

NAVIGATING THE LANDSCAPE OF HIRING FOREIGN NATIONALS AND EXPATRIATES IN MALAYSIA

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17 March 2025

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These brief slides have been prepared for ease of reference and sections referred to in the Statute have been paraphrased.

You are advised to refer to the actual wording of the Statute for a complete appreciation of its legal implication.

Professional advice should be sought before making decisions based on this general presentation.

PART 1:

**EMPLOYMENT PASSES FOR
EXPATRIATES IN MALAYSIA**

INTRODUCTION

- Hiring expatriates in Malaysia requires compliance with the country's legal and regulatory framework, ensuring that foreign employees meet the necessary qualifications while aligning with business needs.
- Employers must obtain the appropriate work permits and passes, primarily through the Expatriate Services Division (“ESD”) under the Immigration Department of Malaysia. Companies seeking to hire expatriates must demonstrate that the position cannot be easily filled by a local candidate, adhere to industry-specific guidelines, and meet eligibility criteria set by relevant authorities.

Cont..

- Expatriates are skilled foreign professionals. By obtaining an Employment Pass (EP), an expatriate needs to take up employment with an organisation in Malaysia. The pass is subject to the contract of employment (up to 60 months).
- Common work passes include the Employment Pass (EP), Professional Visit Pass (PVP), and Residence Pass-Talent (RP-T), each catering to different employment durations and skill levels.

Employment Pass Categories

Employment Pass Type	Salary	Contract	Dependants
Category I (<i>Expatriate</i>)	RM10,000	Up to 5 years	Allowed
Category II (<i>Expatriate</i>)	RM 5,000 – RM 9,999	Up to 2 years	Allowed
Category III (<i>Knowledge / skilled</i>)	RM3,000 – RM4,999	≤12 months (max 2x renewal)	Not Allowed

Q: What industries can hire expatriates?

There is a distinction between expatriates and foreign workers under Malaysian law:

- **Foreign workers:** Individuals who come from a list of allowed source countries and are only allowed to work in the following sectors: **manufacturing, construction, agriculture, plantation and services.**
- **Expatriates:** There are **no limitations** on industries that can hire expatriates, who, as skilled foreign professionals, are usually in professional sectors.

Q: Who can apply for an EP?

- The application for an EP must be done by the company that intends to hire the expatriate. Expatriates are not allowed to apply for their own immigration passes.

NOTE: The payment of the application charges for skilled expatriate employment passes are to be borne by the employer.

READ ONLY

Requirements to Employ Foreign Expatriates

- Companies must first register with the ESD to apply for an EP, there **2 requirements** to be eligible to register:

1. Company must be registered with one of the below:

- The Companies Commission of Malaysia (SSM) under Companies Act 1965
- The Registry of Societies Malaysia under the Organisation Act 1966
- Associations/Cooperatives registered under the laws of Malaysia

Requirements to Employ Foreign Expatriates

2. Company paid up capital:

Equity	Paid-up Capital
100% Local Owned	RM250,000
Joint venture (minimum foreign equity is 30%)	RM350,000
100% Foreign Owned	RM500,000
Foreign owned companies running Wholesale, Retail and Trade (WRT). License is compulsory. Refer to the Ministry of Domestic Trade, Co-operatives and Consumerism WRT license application guideline	RM1,000,000

> OVERALL PROCESS

Overview

STAGE 1
1

Company Registration via ESD Online



Expatriate Services Division
Bahagian Khidmat Ekspatriat

Company submits all related company information through the Expatriate Services Division (ESD), Immigration Department of Malaysia at esd.imi.gov.my.



Online Endorsement via ESD Online

MYXpats



TalentCorp
GROUP OF COMPANIES



Pay the applicable fee, submit application to the ESD Online with required documentation.

STAGE 4
4

STAGE 2
2

Company Activation



Expatriate Services Division
Bahagian Khidmat Ekspatriat

Company logs into the ESD Online to complete the Online Company Activation process and receive further access to the services of ESD Online.



