

*Case Study by Economy*  
*Southeast Asia*

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# Malaysia

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# MANAGING CROSS-BORDER LABOUR MOBILITY IN MALAYSIA: TWO DECADES OF POLICY EXPERIMENTS

## I. INTRODUCTION

Malaysia is a net receiver of foreign labor and its attitudes and policies towards out-migration and in-migration vary considerably given significant differences in the size and structure of cross-border labor flows. Out-migration is predominantly technical and professional labour, while in-migration almost entirely consists of low-skilled labour. Out-migrants are long-term or permanent migrants, while in-migrants are mostly temporary migrants employed as contract workers. Of these categories of labour movements, the inflow of low-skilled temporary workers is the most significant in terms of its magnitude, policies and its implications for the economy.

Large-scale migration into Malaysia dates back to the late nineteenth century<sup>1</sup>, but it is the more recent in-migration of low-skilled workers on a temporary or rotation basis since the late 1970s, triggered by labor shortages, that has been the focus of policy concern. Until 1984, there was a relatively open policy towards low-skilled migrants. The number of foreign workers entering the country was contained and they contributed to alleviating the widening labor market imbalances in rural agricultural, especially in the export-oriented primary commodity sectors. However as their numbers swelled from an estimated half a million in the early 1980s<sup>2</sup> to around two million<sup>3</sup> by the mid-1990s following a period of extended high growth, the state intervened to control and regulate their intake.

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<sup>1</sup> The large-scale migrants in the late nineteenth and early twentieth century, i.e. prior to Independence in 1957, consisted of permanent settlers from India and China as well as from Indonesia.

<sup>2</sup> Ministry of Labour, Labour and Manpower Report, 1987/88, Kuala Lumpur: Ministry of Labour, undated.

<sup>3</sup> The number contract migrant workers with work permits was around 650,000 in the early 1990s and the official estimate of irregular migrants was around one million, while the unofficial estimate was as high as two million (Kanapathy, 2007a).

Managing cross-border labor mobility is highly complex and challenging the world over, and Malaysia's geo-economic and cultural factors create further hurdles to its efforts in securing its borders. Malaysia is a comparatively fast-growing country with a small population base of about 26 million situated amidst labor-surplus economies. It has a very long coastline, and it shares a porous border with its immediate neighbors, making it rather difficult to secure its borders. As a multi-ethnic and multi-cultural nation, it shares close ethnic and cultural affinities with many of the migrant source countries, making it easier for irregular migrants to assimilate into the society and gain unauthorized employment. An overwhelming majority of the inflow of migrants consists of low-skilled temporary workers, and in contrast to high skilled labor, monitoring low-skilled cross-border mobility is a daunting task. Low-skilled migrants who enter the country illegally are easily employed in the informal economy or in remote plantations and other agriculture and forestry activities, and are therefore difficult to track. As a result, the large part of the policies to manage cross-border labor mobility is directed towards low-skilled temporary migrant workers, commonly termed "foreign workers" in Malaysia.

The paper begins with a brief overview of the demographic and economic changes that have influenced labor migration into Malaysia. Section III provides a brief overview of policies to manage the inflow of migrant workers, both documented and undocumented. Section IV critically examines the outcomes of the various policy instruments to implement the national policy on foreign labor. Section V concludes the paper.

## **II. THE DEMOGRAPHIC AND LABOUR MARKET DEVELOPMENTS**

### **Trends in Population and Labour Force**

The Malaysian population was 26.75 million in 2005 and is expected to reach 28.96 million by 2010 (Table 1). The local population grew at a fast pace of 3.6 per cent per annum between 1990 and 2005 due to a relatively high total fertility

rate (TFR) of 2.76 in 2005. Ethnic Malays generally register a high TFR due to religious and cultural factors and explain Malaysia's relatively high population growth.

The local labor force grew at 2.3 per cent per annum from 1990 to 2005, while total labor demand expanded at 2.8 per cent per annum. The tight labor market was alleviated primarily through the absorption of foreign workers. Foreign labor intake increased at around 13.0 per cent during this period and accounted for about 35.0 per cent of the increase in employment (Table 2). The large-scale intake of foreign labor has helped to moderate wage increases as the economy attained full employment in the early 1990s. The unemployment rate has hovered at between 2.5 to 4.5 per cent from 1990 to 2007 (Ministry of Finance, *Economic Report*, various issues).

### **Augmentation of the Labor Force**

The Malaysian economy transformed from a labor surplus to a net importer of labor in the late 1970s as the manufacturing sector transformed into the main engine of growth. Initially, the rural agricultural plantation sector began importing labor from neighboring Indonesia, Thailand and the Philippines in the late 1970s. Following structural changes in the economy and rising global competition, the agricultural sector increasingly encountered difficulties in recruiting and retaining local labor at competitive wages. Its dependency on foreign labor rose from 6.2 per cent in 1985 to about 21.0 per cent in 2004, making it the sector with the highest dependency on foreign labor (Table 3).

