

# TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPPA)

## 跨太平洋伙伴关系协定（跨协）

### Changes Required to Accede to the TPP: Labour Obligations

就加入跨协所需的修改：劳工责任

In collaboration with:  
联合著作：



# Labour Chapter

The TPP Agreement presents the opportunity to improve working conditions and to raise labour standards in the TPP member countries through a number of obligations that align to international labour standards.

Chapter 19 of the TPP agreement reiterates the members' commitment to the 1998 International Labour Organization (ILO) Declaration. This commitment requires TPP members to ensure that their labour laws and policies that uphold and respect the 1998 ILO Declaration. This declaration has now become the reference point in most labour provisions in Free Trade Agreements.



## Negotiated Outcome of Chapter 19

1. Commitments to protect and promote internationally recognized labour principles and rights, which includes the International Labour Organization's (ILO's) 1998 Declaration on Fundamental Principles and Rights at Work.
2. Commitments to ensure that national laws and policies provide protection of the fundamental principles and rights at work, which includes:
  - a) the right to freedom of association and collective bargaining; and
  - b) the elimination of child labour, forced labour or compulsory labour, and of discrimination in respect of employment and occupation.
3. Ensures that national laws provide acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.
4. Include a non-derogation clause that prevent TPP parties from relaxing their rule or law or deviate from domestic labour laws in order to encourage trade and investment.
5. Enforceable dispute settlement procedures, in case of non-compliance, to help ensure all labour obligations are respected.

## "ILO 1998 Declaration" Fundamental Principles and Rights at Work

The 1998 Declaration commits Member States to adopt the four fundamental principles and rights, even if they have not ratified the ILO Conventions.

The four principles are:

1. Freedom of association and rights of collective bargaining
2. Elimination of force or compulsory labour
3. Effective abolition of child labour
4. Elimination of discrimination in respect of employment and occupation.

As signatory to the Agreement, Malaysia is bound to oblige to these labour rights and standards through a fully enforceable Labour Consistency Plan (LCP) as key part of the TPPA commitment.

# Malaysia-USA Labour Consistency Plan

The TPP provisions under Chapter 19 – Labour requires several amendments on Malaysia's national labour laws prior to acceding TPP formally. Malaysia's obligation is established in the bilateral agreement between Malaysia and United States. The Malaysia-United States Labour Consistency Plan (LCP) is the bilateral instrument in accordance with Chapter 19 of the TPPA, and represent the significant commitment towards compliance with the ILO requirements.

The legal reforms stipulated in the LCP sets the basis for Malaysia to amend the affected legislations related to employment, i.e. *Employment Act 1955*; Sabah Labour Ordinance (Cap 67); Sarawak Labour Ordinance (Cap 76); *Industrial Relations Act 1967 (IRA)*; *Trade Unions Act 1959 (TUA)*; *Children and Young Persons (Employment) Act 1966*; *Workers' Minimum Standards of Housing and Amenities Act 1990*; *Employment (Restriction) Act 1968*; *Workmen's Compensation Act 1952*; *Private Employment Agencies Act (1981)*; and *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007*).

## Freedom of Association

- The current law in Malaysia has place considerable amount of power and discretion to the governmental that curtail the freedom of association.
- The ability of workers to form independent unions; and for unions to form across enterprises (by sector), and to affiliate vertically with confederations, are some of the changes required from Malaysia to uphold the freedom of association.
- Malaysia is expected to adopt and maintain the 4 principles of the 1998 ILO Declaration into the respective labour laws by addressing the following issues:
  - Part sections of TUA that are related to the power of the government in curtailing the freedom of association, and collective bargaining;
  - Sections that (i) restrict union membership within similar trades, occupations or industries; and (ii) remove restrictions on cross-affiliations of unions.
  - Sections that place limitations of membership and leadership on non-citizen workers.

## Malaysia-United States Labour Consistency Plan (LCP)

The LCP outlines the commitments that Malaysia shall undertake to fulfill the obligations that are stated in Chapter 19 (Labour), of the TPP Agreement.

LCP is legally binding although not attached to the Labour Chapter.

## Impact of Freedom of Association

Businesses and industry sectors are concern that:

- Union activities could potentially cause higher operational costs, arising from reducing working hours and conclusion for higher wages.
- Disruption or loss in productivity due to strikes can be a cost to businesses.

# Changes Required to Ratify Labour Chapter

- Sections of TUA that require two-thirds of the votes cast as quorum pre-requisite for union strike, versus simple majority vote;
- Discretion of Director-General in determining whether or not a strike would commence.

## Collective Bargaining

- In relation to collective bargaining, Malaysia shall amend relevant sections of current labour legislation that place restrictions related to the scope of collective bargaining. These may include:
  - Removing limitations on the condition for strikes as stipulated under Section 13(3) of IRA;
  - Amending relevant sections of IRA (including First Schedule) that set limit on the type of industries in which strikes are prohibited on the basis that they are essential service.
  - Ensuring that the use of subcontracting or outsourcing is not used to circumvent the rights of association or collective bargaining.