Expatriate Application via ESD Online



Expatriate Services Division
Bahagian Khidmat Ekspatriat

Pay the applicable fee, submit application to the ESD Online with required documentation.

STAGE 3
3

Procedure: How to employ foreign expatriates?

Applications for these passes can be made online through esd.imi.gov.my

Stage 1: Company Registration via ESD Online

1. Create an account online
2. Submit the Company Application
3. Notification regarding the verification and validation of the submitted information will be sent to you
4. Notification of status will be sent via the ESD Online with further instructions
5. Approved company will now proceed to company activation, companies will be rejected if they do not meet the requirement for expatriate application

> STAGE 1: (Step By Step)

Company Registration via ESD Online

Submit Company Application

- Log in using the login id and password created.
- Submit related company information, documents and projection of expatriate(s) required for the year.



Notification (Status)

- Notification of status will be sent via the ESD Online with further instructions.



01
STEP 1

02
STEP 2

03
STEP 3

04
STEP 4

05
STEP 5

Create Account

- Create account by clicking “Registration” and fill in the necessary information.
- Click the activation link sent to the email address registered in the [ESD Online](#).

- (a) Purchase e-Info SSM
- Company is required to purchase e-Info SSM through ESD Online.



Notification (Activation)

- Verification and validation of the submitted information.



Company Activation

- Approved company may now proceed to STAGE 2 (refer to [page 10](#)) for company activation.
- OR Rejection
- Company does not meet the requirement for expatriate application.



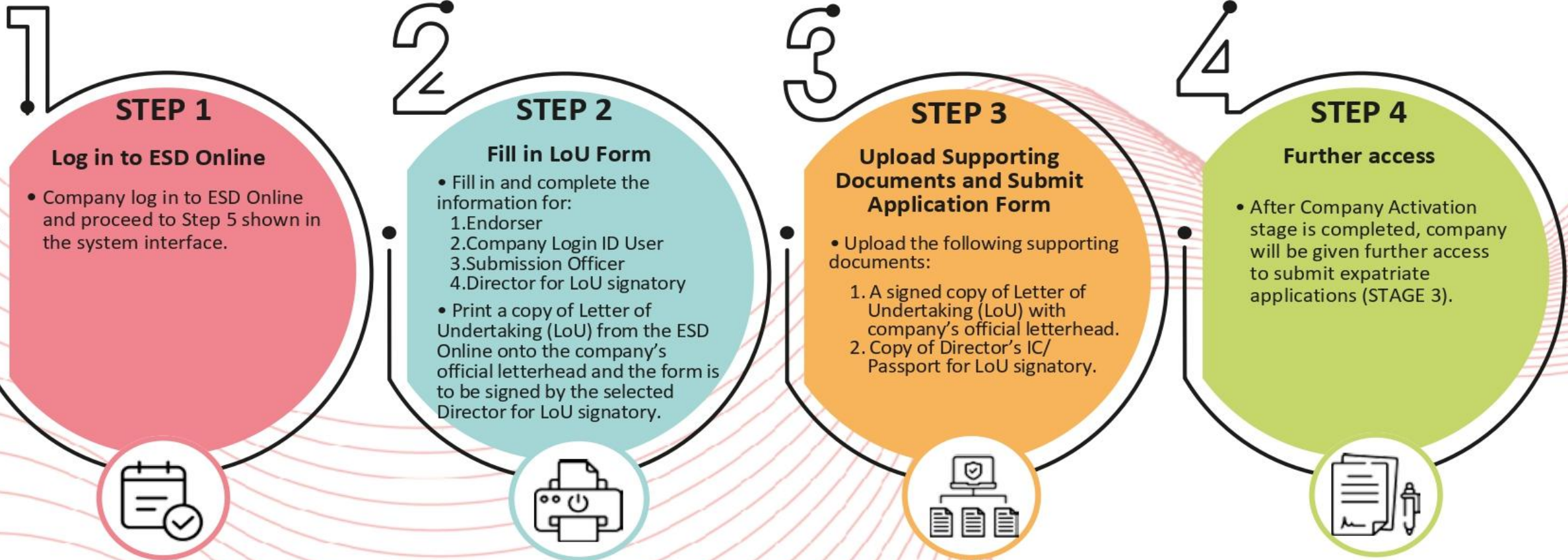
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Stage 2: Company Activation