The construction sector likewise faced labor scarcity when large-scale infrastructure development programs were launched from the late 1980s. This coincided with the out-migration of skilled construction workers to Singapore and other East Asian economies such as Japan, Taiwan and Hong Kong that were experiencing similar labor market tightness. Despite the tight labor market at home, many Malaysians emigrated to these East Asian economies in search of

employment to maximize their earnings from the relatively higher wages overseas and more favorable exchange rates. In the mid-1980s and early 1990s, the East Asian economies reported between 5,000 to about 20,000 Malaysians working without authorization in these countries (Pillai 1995, p.227). Labour shortages in the domestic construction sector were met through the intake of foreign labour, mostly from Indonesia. The dependence on foreign labor in construction almost doubled from 7.6 per cent in 1985 to about 13.0 per cent by 2004.

Following the protracted period of high growth of around 8.0 per cent per annum from 1988 to 1997, the manufacturing and services sectors were equally hit by severe labor shortage. The state thus sanctioned the hiring of foreign workers in low-end manufacturing jobs and in the services sectors that were experiencing difficulties in recruiting local workers at the prevailing wage rates. The dependence on foreign labor in manufacturing rose from below 2.0 per cent in 1985 to around 11.0 per cent by 2004 and in the services sector from 4.8 per cent to 13.3 per cent.

Apart from the hiring of foreign labor, several other strategies were also pursued to cope with widespread skill and labor scarcity. These included increased investment in education and training to step up the supply of skilled labor, encouraging more females to enter the labor market by easing the policy on the hiring of foreign domestic workers, raising the retirement age and liberalizing the intake of skilled foreign labor.

To encourage foreign direct investment and to diversify the sources of growth, policies on the intake of skilled labor were further liberalized. At present, less than 2.0 per cent of the total in-migration consists of high-skilled labor. This category of foreign workers is commonly termed “expatriates” in Malaysia and the management of their inflow is less complex given their small numbers and their higher level of education and awareness. As such, there has been less

policy attention with respect to restricting their entry and employment. On the contrary, there are policies to encourage and facilitate their entry and employment<sup>4</sup>. The explicit bias in foreign worker policies (both immigration and employment) has been reinforced in recent years to foster skill and knowledge-intensive industries. Expatriates are allowed to work in almost all sectors, except those that impinge on national security. While there are some restrictions on the number of expatriates employed in finance and banking, and manufacturing, firms located in the various Economic Growth Regions can hire as many expatriates as required. Unlike the less-skilled foreign workers, expatriates can bring along their dependents.

### **Emigration of Malaysians**

Out-migration is a long-standing phenomenon that began in the early 1960s. Those who left in the early 1960s to the early 1990s migrated both for work and long-term settlement, but recent trends suggest migrants are mostly temporary or circular migrants in search of better opportunities in an increasingly globalized market for high skilled labour.

Policy focus on out-migrants only began in the mid-1990s when the economy experienced skill scarcity that was perceived as hampering its structural transformation to higher value-added growth. A policy to encourage return migration of Malaysian professionals overseas was introduced in 1995 known as the Brain Gain Scheme. The Scheme was not very successful as wages and working conditions at home had not improved sufficiently enough to attract overseas Malaysians. The Scheme was abandoned following the 1997 financial crisis and economic recession in 1998. The Brain Gain Scheme was reintroduced in 2001. A parallel scheme termed the “distance service”

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<sup>4</sup> Changes were introduced in May 1997 to ensure faster and more efficient processing of applications for work for “expatriates” by decentralizing decision-making to each relevant Ministry. The Immigration Department merely endorsed and approved the applications to hasten the process (New Straits times, March 6 1997).

programme has also been introduced to solicit the services of Malaysian professionals overseas, without the need for return migration.

Malaysia's dependence on foreign labor has increased gradually, and today foreign workers are a permanent feature of the economy, despite the official policy that sanctions the intake of foreign workers as an interim solution to alleviate sector and occupation specific labor market imbalances. The emphasis on education and training implies that the new entrants into the labor market will be better qualified and therefore command a higher reservation wage. Hence, unless the pace of structural transformation of the economy is intensified to increase the demand for skilled labor, Malaysia could face youth unemployment in the long run if it continues a growth strategy that is heavily reliant on low-skilled foreign labor.

### **III. AN OVERVIEW OF NATIONAL POLICY ON FOREIGN LABOUR**

From a largely market-determined approach towards cross-border labor mobility, the state introduced minimal policy intervention in the mid-1980s, but had resorted to substantive state control from the 1990s to regulate the absorption of foreign workers. The following outlines the major policy developments to manage the inflow of low-wage labor, while the rationale behind the state intervention, the efficacy of policy instruments and their outcomes are analyzed in Section IV.

Initial state intervention included the signing of a number of Memoranda of Understanding (MOU), beginning with the 1984 Medan Agreement with Indonesia, the largest sending country, and later with Philippines, Thailand, Bangladesh, India and Pakistan. The primary objective was to introduce an orderly and authorized inflow of foreign workers, and to document their presence in the country. The intervention was largely motivated by the economic slowdown in the early 1980s and protests from unions.

An explicit national policy on the reliance on foreign labor was announced in 1995 when the manufacturing sector, the principal engine of growth, was equally hit by labor shortage. In the 1995/96 annual budget, the state sanctioned “the import of foreign labor as an interim solution to meet excess demand for low-skilled labor, while it pursued a longer-term strategy to increase productivity and expand the supply of skilled labor” (Ministry of Finance, 1996, p.39). There has been no change in the national policy on foreign workers since, but a variety of policy instruments have been introduced to: (i) control the intake of foreign workers; (ii) encourage legal recruitment; (iii) stem irregular migration; and (iv) protect foreign workers (See Table 4).

