

New Guidelines on the Employment of Foreign Workers in Malaysia

The long-awaited **Employment (Amendment) Act 2022** (“Amendment Act 2022”) has finally come into force on 1 January 2023.

On the employment of foreign workers, the new Section 60K of the Amendment Act 2022¹ now requires employers to obtain prior approval from the Director General of Labour before employing such employees irrespective of their wages be it a foreign worker or an expatriate. Such approval is however subject to the following conditions:

- (a) The employer has no outstanding matter relating to any decision, order or directive issued under the Employment Act; or
- (b) The employer has no outstanding matter for any conviction under the laws applicable to social security, minimum wages or minimum housing; or
- (c) The employer has not been subjected to any conviction in relation to human trafficking and forced labour.

Pursuant to a [recent announcement](#) made by the Labour Department at its official website on 3 January 2023 (which has been updated on 4 January 2023), any employer who wishes to employ foreign workers is required to make an application at the links given below based on the foreign workers’ respective category, as follows:

No.	Category
1.	Applications for the employment of foreign workers under the permitted sectors (<i>manufacturing, services, plantation, agriculture, construction, mining and quarry</i>) Link
2.	Applications for the employment of Foreign Domestic Workers Link

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	The checklist and application guide for this category of foreign workers can be found here .
3.	Applications for employment of all other categories of foreign workers / pass holders (<i>inter alia</i> , Expatriates, Foreign Security Guards, Foreign Fishermen, Ship Crews, Professional Visit Pass (Missionary / Other Religion) Holders, Student Pass Holders, Resident Pass Holders, Malaysia My Second Home (MM2H) Program Participants and Malaysia's Premium Visa Program (PVIP) Participants) Link
4.	Applications for the employment of "tom yam" chefs Link
5.	Applications for the employment of Traditional Pass Holders (Thai citizen workers in the bordering states) Link

Note that any application for the change of employer must be made via email at ptm@mohr.gov.my. The application checklist and form can be found at: <https://itksm.mohr.gov.my/en/berita-pengumuman/2-uncategorised/2964-senarai-semak-borang>

In respect of the employment of expatriates, an employer will need to complete the following details of the company through the above link, *inter alia*:

- 1) The position of the expatriate which the employer intends to apply for;
- 2) The total number of existing local employees;
- 3) The total number of existing foreign employees;
- 4) Name and registration number of the company under the Companies Commission of Malaysia;
- 5) Address and contact details;
- 6) Business sector;
- 7) Date of commencement of business;
- 8) Status of the Company (Active / Non-active);
- 9) SOCSO number

Aside from the above, an employer is required to respond to the following questions in order to proceed with the application:

- 1) Does the Company keep a Register of Employees (employee details) in its premises?
- 2) Does the Company provide a copy of the terms of service (employment letter) to the employee?
- 3) Does the Company provide a copy of the payslip to the employee?
- 4) Normal working days per week practiced by the Company;
- 5) Normal working hours per week practiced by the Company;
- 6) Wage period of the Company;
- 7) Payroll date;
- 8) Payroll method;
- 9) Minimum number of paid public holiday(s) given to the employee per year;
- 10) Minimum number of rest day(s) given to the employee;
- 11) Minimum number of days of paid sick leave(s) given to the employee;
- 12) Whether accommodation is provided to the employee? If yes, the following questions are required to be answered:
 - a) Method of arrangement;
 - b) Reference number for the Certificate of Accommodation obtained from the Labour Department;
- 13) Whether the employer contributes to SOCSO?
- 14) The minimum wages paid to the employee;
- 15) Whether the Company has been convicted under the **Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007**?

Although an employer may elect not to respond to the aforementioned questions pursuant to Section 67(2) of the Employment Act 1955, in these circumstances the employer will not be able to proceed with the application for employment.

Given the ramifications of potential penal and/ or financial liabilities on conviction for any breaches or non-compliance with the provisions of the Amendment Act 2022 compliance is key. The failure to adhere to the new requirements may result in the inability to engage ex patriates or foreign workers.

The contents of this article are premised on the Labour Department's official website (<https://jtksm.mohr.gov.my/en/berita-pengumuman/2973-permohonan-2>) and is accurate as of 4 January 2023. Given that the announcement is recent, there may be further changes to the process outlined above. For further details and information, please visit the official website of the Labour Department: <https://jtksm.mohr.gov.my/ms/>.

Endnotes:

¹ Section 60K of the Employment (Amendment) Act 2022 – Employment of foreign employee

(1) No employer shall employ a foreign employee unless prior approval has been obtained from the Director General.

(2) An application for the approval under subsection (1) shall be made in the form and manner as may be determined by the Director General.

(3) Upon approval of the Director General under this section, an employer shall, within fourteen days from the date of the employment of a foreign employee, furnish the Director General with the particulars relating to the foreign employee in such manner as the Director General may direct.

(4) The Director General may, subject to any written law, approve an application under this section if the employer complies with the following conditions:

(a) the employer satisfies the Director General that on the date on which he makes the application—

(i) he has no outstanding matter relating to any decision, order or directive issued under this Act; or

(ii) he has no outstanding matter or case relating to any conviction for any offence under this Act, the **Employees' Social Security Act 1969** [Act 4], the **Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990** [Act 446] or the **National Wages Consultative Council Act 2011** [Act 732]; or

(b) the employer has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour.

(5) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

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