6. Approved companies to fill in the LoU (Letter of Understanding) form found in the ESD Online
7. Print a copy of the LoU from the ESD Online onto the company's official letterhead and the form is to be signed by the selected Director for the LoU Signatory
8. Upload Supporting Documents and Submit Application Form
9. Further Access

➤ STAGE 2: (Step By Step)

Company Activation



Cont...

Expatriate Application via ESD Online

10. Create Application
11. Submit Application
12. Verification and validation of the submitted information and documents
13. Status notification will be sent via ESD Online and email – approved or rejected

READ ONLY

➤ STAGE 3: (Step By Step)

Expatriate Application Via ESD Online

Create Application

- Fill in the required information of expatriates and dependents (if applicable).
- Fill in the position by selecting through the list at "Position Setup."
- Upload all documents as required.



01
STEP 1

Submit Application

- Proceed with online payment of application fee and submit the completed application.
- Notification email will be sent to you upon successful submission.



02
STEP 2

Clearance

- Verification and validation of the submitted information and documents.



03
STEP 3

Notification

- Status notification will be sent via ESD Online and email - approved or rejected. Approved expatriates may now proceed to STAGE 4 for pass endorsement.



04
STEP 4

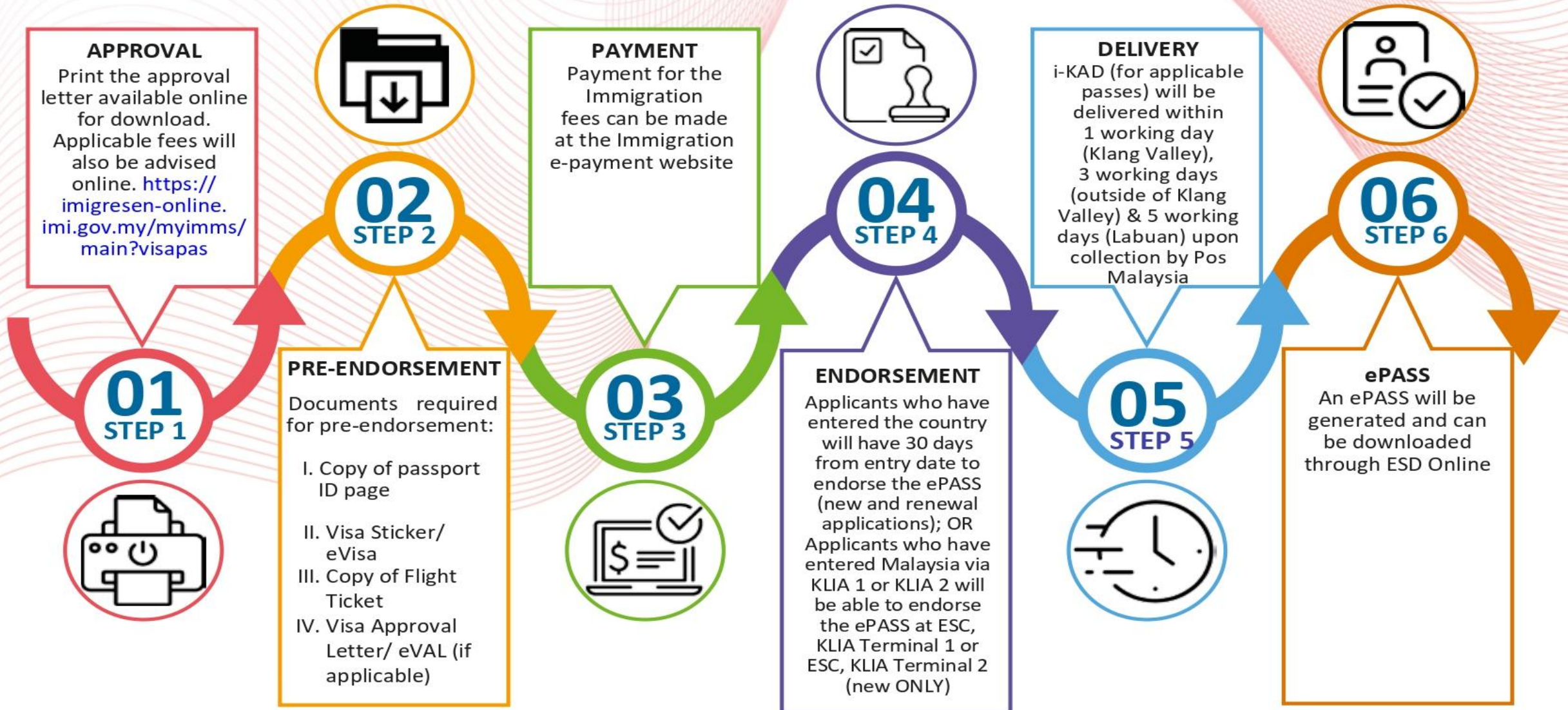
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Online endorsement & Sticker Delivery From MYXpats Centre