Briefly, these included the 1991 Comprehensive Policy on the Recruitment of Foreign Workers which detailed the recruitment process, the terms and conditions of employment and repatriation of foreign labor, the introduction of the annual levy in the 1991/1992 national budget to offset social costs and discourage the use of foreign labor, the Regularization Programs to legalize the entry and employment of undocumented workers without penalty, amnesty and the occasional imposition of the total ban on new recruitment since 1993. These measures to formalize recruitment and encourage authorized entry and employment were complemented by security operations to curb illegal entry and internal surveillance to arrest, detain and deport “undocumented” migrants not responding to the registration exercise. Those arrested were held at the detention centers until deportation.

Following a decade of policy experiments on managing foreign worker inflows, it became apparent that unilateral measures were difficult and costly to implement, and often strained diplomatic ties with sending countries. There was thus a shift from a unilateral to a bilateral approach to labor inflows. Political pressures within sending countries to protect their citizens overseas also contributed to greater willingness amongst labor sending countries to strike labor accords with the receiving countries. The G to G (government to government) agreement was

reintroduced in February 2002 to ensure that the process of recruitment was more systematic and transparent, and beneficial to all parties. The bilateral MOUs include several clauses dealing with the responsibilities of the signing parties, the employers and the migrant workers on conditions of residence and employment.

A compulsory Induction Course was also introduced to familiarize prospective foreign workers on Malaysian labor laws, customs and language. A Biometric Identification system has been introduced to ensure foreign workers who broke the laws did not re-enter the country under a different identify. A new anti-human trafficking bill - Anti-Trafficking in Persons Bill 2007 - was tabled in Parliament in April 2007 that punishes offenders and grants immunity for the trafficked victims<sup>5</sup>. Traffickers can be jailed for up to 20 years in prison, while the victims will not be prosecuted for illegal entry or charged with entering the country with fraudulent documents provided by traffickers<sup>6</sup>. Instead, they will be placed in “friendly” halfway shelter homes for three months to two years to heal and help authorities collect evidence to prosecute offenders. The Bill also calls for the setting up of an enforcement council, with NGOs as members, to enforce all provisions of the laws, and the creation of a national action plan to combat human trafficking. The Bill is relatively new and its effectiveness will to a large degree depend on its firm enforcement.

Through trial and error, a fairly efficient and transparent administrative system has been put in place to process applications for foreign labor. The timeframe for the recruitment of foreign workers has been drastically reduced from as long as 1-2 years to six months. The introduction of the work permit and its annual renewal has also contributed to the development of a more consistent database on foreign workers in the country since the mid-1990s.

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<sup>5</sup> This follows Malaysia’s ratification of the UN Convention Against Transnational Organized Crime in September 2004.

<sup>6</sup> Prior to the new ruling, apprehended victims were handed over to immigration authorities who would incarcerate them in detention camps before being deported. At times, due to lack of evidence, the victims were charged for illegal entry, employment for working in the vice trade.

#### **IV. POLICY OUTCOMES**

The initial wave of foreign labor inflow into Malaysia began in the late 1970s and grew steadily from the late 1980s on the back of high and unabated growth. The total number of foreign workers with work permits increased from 242,000 in 1990 to 1.9 million in 2006 (Table 5). Labor market augmentation by foreign workers has been on the rise despite increasing state intervention to control and regulate their inflow and stem irregular migration. Some of the major outcomes of the policies to manage the intake of foreign workers are discussed below.

##### **Increased Reliance on Foreign Labor**

Contrary to the explicit national policy to reduce the dependence on foreign labor, the number of foreign workers in the country has doubled from around one million in the mid-1980s to more than two million (Kanapathy, 2007 & 2007a). As of December 2006, there were 1.9 million foreign workers with valid work permits. In addition there was an estimated 700,000 in irregular status in the Peninsula (Malaysiakini, July 17, 2006). In the state of Sabah, the official estimate ranged from 150,000 to 200,000, while unofficially it is estimated as high as 500,000 (Malaysiakini, June 27). In other words, there was an estimated 2.8 million foreign workers in the country accounting for about 27.0 per cent of the total workforce. The annual labor force survey (LFS) may underestimate the total number of foreign workers in the country, but it provides a more accurate picture of the broad trends on foreign workers in the economy. A similar increase has been registered by the LFS. According to the LFS, the dependence on foreign workers more than doubled from about 3.6 per cent in 1990 to about 9.8 per cent by 2004.

The majority of foreign workers were from Indonesia (64.4 per cent). State initiatives to diversify the sources of foreign labor have only been partially effective. Indonesia continues to remain the main sending country, though the percentage has fallen from 73.5 per cent in 1999 to about 64.0 per cent in 2006.

The manufacturing sector employed the majority (33.3 per cent) of documented workers, followed by agriculture (26.6 per cent) and domestic services (17.1 per cent) (Table 6). The sectoral distribution of documented workers is however not a true reflection of the dependence of the various sectors on foreign workers, since the majority of undocumented workers were found in agriculture and the construction sectors and hence the reliance on foreign labor in these sectors is higher. Nonetheless, foreign worker dependence in manufacturing has risen significantly. In 1985, only about 2.0 per cent of the total foreign workers were employed in manufacturing, but by 2004 the ration has risen to 11.0 per cent (Labor Force Survey, unpublished data).

