), the Government has prepared a comprehensive program of policy reforms to increase the availability of skilled labour. In 1991, the Ministry of Human Resources conducted various training courses and programs aimed at upgrading skills and the quality of labour. In January 1993, the Human Resources Development Fund ("HRDF") was launched to provide financial assistance to employers in the manufacturing sectors who sent their employees for approved training programs.

Since the early 1990's, the Government has liberalised its labour policy by introducing several measures to ensure that there is sufficient labour to cope with the rapid expansion of the economy. The Government allows to continue the employment of foreign workers based on specific needs although a freeze on the intake of semi skilled and unskilled foreign workers has been imposed since early 1994. A longer term solution would be to promote greater automation, labour saving production devices and maximise the utilisation of the existing labour force.

The Malaysian labour market enjoys remarkable industrial harmony and labour strikes are relatively rare. Industrial relations remained stable during 2001 with not more than 15 strikes taking place throughout the peninsula. Wages are usually determined by market forces, although in many establishments, wages are negotiated through collective bargaining.

Malaysia also offers a large continuous pool of graduates from its local universities. This does not include the substantial number of Malaysian students studying overseas and those studying in private colleges offering undergraduate and postgraduate degree programs in conjunction with foreign institutions of higher learning under twinning arrangements. These graduates provide the necessary professional, technical and management personnel required by the various industries.

Employment Statistics

Labour Force and Employment Rate 1999 – 2001

	1999 (‘000)	2000 (‘000)	2001 (‘000)	% change	
				2000	2001
Total Labour Force	9,178	9,573	9,801	4.3	2.4
Employment	8,862	9,271	9,411	4.6	1.5
Unemployment	316	302	390	3.1	3.9

Ethnic Composition

Total Population	23.27million
Bumiputra	66.1%
Chinese	25.3%
Indian and others	8.6%

Geographical Distribution

Peninsula Malaysia	79.4%
Sabah	11.5%
Sarawak	9.1%

Age Structure

0 – 14	33.1%
15 – 64	62.9%
65 and above	4%

Source: 8th Malaysia Plan

Employment by Sectors

Sector	('000)	('000)	('000)
	1999	2000	2001
Agriculture, Forestry Livestock & Fishing	1399.2	1407.5	1397.1
Mining and Quarrying	41.9	41.2	41.4
Manufacturing	2368.3	2558.3	2574.2
Construction	803.8	755.0	769.3

Sector	('000)	('000)	('000)
	1999	2000	2001
Electricity, Water & Gas	72.1	75	76.9
Transportation, Storage & Communications	441.9	461.6	471.9
Wholesale & Retail Trade, Hotel & Restaurants	420.3	508.7	527.1
Government Services	876.5	981.0	998.6
Other Services	867.2	898.7	927.2

Source: Economic Report 1999/2000/2001

8.2 Labour Legislation

All employment and labour relations are regulated by law to safeguard the interests, rights and responsibilities of employers and employees in addition to providing a legal framework for the orderly conduct of industrial relations. The principal labour legislations in Malaysia are:

- **The Employment Act, 1955**
- **The Employment (Amended) Act, 1989 and 1998.**

The Employment Act ("EA") provides a comprehensive legal framework governing matters such as payment of wages, rest days, house of work, holidays, termination, maternity protection, employment of foreign employees and the employer's duty to notify the Labour Office when commencing business, amongst others.

The Act is chiefly concerned with employees who are earning less than RM1,500 per month or employees as defined by the Act. It seeks to ensure that no contract of service entered into between the employer and the employee is less favourable than the provisions under the Act. Terms and conditions which are found to be less favourable are void and of no effect and would be suspended by the corresponding provisions in the Act.