This may involve amendments related to Section 2A of the Employment Act 1955 (EA); Sabah labour Ordinance (Cap 67); and Sarawak Labour Ordinance (Cap 76) in order to provide clarity to the rights of workers provided to a principal either by outsourcing company or contractor-for-labour.

## TPPA obligations versus Malaysia's current practices

Obligations under TPPA	Existing Practices in Malaysia	Relevant sections of TUA and IRA
Multiple unions are permitted to be formed within an organization	Only one union can be formed within an organization	TUA: Section 15(2), 32, 33, 72, 74, 76A
Workers are allowed to become members of multiple unions; allowed to become unions members across trade, occupation or industry	Establishment of a union and its membership is restricted to only similar trade, occupation or industry	TUA Section 26(1A)
Conditions for a union to hold a strike include the consent of a simple majority of the member votes cast to agree to hold a strike	Conditions for a union to hold a strike include the consent of at least 2/3 of their members through secret ballot	TUA Section 25A(1)(a)
No workers can be restricted to run for election to become office bearers	Foreign workers are not allowed to run for election to become office bearers	TUA Section 28(1)(a)
The ILO places limitation on the right to strike in <u>nine</u> essential services.	Malaysia's Industrial Relations Act 1967 (IRA) lists <u>18</u> activities as essential services.	IRA First Schedule [Section 2]

# Changes Required to Ratify TPP Agreement

## Eliminate Forced Labour

- Foreign workers in Malaysia were impacted by many labour rights abuses, and particularly susceptible to debt bondage consequential from practices by labour recruiters, which constitute or linked to force labour.
- To protect workers from forced labour, the LCP recommends the following 4 broad actions:

## What Can Constitutes Forced Labour

- Fraud in wages related to recruitment and placement
- Debt bondage resulting from high recruitment fees.
- Constrained movement and isolation resulting from document retention.

1. Protections against the withholding of passports.	2. Recruitment practices, contracts and fees	3. Protection services for trafficking and forced labour victims	4. Foreign worker housing and freedom of movement
---	---	---	--

- Under each of the 4 broad actions, the LCP puts forth the improvements and commitment to enact or amend exiting laws from Malaysia to ensure compliance with the acceptable conditions of work and labour standards enforceable under TPPA.
- Some of these commitments have either been put into practice or already protected by our laws, but the enforcement may be lacking.

1. Protections against the withholding of passports	<ul style="list-style-type: none"> <li>▪ Enforce relevant provision in Section 12 of Passport Act 1966 that retaining a worker's passport is an offence; and prosecute employers and recruitment agencies that retain workers' passports.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Compel employers that engage foreign workers (whether direct or indirectly) to inform the workers via notice on their rights in retaining their own passports.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Amend the Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446) to cover all sectors, and to require provision of storage and secure safekeeping facilities</li> </ul>
2. Recruitment practices, contracts and fees	<ul style="list-style-type: none"> <li>▪ Ensure that the recruitment of foreign workers, whether directly by employer or by recruitment, are covered by the sections of the Private Employment Agencies Act of 1981 (Act 246), including provisions regarding limitations on the recruitment fees charged to a foreign worker.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Amend relevant regulations to effect that any government levies charged for employment of foreign workers are the obligation of the employer.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Recruitment agencies and employers to provide foreign workers a valid written work contract and terms of employment in workers' own language, prior to their entrance into Malaysia</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Amend relevant sections of Employment Act 1955 to disallow contract substitution</li> </ul>



# Changes Required to Ratify TPP Agreement

<p>2. Recruitment practices, contracts and fees</p>	<ul style="list-style-type: none"> <li>▪ Ensure that the recruitment of foreign workers, whether directly by employer or by recruitment, are covered by the sections of the Private Employment Agencies Act of 1981 (Act 246), including provisions regarding limitations on the recruitment fees charged to a foreign worker.</li> <li>▪ Amend relevant regulations to effect that any government levies charged for employment of foreign workers are the obligation of the employer.</li> <li>▪ Recruitment agencies and employers to provide foreign workers a valid written work contract and terms of employment in workers' own language, prior to their entrance into Malaysia</li> <li>▪ Prohibit contract substitution</li> </ul>
<p>3. Protection services for trafficking and forced labour victims</p>	<ul style="list-style-type: none"> <li>▪ To include into the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) to allow victims of trafficking to move freely to and from shelters; to have access to legal counsel of their choice; allow them to work under clearly established procedures; enable NGOs to own and operate shelters for these victims</li> <li>▪ Waive any fees associated with required pass for foreign workers who are involved in an investigation of violations of labour law; and allow them to seek alternative employment.</li> </ul>
<p>4. Foreign worker housing and freedom of movement</p>	<ul style="list-style-type: none"> <li>▪ Include provision that require employers or recruitment agencies (that provide housing for foreign workers) to make available notice in a language that workers understand of their right to freedom of movement under Malaysian law.</li> <li>▪ Recruitment agencies or employers having more than 10 foreign workers shall be required to post notice at their premises visible to the workers informing them of their rights to acceptable housing conditions.</li> </ul>