Sabah has a higher proportion (50.0 per cent) of foreign workers in its labor force. It has a higher propensity to attract and absorb migrants and their families due to historical, political, cultural and geographical factors. Its incidence of irregular migration is also relatively high and intractable. The reliance on foreign labor in Sarawak is low, but is on the rise, and its incidence of irregular migration is insignificant.

### **High Incidence of Irregular Migration**

Despite increasing state intervention to stem irregular migration, the incidence of irregular migration in the country continues to remain high. Poor governance and unintended policy outcomes are important variables explaining the high incidence of irregular migration in the country.

Estimating the size of irregular migrants is fraught with difficulties<sup>7</sup>. Official estimates of undocumented migrants in the Peninsula vary from as low as 400 thousand immediately following an amnesty and subsequent crackdown by authorities to over a million when there is a lapse on enforcement. As noted earlier, the current estimate of irregular migrants in the Peninsula is around 0.7

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<sup>7</sup> There are different categories of irregular migrants in Malaysia, and not all of them are migrant workers (See Kanapathy, 2007a for details)

million, while in Sabah, the official estimate ranged from 150,000 to 200,000 while unofficially it is estimated as high as 500,000. In other words, more than a third of the migrant workers in the country are undocumented.

More than 70.0 per cent of the undocumented workers are from Indonesia. In the initial years, illegal entry across borders was the common mode of entry, especially among the Indonesians and the Filipinos entering Sabah. However, with the increase in border surveillance and the easing of restrictions on visa, more irregular migrants are entering the country lawfully under different visa conditions but overstay. About half of the Indonesians who entered Sabah under a tourist visa between 1996 and February 2003 failed to return home upon the expiry of their visa (Azizah Kassim, 2004). Apart from the Indonesians, the incidence of overstaying is relatively high amongst nationals from India and China. The cultural and linguistic similarities between the major races in Malaysia and nationals from these countries make it easy for them to remain untraced for long. Close to 250,000 Indian and Chinese nationals were estimated to have overstayed in 2003 (New Straits, Times, February 20, 2004). Since the visa-on-arrival (VOA) was introduced in September 2006 to boost tourism, 20,481 visitors or more than half of the 36,701 visa applicants have overstayed.

State intervention meant to regulate the inflow of foreign workers has contributed to increasing the transaction costs of migration. A foreign worker levy was introduced in 1992 to “offset social costs and encourage restructuring”. The levy ranges from RM360 per annum for domestic workers to RM1,200 for those employed in manufacturing, services and construction. Apart from the levy, foreign workers have to pay various other fee that raise the administrative costs of hiring foreign labor by between RM1,380 to RM3,410 (Table 7). The financial costs for legal migration increases further if the administrative costs and the agents’ fee in both the sending and receiving countries as well as transportation costs are included. The total cost of legal migration has been on the rise and is now estimated to range from RM6,000 to RM8,000 depending on the country of

origin and employment sector. In contrast, irregular migration is less time-consuming and cumbersome, and cheaper for both employers and migrants.

The recruitment policy for contract migrant labor using the work permit system ties the migrant worker to a particular employer, sector and location. Hence, foreign workers who seek greater freedom and flexibility, and opportunities to maximize their incomes by reducing their transaction costs and earn more income by taking on multiple jobs, resort to irregular migration despite the high risks. Even those who enter the country through regular channels opt to move into irregular status by “absconding” from their respective employers in order to enjoy greater freedom and mobility, and seek opportunities to maximize their earnings.

The extensive migration networks, both social and commercial, developed over the last three decades, compounded by malpractices in law enforcement and regular amnesties have encouraged and facilitated unauthorized entry and employment, and evasion from apprehension. On the demand side, there is a ready secondary job market for irregular migrants. Despite the harsh penalties on employers hiring migrants unlawfully, some continue to do so since it is cheaper and workers can be hired for shorter periods than warranted by the work permit. They can also bribe their way to avoid the penalty. In practice, employer sanction has not been easy to implement due to lack of evidence, giving the impression that they are immune to the tough laws.

Legal loopholes and weaknesses in enforcement of existing legal protective mechanisms also contribute to workers falling into an irregular status. Employers have unlawfully revoked the work permits of foreign workers, forcing them into irregular status. This happens in disputes between the employer and the migrant worker, whereby the employer may unilaterally terminate the latter’s employment, and hence his visa and work permit. Should the migrant seek legal redress against his employer, he/she has to pay RM100 for a Special Monthly Pass to

remain in the country. Migrant workers holding Special Passes are not allowed to work in the country, and with no income to support their cost of living and legal fee, it is virtually impossible to seek legal redress. Exemption from paying the fee is available for the very few who seek the assistance from NGOs. Also included in this group are contract defaulters and pass abuses. Work permits issued to contract migrant workers are tied to the workplace and employer, and the work permit is invalidated the moment the worker terminates his employment or switches his employer.