Some of the major provisions provided under The Employment Act 1955, are as follows:-

- A contract of service may be written, oral, expressed or implied. Where the period of notice for termination is not specified, the minimum period as required by law applies and such notice must be in writing. Termination without notice is allowed provided either party pays an amount equal to the wages earned during the notice period to the other or in the event of any wilful breach by the other party of a condition of the contract of service.
- All wages must be paid within seven (7) days from the day the last day of any wage period and all payments must be made in legal tender. A wage period must not exceed one calendar month.
- Female employees are entitled to 60 consecutive days of maternity leave and a maternity allowance based on her ordinary rate of pay per day. Entitlement to this allowance ceases if she has five or more surviving children, but she is entitled to the 60 days maternity leave. A female employee who is not eligible to receive maternity allowance but is on maternity leave, may return to work during the maternity leave period with the consent of the employer and after being certified fit to work by a registered medical practitioner.
- All employees are entitled to one rest day for each working week and the rest day need not be fixed. He may work on his rest day but must be paid at least twice his ordinary daily rate of pay.
- Employees are not required to work more than 8 hours in one day or five continuous hours without at least a 30 minute rest period. Permission can be obtained from the Director-General to exceed the above limits subject to a minimum standard working week of 48 hours.
- Employees engaged in shift work may be required by his employer to work more than 8 hours in any one day or more than 48 hours in any one week but the average number of hours worked over any period of 3 weeks or over any period exceeding 3 weeks cannot exceed 48 hours per week.
- Overtime work must be paid at a rate of at least one and a half times the ordinary rate of pay for normal working days. The maximum permissible overtime is 104 hours per month. Permission for excess can be obtained from the Director-General.
- Every employee is entitled to at least 10 paid gazetted public holidays in a calendar year and if required to work during the public holidays, he must be paid twice his ordinary rate of pay in addition to his holiday pay or thrice in excess of normal hours of work.
- Every employee is entitled to, paid annual leave of eight days for every 12 months of continuous service if he has been in service for less than 2 years. For employees with 2 or more years of service, but less than 5 years of service, they are entitled to 12 days of paid annual leave and those over 5 years of service are entitled to 16 days.

- Every employee is entitled to 14 days paid sick leave (inclusive of dental care) for each year of service if employed for less than 2 years. Sick leave entitlement increases with years of service and where hospitalisation is necessary, 60 days entitlement is to be granted.
- The rate of remuneration per day for maternity leave, paid public holidays, and annual sick leave shall be the ordinary rate of pay.
- **The Employees Social Security Act, 1969**
- **The Employees Social Security (Amendment) Act, 1979, 1984, 1987 and 1992.**

This Act aims to provide protection for employees (as defined under the Employment Act) and their families against economic and social distress in situations where the employees sustain injury or death. Under some of the schemes of payment, it is unnecessary for the accident in question to arise from the course of work. However, in other cases, the injury must be an 'employment injury' before the benefits are payable. The schemes of social security under the Act are administered by the Social Security Organisation ("SOCSO"), and are financed by compulsory contributions made by employers and employees. The level of benefits entitled by a particular employee is dependant on his earnings and contribution record.

All establishments employing one or more workers whose wages do not exceed RM2,000 per month, must insure their employees under the two schemes of SOCSO, namely the Invalidity Pension Scheme & Employment Injury Scheme, and the Employment Injury Insurance Scheme.

The Invalidity Pension Scheme & Employment Injury Scheme provide a 24 hour coverage for employees against invalidity and death due to any cause before the age of 55. Under this scheme, the employer and worker each contribute 0.5% of the monthly wage of the employee.

The Employment Injury Insurance Scheme provides coverage for employees in the event of disablement or death due to employment related injuries by way of cash benefits and medical care. The contribution is borne by the employer and constitutes about 1.25% of the wages of an employee.

- **The Employees Provident Fund Act 1951(Revised 1982);**
- **The Employees Provident Fund (Amendment) Act 1986 and 1991.**

The main objective of the Employees Provident Fund Act 1991 is to provide financial relief or social security protection for workers through compulsory savings. Both employers and employees are required to make monthly contributions to the EPF in accordance with specified rates which are currently 12% and 11% respectively of the employees monthly salary. An employer who fails to pay such contributions within the prescribed period which he is liable to pay and in respect of his employee(s), commits an offence.

Payment of benefits is made to employees upon attaining 55 years of age (50 years in the case of female workers) or in the event of total incapacity. Certain employees (such as exempted domestic servants) are not required to contribute to the Fund, however, they may elect to do so. An employer is not bound to contribute for an expatriate employee who is domiciled outside of Malaysia and who works in Malaysia on a work permit, unless the employee elects to contribute to the Fund. A recent amendment to the Act permits, contributions by self employed persons, on a voluntary basis.