14. Print the approval letter available online for download. Applicable fees will also be advised
15. Pre-endorsement
16. Payment for the Immigration fees can be made at the Immigration e-payment website.
17. Applicants **who have entered the country will have 30 days from the entry date** to endorse the pass, or **applicants who have entered Malaysia via KLIA1 & KLIA@ will be able to collect and endorse the pass at KLIA 1 or KLIA 2.**

> STAGE 4: (Step By Step)

ONLINE ENDORSEMENT VIA ESD ONLINE



Q: Where can Expatriates work?

- Expatriates may **only** work for the **company named** in the Employment Pass. If they change companies, they need to resubmit their application.
- Expatriates may work at a **second location (for the same company)**, but permission has to be obtained through application on the ESD online services

READ ONLY

Q: Can a company cancel/terminate the Employment Pass?

- Simple answer here is **Yes**.
- A company can terminate an EP for reasons such as **resignation, termination, or non-compliance with permit conditions**. If the cancellation is due to an error or misunderstanding, an employee may be able to appeal.

Q: How to cancel/terminate the Employment Pass?

- A company can terminate an EP by preparing the necessary documentation (inclusive of the EP, employee's passport, letter of termination/resignation among other documents) and submitting it to the immigration department.

READ ONLY

PART 2:

**OTHER RELATED PASSES FOR
EXPATRIATES AND
FOREIGNERS**

Dependant Passes for Expatriates

- Requirement: EP holder's salary \geq RM5,000 (min RM5,000.00)
- EP Holder may apply passes for their **Spouse, Children/legally adopted children (under 18 years old), parents / parents-in law**
- Features:
 - i. Dependants are allowed to stay in West Malaysia
 - ii. The Dependants are not allowed to undertake any Employment

Long-Term Social Visit Pass

- May be issued to a foreigner for a temporary stay in Malaysia for a period of not less than six months.
- EP Holder may apply pass for:
 - Unmarried children between 18-25 (biological, legally adopted stepchild, except for children with disabilities), and not studying / working in Malaysia, Children of Common law spouse from previous relationship below 7 years old, Parents and Parents-in-law, Common law spouse

Cont..