The primary motive of irregular migrants is to seek employment or engage in petty trading, but there are cases where foreigners enter the country legally or illegally purely to commit crimes such as theft and burglary or engage in promiscuous activities<sup>8</sup>. Many who engage in promiscuous activities are victims of unscrupulous illegal labor recruiting agents.

### **Commercialization of Migration**

State intervention has also contributed to the “commercialization” of the recruitment process and the development of a growing “migration” industry in the country. Unlike the employment of high-skilled labor, legal recruitment of low-skilled labor involves several intermediaries in the sending and receiving countries to process their movement. Labor recruiters in both countries facilitate the entire migration cycle from the village to the employer for a fee that is borne by the migrant worker.

There are currently 1,041 employment agencies registered with the Ministry of Human Resources. Although they were originally established to seek employment for Malaysians abroad, the majority now engages in recruiting foreign workers for local employers.

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<sup>8</sup> Between 2004 and 2006, about 400 foreign women, mostly from China, Thailand and Vietnam were rescued from vice dens.

In addition, the Ministry of Home Affairs (MOHA) now grants permits to establish Labor Outsourcing Companies, and these companies operate as commercial entities that supply foreign labor. Their activities are supply-driven and run contrary to the national policy to reduce foreign labor dependence. Unlike direct recruitment that only allows employers to recruit foreigners to fill in vacant positions in their companies that cannot be filled by local workers<sup>9</sup>, Labor Outsourcing Companies can hire foreign workers without a valid job vacancy. This recruitment method introduced in 2002 not only contributes to the expansion of the “immigration” industry, but it also “creates jobs” for recruited foreign labor. For instance, workers from Bangladesh can only be employed through the outsourcing companies, and in order to provide employment for these workers, they are hired as petrol pump attendants, even though a policy of self-service was introduced in the late 1990s as part of a strategy to reduce dependence on foreign labor.

### **Minimal Focus on Strategies to Reduce Demand for Labor**

The largely supply-centered management of foreign labor parallels neglect on strategies to reduce the demand for foreign labor.

The levy was originally aimed to “control the influx of cheap and unskilled labor into the country” (New Straits Times, 16<sup>th</sup> May 1991). Unlike Singapore, which imposes a lower levy on higher skilled workers, Malaysia imposes a higher levy on higher skilled workers, which appears to contradict the national policy to encourage skill-intensive industries. The rationale in the Malaysian case is to impose a lower levy on sectors perceived to face critical labor shortages, while a higher levy is imposed on sectors where the problem of excess labor demand has been perceived to be less serious. In other words, the short-term goals to meet labor shortages override the longer-term goals of economic restructuring. Originally, the employer had to bear the levy, but a year later the government allowed the transfer of the levy to the worker, treating it as tax on foreign

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<sup>9</sup> A labour market test is compulsory for all employers wanting to employ foreign labour.

workers. Foreign workers do not pay tax, so the levy was transformed into a policy tool to make foreign workers pay “for the development of public facilities and social amenities that they enjoy or use while working in Malaysia” (The New Straits Times, 2<sup>nd</sup> January 1993).

The wide variance in levy ranging between RM360 for domestic and plantation workers and RM1,200 for others has also encouraged entry of foreign workers via sectors with lower levy and “abscond” to work in other more “attractive” sectors. The wide disparity in the levy also encourages self-employed business operators, particularly home business entities, to recruit foreign domestic workers by paying lower levy but employing them in the private businesses. At times, the domestic worker is even made to do both housework and assist in the business.

Some initial measures were introduced to economize on foreign labor use, beginning with the petrol pump attendants. But there has been a lapse in the implementation of the policy for reasons explained earlier.

### **Inconsistency in Policy Implementation**

There is an explicit national policy on foreign labor and a very comprehensive range of policy instruments to control foreign labor intake, stem irregular migration and protect migrant workers from abuse and exploitation. However in practice poor governance and inter-agency rivalry have compromised policy implementation. Some of the policy instruments have also contributed to unintended outcomes.

Unlike in many labor-receiving nations, the management of foreign labor is now under the Ministry of Home Affairs (MOHA). See Figure 1 for the institutional framework for foreign labor management. The shift in responsibility from the Ministry of Human Resources (MOHR) to the MOHA has paralleled a move towards the “securitization” of foreign labor management. Foreign labor management is increasingly viewed from the security perspective rather than as

a labor issue (Mak, 2007). This is evident from the amendments to the Immigration Act 1959 to enhance the penalties on irregular migrants and their employers and increased enforcement through the deployment of RELA or the Peoples' Volunteer Corp.

To beef up the Police and the Immigration Departments in charge of monitoring irregular migration, RELA, with a total of about 500,000 members, was originally tasked to gather information on irregular migrants in their respective areas. But recently, its powers have been widened to apprehend migrants in irregular status. A Private Member's Bill is to be tabled in Parliament for the formation of a RELA department under the MOHA. The Bill will also broaden the enforcement capability of RELA to assist the Immigration Department. The widening of powers has coincided with a series of alleged misconduct by RELA members. Human rights organizations in Malaysia have also criticized RELA for alleged indiscriminate arrests and human rights violations during its operations.