Foreign workers earning less than RM2,500 per month are required to contribute to the EPF at a rate of 11% of his monthly wages, while employers are required to contribute a minimum of RM5 per month.

- An employee is allowed to withdraw from the EPF the whole or part of the amount in his accounts, upon fulfilment of certain conditions as stated under the Act, and regulations or rules made thereunder. Partial withdrawal from EPF is allowed for employees who require medical financing, purchase of shares from EPF's share investment unit and those who have purchased or built a house irrespective of whether a loan has been taken or not.

For administrative purposes, members contributions are currently divided into three accounts:-

- Account I consists of 60% of all contributions for the purpose of retirement at the age of 55
- Account II consists of 30% of all contributions for housing withdrawal or withdrawal at the age of 50 years; and
- Account III consists of 10% of all contributions for medical withdrawals.

- **The Employment (Termination and Layoff Benefits) Regulations, 1980.**

This regulation establishes entitlements to certain termination and lay off benefits for workers whose services have been terminated after a continuous period of employment with the same employer.

- **The Factories and Machinery Act, 1967**

This Act covers various regulations including those dealing with the safety, health and welfare of employees.

- **The Employment (Restriction) Act, 1968**
- **The Employment (Restriction) (Amendment) Act, 1972**
- **The Industrial Relations Act, (Revised) 1976;**
- **The Industrial Relations (Amendment) Act, 1980 and 1989.**

These Acts, amongst other things safeguard the legitimate rights and interests of employers and workers and their trade unions. It works towards ensuring the speedy and just settlement

of industrial disputes and protects the public's interests during periods of dispute when the parties promote their own particular interests.

- **The Trade Union Act, 1959**
- **The Trade Union Act, (Revised) 1981;**
- **The Trade Union (Amendment) Act, 1989 and 1991.**

The Act consolidates the laws relating to the registration, rights and liabilities, constitutions and other features of trade unions in Malaysia.

- **The Children and Young Persons (Employment) Act, 1966.**

This Act restricts the areas in which children or young persons may be employed in, and lays down their period of work. A child is defined as one who is below 14 years old and a young person as one who is between the ages of 14 and 16.

- **Human Resources Development Act, 1992.**

The Act was created in 1992 to provide for the establishment of the Human Resources Development Fund ("HRDF") and the imposition and collection of a Human Resources Development ("HRD") levy for the purpose of promoting, developing and upgrading the skills of employees.

At the time of establishment, the Act imposed a stipulation on every employer engaged in the manufacturing sector and employing at least 50 employees, to register with the HRD Council and pay the HRD levy in respect of each of his employees at the rate of 1% of the monthly wages of the employee. However, with effect from 1 January 1995, the HRDF has been extended to employers having 10, but not exceeding 50 employees and a paid up capital of RM2.5 million. This amendment was made in order to extend the HRDF to small enterprises and those in the hotel, air transport, tour operating, telecommunications, freight forwarders, shipping, postal, advertising and computer services.

All employers who have registered with the HRD Council and have started to contribute to the HRD levy for one month are eligible to apply for training grants up to a limit of the amount levy paid in the current year.

Employers having 10, but not exceeding 50 employees and a paid up capital of less than RM2.5 million are given the option to register with the Council. As an incentive and to encourage these employers to register and retain and upgrade the skills of their employees, the government has agreed to contribute RM2 for every RM1 contributed into their accounts.

The Registration of Employer Form (Form 1) can be obtained from:

Director General
Human Resources Development Council
Lot 11.2, 11th Floor
Exchange Square
Off Jalan Semantan
Bukit Damansara
50490 Kuala Lumpur

The following training schemes are available under the HRDF:-

SBL Scheme – this scheme allows employers to conduct training either on or off the job and engage internal, external or overseas trainers.

SBL – PKS Scheme – this scheme was established to mainly assist employers in Small and Medium enterprises with 199 employees or less to retrain and upgrade the skills of their workforce.

PROLUS Scheme – enables training providers to register with the HRDF and thereafter to submit their training programmes which are relevant to an employer's training needs for the award of the Approved Training Programmes (ATP) status.