## Abolishing Child Labour

- Rules on child labour will be tightened under the TPP Agreement.
- Under the LCP, Malaysia has to enforce the following:
  - to ensure that a minimum age of at least 13 is established for admission to light work
  - to issue a list of hazardous types of work prohibited for persons under 18 years of age.

## ILO Convention 138 “Light Work”

- Light work is not be likely to harm the health or development of young persons, and that it not prejudice their attendance at school; participation in vocational orientation or training programs.

# Changes Required to Ratify TPP Agreement

## Employment Discrimination

- Member countries are also required to eliminate discrimination in respect of employment and occupation.
- Under existing legislations, several prohibitions are being placed on employment of women in certain occupations, which were initially intended to provide safety and safeguard to the women employees.
- These prohibitions as listed in Sections 34, 35 and 36 of EA and Cap. 67 and Cap. 76 shall be amended to remove the restrictive conditions, which are now deemed to be discriminatory against women.

### Prohibition of Night Work s.34 of Employment Act

No employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o'clock in the evening and five o'clock in the morning.

### Prohibition of Underground Work (s.35)

No female employee shall be employed in any underground working.

### Prohibition by Minister (s.35)

the Minister may by order prohibit or permit employment of female employees in such circumstances or under such conditions as may be described in such order

## Other Main Labour Obligations

- Besides being bound by the 1998 ILO Declaration, all member countries must adopt and maintain laws governing acceptable conditions of work. The acceptable conditions related to minimum wages, hours of work, and occupational health and safety are to be determined by member countries.
- This means to be compliant with the TPPA, each member country can establish its own set of minimum wage, working hours and safety protection depending on the level of development and economic situation. compliant with the TPP.

For Malaysia, we have adopted and maintain regulations with respect to minimum wages via the Minimum Wages Order 2012; hours of work through EA, Cap 76 and Cap 67; while the Occupational Safety and Health Act (OSHA) 1994 is the legislative framework for securing safety and health of persons at work.

- Hence, there are no amendments required under these TPP obligations, unless our policy makers envision to improve or enhance the current 'acceptable work conditions'.

In fact, the Ministry of Human Resources (MOHR) is now engaging with employers to get their views on improving existing provisions on annual leave, maternity leave, paternity leave, natural disaster/emergency leave, retrenchment benefit, etc.

# The Way Forward for Malaysia

## Summary for Labour Obligations

- This is the first FTA with labour obligations for Malaysia. The obligations of TPPA reiterate and adopt the principles of the 1998 International Labour Organization (ILO) Declaration into the member's national laws.
- Malaysia shall enact the legal and institutional reforms as required in the Labour Consistency Plan prior to the date of entry into force of the TPP Agreement.
- The reform exercise is expected to see at least nine current legislations related to labour and employment being amended.



Prepared by SERC's TPPA Research Team:  
由社会经济研究中心跨协研究团队所撰稿

- Ms. Sum Kum Mooi – Senior Researcher  
沈金梅硕士 – 高级研究员 (kmsum@accimserc.com)
- Mr. Lee Soon Thye – Researcher  
李顺泰先生 – 研究员 (stlee@accimserc.com)
- Mr. Shim Zhou Hong – Researcher  
沈兆雄先生 – 研究员 (zhshim@accimserc.com)



### 马来西亚中华总商会（中总）

The Associated Chinese Chambers of Commerce and Industry of  
Malaysia (ACCCIM)

6<sup>th</sup> Floor, Wisma Chinese Chamber,  
No. 258, Jalan Ampang, 50450 Kuala Lumpur, Malaysia.

Tel : (603) 4260 3090 / 91 / 92 / 93 / 94 / 95  
Fax : (603) 4260 3080  
Email : [accim@accim.org.my](mailto:accim@accim.org.my)  
Website : <http://www.accim.org.my>



### 社会经济研究中心

Socio-Economic Research Centre (SERC)  
SERC SDN BHD (918837-W)

6<sup>th</sup> Floor, Wisma Chinese Chamber,  
No. 258, Jalan Ampang, 50450 Kuala Lumpur, Malaysia.

Tel : (603) 4260 3116 / 3119  
Fax : (603) 4260 3118  
Email : [serc@accimserc.com](mailto:serc@accimserc.com)  
Website : <http://www.accimserc.com>