The shift in responsibility has inevitably contributed to a more supply-driven approach to the management of foreign labor. In 2005, the cabinet decided to cap the intake of foreign workers at 1.5 million. However, contrary to the national policy decision to limit and reduce foreign worker demand, the One-Stop Center for the Employment of Foreign Workers<sup>10</sup> situated within the MOHA is pro-business and demand driven. The various ministries, each guarding their own sectoral interest, are represented in the One-Stop Center, and therefore the Center readily yields to the demands of employers and sanction the intake of more workers in order not to jeopardize their operations. Even the focus of the Cabinet Committee of Foreign Workers (CCFW), chaired by the Deputy Prime Minister, is heavily skewed towards the supply-side management of foreign labor,

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<sup>10</sup> MOHA serves as the secretariat to the One-Stop Center for the Recruitment of Foreign Workers set up in 2006. The One-Stop Center is responsible for approving and processing all applications to bring in foreign workers into Malaysia. All relevant government bodies and industry organisations related to the employment of migrant workers are represented in the One-Stop Centre.

such as determining source countries and quantum of foreign worker levy. Little attention is paid on strategies to cut back on foreign labor. On the contrary, the focus is on improving and facilitating recruitment, as exemplified by the establishment of labor outsourcing companies.

The visa on arrival (VOA) policy was introduced in September 2006 as part of the Visit Malaysia Campaign to encourage tourists, but it has been exploited by recruiting agents and individuals alike to enter the country through legal channels and gain employment illegally. Despite statistics showing a high incidence of overstaying, authorities have been hesitant to revoke the VOA, for fear of jeopardizing the performance of the tourism industry, which is a leading growth sector.

Inter-agency tensions, i.e. between MOHA and MOHR, have prevented a more coherent and coordinated approach to reduce foreign labor dependence and to protect migrant workers from abuse and exploitation. The multitude of agencies engaged in the recruitment and protection of foreign workers tend to work in silo resulting in duplication of functions and contradictions in policy implementation. For instance, the Immigration Department and Ministry of Human Resources maintain separate databases on foreign workers, and their figures differ. The lack of coordination and cooperation between the two key agencies also stacks the scales of justice against abused foreign workers. As noted earlier, an abused worker may complain to the Labor Department, but the employer can unilaterally terminate the work permit and place the worker in irregular status, thereby denying the protection provided by law. They are instead detained and deported, without recourse to legal redress.

The lack of policy coherence and coordination in turn leads to ambivalence in policy implementation. Employers, foreign workers and even government officials down the line have a poor comprehension of the multitude of rules and procedures governing the recruitment and protection of foreign workers. This

leads to non-compliance of the rules and procedures and encourages irregular migration.

### **Sluggish Productivity Growth**

Ambiguity in policy implementation in turn failed to send the right signals to producers. The increasing reliance on foreign labor to sustain growth via labor-intensive industries without clear-cut strategies to cut back on foreign workers has distorted relative factor prices and has sent the wrong message to investors.

The two-pronged strategy to gradually phase out foreign labor, i.e. controlled intake of foreign labor alongside policies to upgrade the economy through human capital development and fiscal and industrial policies to attract skill and capital intensive industries, has only contributed to incremental changes in productivity as shown in Table 8. Total factor productivity contribution to GDP growth has increased marginally from 1.1 between 1996-2000 to 1.3 between 2001-2005. At the same time, the contribution from capital has declined from 2.2 to 1.7 over the same period. Between 1990 and 2005, foreign labor contributed more than a third of the increase in total labor supply, and over 98 per cent were low-skilled contract migrant workers. The heavy reliance on foreign labor to drive growth has clearly overshadowed the national policy to reduce foreign labor dependence. The policy incoherence has important longer-term implications on the employment of educated and trained labor entering the labor market with higher reservation wages.

In order to cut back on foreign labor reliance, Malaysia needs to re-examine its strategy to increase investment in low value added agricultural activities as envisaged in the Ninth Malaysia Plan (2006-2010). Instead, it should provide incentives for Malaysian investors to relocate its low value added activities overseas.

### **Contributions to the National Economy**

Currently, sustained economic growth is contingent upon a regular supply of foreign labor. Oil palm, construction and even low-end manufacturing are increasingly dependent on foreign labor to remain profitable and competitive. Malaysian's heavy reliance on foreign direct investment to drive export growth and to provide employment for urban job-seekers implies that it cannot risk an abrupt uprooting of footloose foreign firms until it could build up its domestic capabilities. Manufacturing industries such as electronics, wood-based and textile industries that were fast losing their comparative advantage to the low-wage producers such as China and Vietnam have sustained their profitability and comparative advantage by employing foreign labor.

Foreign workers also provide a labor reserve to draw upon during periods of high growth and retrenched during periods of slow growth, thereby moderating wage growth and ensuring stable employment of local labor. This was evident during the growth cycle from 1987-1997, when the economy grew at an annual average of 8 per cent. During the high and unabated growth phase, foreign workers helped to alleviate severe labor market imbalances, especially in agriculture and construction to support non-inflationary growth. During the recession in 1998 following the financial crisis in 1997, the level of employment of local labor was sustained through the official policy of firing foreign workers first.