PLT Scheme – an annual training plan scheme where employers are required to undertake systematic training needs analysis to ensure that training is conducted on a needs basis and in line with their business plans and level of technological adaptations. Employers who do not possess the necessary expertise to conduct a Training Needs Analysis can seek assistance from the Juruplan Scheme (Consultancy Scheme for TNA) and the Small and Medium Industries Training Needs Analysis Consultancy Scheme.

PERLA Scheme – this is a Training Agreement Scheme with selected training providers registered with the HRDF. The objective of this scheme is to alleviate the financial burden of employers, particularly those from the Small and Medium Enterprises. Under this scheme, employers sending their workforce for retraining or skills upgrading with approved training providers need not pay the full amount of fees charged.

Computer Based Training (CBT) Scheme – this scheme allows employers who wish to purchase or develop computer based training software for the purpose of upgrading their worker's skills, to apply for financial assistance.

Training Scheme for Retrenched Workers – the objective of this scheme is to enable retrenched workers to enhance and upgrade their skills to increase their employment opportunities in the labour market. Workers who have been retrenched from specific industries are eligible for the scheme and training fees incurred and monthly allowances at pre-approved rates will be fully paid by the HRDF.

Apprenticeship Scheme – the purpose of this scheme is to increase the supply of skilled workers in industries identified by the HRDF and employers. Apprentices are selected from PMR/SPM school leavers and will undergo theoretical training with an emphasis on practical training as well. Tuition fees incurred are paid in full by the HRDF and employers will be responsible for paying their apprentices monthly allowances of between RM300 to RM500.

Joint Training Scheme – this scheme enables employers, and particularly those from the Small and Medium Enterprise's to jointly appoint a training provider to conduct training programmes for their employees. One of the employers will act as the 'organising employer' and will determine the type of training programmes required, the venue and engage a suitable training provider. The 'organising employer' will be eligible to claim allowable costs at the rate of 100%.

8.3 Trade Unions and Industrial Relations

The Government adopts a policy on industrial relations which is aimed at promoting cordial employer-employee relationships based on social justice, equality and good conscience so as to create a favourable climate for growth and development. To achieve this, the Government has laid down the legal framework through the establishment of the following Acts:-

- Trade Union Act, 1959 (Revised 1981),
- Trade Union (Amendment) Act, 1989,
- Industrial Relations Act

The Constitution of Malaysia grants all citizens the right of association and workers and employers may constitute occupational organisations within the legal framework of the Trade Unions Act 1959. All unions must be registered with the Registrar of Trade Unions. The Act lays down certain legal requirements relating to the running and formation of trade unions. It does not permit the formation of omnibus or federation of different types of trade unions and only allows these to be formed on an industrial, trade or occupational basis. The Government's policy is to encourage healthy and responsible unionism. It is estimated that there are over 565,000 members in the various trade unions.

- **Industrial Relations Act, 1967 (Revised 1976) and**
- **Industrial Relations (Amendment) Act, 1980 and 1989**

The Act is mainly concerned with the following:-

- The regulation of the relations between employers and workmen and their trade unions;
- The prevention and settlement of any differences or disputes arising from their relationship; and
- Trade disputes and matters arising thereof

The Act provides for a voluntary system of co-ordination between the employer and employee, encouraging collective bargaining through agreed procedures. Where collective bargaining fails to reach an agreement, the reconciliation and arbitration services of the Ministry of Human Resources and where necessary, references of disputes to the Industrial Court, are available. The decision of the Industrial Court is final and binding on the parties concerned.

To-date, the relationships between trade unions and management have been cordial and the Government's reconciliatory services has been effective in preserving industrial peace in the country.

8.4 Foreign Labour Policy

It is the Government's policy to ensure that Malaysians are eventually trained and engaged in employment at all levels. Notwithstanding this, it is recognised that foreign "talent" and "key posts" whose skills are not yet available in the country, be allowed to be permanently filled by foreigners. As such, foreign companies are allowed to bring the required personnel in areas where there is a shortage of trained Malaysians to do the job. Whilst the Government allows for such foreign talent, companies should also make every effort to train more Malaysians so that the employment pattern at all levels of the organisation reflect the multi-racial composition of the country.