Foreign workers have also provided great flexibility to the labor market, both employment and wage flexibility. Migrant workers are employed on short-term contracts and their services can be terminated easily. They are also more willing to do overtime compared to local labor and thus provided the much needed flexibility to many labor-intensive, such as electronics, textiles and wood-based industries. The employment of foreign labor in these industries has been on the rise. The ratio of foreign labor in the garment industry rose from 5 per cent in 1993 to about 23 per cent in 2000. In the wood-based industries, the ratio increased from 23 to 36 per cent and in electronics from 2 to 10 per cent over the same period (unpublished data from Annual Labor Force Surveys).

Estimates of the contribution of foreign workers to the GDP range from 5 per cent based on partial equilibrium studies and about 9 per cent based on general equilibrium analysis (MSN, 2004; Kanapathy, 2007).

## **V. CONCLUSION**

Given a relatively small population base, sustained high growth had transformed the Malaysia from a labor surplus economy to a net importer of labor as early as the late 1970s. Following rapid structural transformation of the economy, many of the labor-intensive export-oriented industries had to rely of foreign labor to maintain their profitability and competitiveness. Foreign labor accounted for about a third of the increase in the workforce from 1990 to 2005.

As the number of foreign workers increased at an unprecedented rate, the state switched from a fairly open policy towards migrant labor to increasing intervention to control and regulate their inflow. The two decades of policy experiments to manage cross-border labor has at best produced mixed results.

The principal objective of Malaysia's foreign labor policy is to gradually phase out the use of contract migrant workers, and to allow sufficient time for skills deepening to foster productivity-based growth. However, policy incoherence, weak inter-agency cooperation and coordination, and poor governance have contributed to ambivalence in policy implementation and non-compliance of the multitude of rules and regulation resulting in an entrenched dependency on foreign labor.

Through trial and error, the state has however been successful in establishing a fairly efficient system of recruitment of foreign labor. Foreign labor management experience has also revealed that national policies are necessary but insufficient

to address the complexities inherent in managing cross-border labor flows and bilateral approaches are useful and relevant.

State intervention has also resulted in a number of unintended outcomes that have compounded the problems inherent in the management of low-skilled foreign labor. The large number of policy instruments to regulate the inflow of foreign labor has contributed to the “commercialization” of the migration process. These policy instruments have raised the transaction costs of migration and inadvertently encourage irregular migration.

The supply-side biases in foreign labor management policy and minimal focus on strategies to systematically reduce foreign labor dependence have sent the wrong message to investors. Large-scale intake of low-skill foreign labor distorts domestic factor prices and undermine policies and strategies to restructure the economy toward productivity-based growth and competitiveness.

The complexities inherent in the managing of foreign labor necessitate a higher level of cooperation between the sending and receiving nations. The issues and concerns with respect to low-skilled skilled and high-skilled migration differ drastically and therefore the nature and level of cooperation will differ in both cases.

Experiences of countries like Malaysia that receive large-scale low skill labour and whose borders are highly porous show that unilateral effort at managing cross-border flows is a daunting task. In such instances, bilateral cooperation with large labour sending countries are useful tools for tackling outstanding migrant labour issues peculiar to the bilateral cross-border labour flows. The cross-border labour flows between Malaysia and Indonesia is a case in point.

There is also substantial scope for regional cooperation for dealing with broader common issues and concerns such as collection and sharing of data on cross-

border flows, tackling human trafficking, portability of pension and health insurance schemes and recognition of national technical and professional qualifications. These issues can be included into the agenda of existing regional co-operations such as ASEAN, APEC, and the Economic Partnership Agreements and ABAC.

Theory and experience shows that trade and investment are substitutes for migration. Therefore, Malaysia needs to re-examine its strategy to increase investment in low value added agricultural activities. Instead, it should provide incentives for Malaysian investors to relocate its low value added activities overseas. In this respect, regional economic integration through trade liberalization under AFTA could bring about greater convergence of wages and prices, and other factors of production and ease cross-border labor flows. But in the interim phase, a much wider regional framework is warranted to ensure more orderly movement of people and better protection of migrants.

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TABLE 1  
Population Size and Structure, 1980-2010

	1980	1990	2005	2010	Growth Rate (%)		
					1980-1990	1990-2005	2005-2010
Population (million)	13.88	18.01	26.75	28.96	2.3	4.3	1.6
Citizens (%)	-	16.78	24.36	26.79	-	3.6	1.9
Non-citizens (%)	-	0.78**	2.39	2.17	-	10.3	-1.9
Age-Structure (%)							
0-14	39.9	34.8	32.6	31.7	1.8	2.6	1.0
15-64	56.6	60.8	63.1	63.6	2.7	4.8	1.8
65 and above	3.5	4.4	4.3	4.7	2.4	5.6	3.4
Dependency Ratio (%)	76.9	64.0	58.5	57.2	-	-	-
Total fertility rate (TFR)	3.9	3.5	2.76	2.48	-	-	-
Bumiputera	4.47	4.0	3.18	2.80	-	-	-
Chinese	2.72	2.52	2.19	2.04	-	-	-
Indian	3.14	2.65	2.34	2.15	-	-	-

Note: \* This includes permanent residents, foreign workers with work permits and foreign students.

\*\* Data is based on the 1991 Population Census

Source: Government of Malaysia, Five-Year Development Plans, various issues.

TABLE 2  
Labor Market Indicators, 1980-2005

	1980	1990	2005	% contribution to change	Growth Rate (%)	
					1980-1990	1990-2005
Labor Force ('000)	5,109	7,040	11,291	100.0	3.3	3.2
Local	-	6,752	9,513	65.0	-	2.3
Foreign	-	290	1,778	35.0	-	12.9
Employment ('000)	4,817	6,686	10,045	-	3.3	2.8
Unemployment (%)	5.7	5.1	3.5	-	-	-

TABLE 3  
Foreign Labor Dependence by Sector, 1985 and 2004

Sector	1985	2004
Agriculture	6.2	20.5
Manufacturing	1.7	11.0
Construction	7.6	13.0
Services	4.8	13.3

Source: Department of Statistics, Malaysia, Annual Labor Force Survey, 1985 and 2004 (unpublished data)

TABLE 4  
Foreign Labor Policy and Outcomes

Objectives	Policies Measures and Instruments	Policy Outcomes
Control and Regulate the Inflow of Migrant Workers	<ul style="list-style-type: none"> <li>• Establishment of recruitment agencies</li> <li>• Bilateral agreements</li> <li>• Work permit</li> <li>• Levy</li> <li>• Freeze/ban on the intake of contract migrant workers</li> <li>• Employment of “Malaysians First” Policy</li> <li>• Labor market test</li> <li>• Biometric Identification System</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increase in documented migrants</li> <li>▪ Severe market pressures and high cost of legal recruitment led to increasing incidence of irregular migration</li> <li>▪ Growth and development of an immigration industry</li> <li>▪ Forgery, trafficking and malpractices in enforcement</li> <li>▪ Negative externalities</li> <li>▪ Ambivalence and ambiguity in policy implementation.</li> </ul>
Reduce Clandestine or Irregular Migrants	<ul style="list-style-type: none"> <li>• Registration and regularization Programs for Irregular migrants</li> <li>• Amnesty</li> <li>• Security Operations code-named Ops Nyah I (Get Rid Operation) and Ops Nyah II</li> <li>• Enhanced legal penalties for irregular migrants and those hiring or harboring irregular migrants.</li> </ul>	<ul style="list-style-type: none"> <li>▪ More efficient recruitment mechanism</li> <li>▪ Reduced incidence of irregular migration</li> <li>▪ Higher incidence of overstaying</li> <li>▪ High cost of policy implementation to state and the migrant</li> </ul>
Protect the Rights of Migrant Workers	<ul style="list-style-type: none"> <li>• Foreign Worker Recruitment Policy – Requirement for Contract of Employment, Provision of Similar wages and benefits as local workers.</li> <li>• Compulsory Induction Course on Local Labor Laws, Language and Customs</li> <li>• Anti-Trafficking in Persons Bill, 2007</li> </ul>	<ul style="list-style-type: none"> <li>▪ More efficient recruitment system</li> <li>▪ Better protection for workers</li> <li>▪ Greater awareness of rights amongst foreign workers</li> </ul>

**TABLE 5**  
Distribution of Contract Migrant Workers by Sector, 1990 –2006

	1990	1995	2000	2003	2006
Agriculture	47.9	36.1	24.0	26.5	26.6
Mining	0.6	0.4	-	-	-
Construction	10.4	13.5	9.0	17.3	14.4
Manufacturing	9.8	24.1	37.1	30.8	33.3
Services	31.3	25.9	7.7	6.6	14.4
Domestic Workers	-	-	22.0	18.8	17.1
Total (‘000)	100.0 (242.0)	100.0 (479.3)	100.0 (732,588)	100.0 1,239,862	100.0 (1,895,242)

Source: Department of Immigration (unpublished data)

**TABLE 6**  
Composition of Contract Migrant Workers by Country, 2000 –2006  
(Percentage distribution)

	1999	2001	2002	2003	2006
Indonesia	73.5	75.1	71.4	70.0	64.4
Bangladesh	18.5	14.0	7.3	7.3	3.4
Thailand	0.4	0.3	2.2	1.2	0.6
Philippines	0.4	2.3	2.0	1.3	1.3
Pakistan	0.5	0.3	0.2	0.2	1.1
Others	2.7	8.0	16.8	20.1	29.1
Total	100.0	100.0	100.0	100.0	100.0

Source: Department of Immigration (unpublished data)

TABLE 7  
Foreign Worker Levy and Other Fee

Items	Rate (RM)
Visa	10-100 per annum
Employment Pass	200-300 per annum
Temporary work Permit	60 per annum
Medical Examination Fee	200 per annum
Levy - Manufacturing, Services and Construction	1,200 per annum
Levy - Plantation and Domestic Maids	360 per annum
Levy – Technical and Professional Personnel	1,200 to 1,400 per annum
Processing Fee	50 per annum
Personal Bond/Bank Guarantee	500 to 1,500

Source: Immigration Department, Malaysia

TABLE 8  
Contribution of Factors of Production, 1996-2005

Factor	1996-2000		2001-2005	
	% of Contribution to GDP	% of GDP	% of Contribution to GDP	% of GDP
GDP	4.8	100.0	4.5	100.0
Labor	1.5	30.8	1.5	33.2
Capital	2.2	45.2	1.7	37.8
TFP	1.1	24.0	1.3	29.0

Source, Malaysia (2006), p.46

**FIGURE I**  
**Institutional Framework for Policy-Making on Foreign Workers**