In bringing in expatriates to assume key posts, the following are the guidelines to adhere to:-

- Any company with a foreign paid up capital of US\$2million and above will automatically be allowed five (5) expatriate posts, including key posts. Additional expatriate posts will be given upon request, if necessary.
- Any company with a foreign paid up capital of less than US\$2million will be considered for expatriate posts on the following basis:-
 - Expatriate key posts may be considered where the foreign paid up capital is at least RM500,000;
 - For executive posts which require professional qualifications and practical experience, expatriates may be employed for up to a maximum of 10 years subject to the condition that Malaysian employees are trained to eventually take over the posts; and
 - For non-executive posts which require technical skills and experience, expatriates may be employed for up to a maximum of five (5) years, subject to the condition that Malaysian employees are trained to eventually take over the posts.

In order to apply for work permits, investors would need to liaise with the Malaysian Immigration Department which handles the processing for work permit applications. There are two (2) types of work permits that are available for foreigners, the employment pass and the professional visit pass. The two can be distinguished as follows:-

	Employment Pass	Professional Visit Pass
Purpose	To perform duties under the employment of a Malaysian company	To provide professional services under attachment to a project
Sponsoring Company	The Malaysian company	The Malaysian company or the project owner which hosts the expatriates
Duration	Approval is usually on a two year basis and is renewable	Approval is normally for a maximum of one (1) year and is renewable

Although the Immigration Department is the approving authority for the application of employment passes and other immigration matters, there has been a general de-centralisation in the procession of employment pass applications where applications from certain sectors other than the manufacturing sector, are referred to the various ministries / government agencies directly related to the specific industries. For example, companies engaged in retail, wholesale or trading activities would need to submit their application to the Ministry of Domestic Trade and Consumer Affairs.

In reviewing employment pass applications, the Immigration Department and other approving authorities will consider the following as criteria before approving applications:-

- i) Justification for the expatriate post
- ii) Paid up capital of the company
- iii) Equity structure of the company

8.5 Immigration and Visa

Every person entering Malaysia must possess a valid national Passport or internationally recognized Travel Document valid for travel to Malaysia. Any person not in possession of a Passport or Travel Document which is recognized by the Malaysian Government, must obtain a Document in lieu of Passport. Application for the Document in lieu of Passport can be made at any Malaysian Representative Office abroad. Holders of Travel Documents like a Certificate of Identity, Laisser Passer, Titre de Voyage or a Country's Certificate of Permanent Residence must ensure that their return to the country which issued the document or the country of residence is guaranteed. The documents shall be valid, for more than six (6) months from the date of entry into Malaysia.

VISA REQUIREMENT

Foreign nationals who require a Visa to enter Malaysia must apply and obtain a Visa in advance at Malaysian Representative Office before entering the country.

Foreign nationals who require a Visa to enter Malaysia must apply and obtain a Visa in advance at any Malaysian Representative Office abroad before entering the country. A visa which has been granted is not absolute guarantee that the holder will be allowed to enter into Malaysia. The final decision lies with the Immigration Officer at the entry point.

Employment of Foreign Unskilled Workers

Foreign companies wishing to employ semi-skilled and unskilled workers are only permitted to do so if their nature of business is in one of the following sectors:

Plantation

Construction

Manufacturing

Services, i.e., Pump Attendants, Supermarket, Cleaning, Restaurants etc.

Domestic Helper

As of February 2002, foreign workers permitted to work in the above sectors in the country may be sourced from the following countries:- Thailand, Vietnam, Cambodia, Nepal, Myanmar, Laos, Turkmenistan, Uzbekistan and Kazakhstan. Indonesians workers may only be recruited as a last resort.

The Guidelines

PENINSULAR MALAYSIA:

An employer who intends to employ a foreign worker must submit an application to the Ministry Of Home Affairs for approval. After obtaining the approval, the employer must submit an application for a Visit pass (Temporary Employment) to :-

Director

Foreign Workers Division,

Level 2, Block K (South),

Damansara Town Centre,

50550 Kuala Lumpur

Tel : 603-2524655