- Features:
 - Allows the holder to stay in West Malaysia
 - One (1) time application
 - Max approval duration: 12 months, subject to the main principal's pass validity or the passport period, whichever is earlier
- ✓ Dependants to stay in West Malaysia
- ✗ Employment – requires conversion to EP
- ✗ Study – requires conversion to Student Pass
- ✗ Change of partner for common law spouse

Professional Visit Pass (PVP)

- Granted to foreign talents with acceptable professional qualifications or skills
- Can enter the country and provide services or undergo practical training with a Malaysian company on behalf of an overseas company on a temporary basis, for up to 12 months
- PVP holders are not entitled to apply for a Dependant Pass

READ ONLY

PART 3:

**LAWS THAT GOVERNS THE
EMPLOYMENT OF AN EXPATRIATE**

Q: What are the Laws that Governs the Employment of an Expatriate?

➤ Employment Act 1955:

- Governs all employees, including foreign employees from having their wages unlawfully held by an employer, mistreatment, making deductions from foreign employees unless Malaysia's employment regulations stipulate it.

➤ Industrial Relations Act 1967

- applies to all workmen irrespective of nationality

Cont...

➤ Trade Union Act 1959:

- It is implied that the right to join a trade union extends to all employees, regardless of their nationality.

➤ Employee's Provident Fund Act 1991 ("EPF Act"):

- EPF contributions are not mandatory for foreigners working in Malaysia, but workers can choose to opt-in to the EPF if they prefer.
- Employers only need to contribute RM5 regardless of how much the foreign employee chooses to contribute

Cont..

➤ Occupational Safety and Health Act 1994 (OSHA):

- Migrant workers are not excluded from the definition of worker

➤ Minimum Wage Order 2018:

- Applies to foreign workers as well

➤ Immigration Act 1959/63

- Individuals who are not compliant with the terms of their pass, such as:
 - Staying beyond the approved period
 - Violated the conditions stipulated in the Pass/Permit
 - Carrying out activities contrary to the conditions of the pass/permit

PART 4:

**TERMINATION OF EMPLOYMENT OF
AN EXPATRIATE IN MALAYSIA**

Q: Can a Company terminate an expatriate or foreign employee?

A: Yes, the Company can terminate a foreign or expatriate employee under certain circumstances, however the Company must comply with employment laws, contract terms, and immigration regulations.

READ ONLY

Q: What are the grounds for termination for an expatriate or foreign worker in Malaysia?

- Misconduct
- Poor Performance
- Retrenchment (Redundancy or Downsizing)
- Expiry or Non-Renewal of Employment Contract
- Work Permit Issues
- Mutual Agreement Termination

Q: When can a company retrench a foreign employee?

- Section 60N of the Employment Act 1955 provides that:

“Where an employer is required to reduce his workforce by reason of redundancy necessitating the retrenchment of any number of employees, the employer shall not terminate the services of a local employee unless he has **first terminated the services of all foreign employees employed by him in a capacity similar to that of the local employee.**”

Q: Can Foreigners File a claim for Constructive Dismissal?

A: The simple answer here is **Yes**, but with limitations:

Valid Employment Pass (EP) Requirement:

- A foreigner must have a valid Employment Pass at the time of filing the claim.
- If their EP has expired or been revoked, their legal standing may be affected.

Right to File a Claim under Section 20 IRA 1967:

- If a foreign employee believes they were constructively dismissed, they can file a claim with the Industrial Relations Department within 60 days of resignation.

Cont...

Challenges in claiming for Reinstatement

- Unlike local employees, foreign workers may not be eligible for reinstatement due to immigration laws. Instead, they are more likely to seek compensation for unfair dismissal.

READ ONLY

PART 5:

**WORKING WITHOUT A VALID PASS
OR PERMIT IN MALAYSIA**

Q: What happens to employers who hires employees without valid passes?

- Section 55B (1) of the Immigration Act 1959/63 provides that:

“Any person who employs one or more persons, other than a citizen or a holder of an Entry Permit who is not in possession of a valid Pass shall be guilty of an offence and shall, on conviction, be liable to a **fine of not less than ten thousand ringgit but not more than fifty thousand ringgit or to imprisonment for a term not exceeding twelve months or to both for each such employee.”**

Cont..

Section 55B (3) of the Immigration Act 1959/63 provides that:

“Where, in the case of an offence under subsection (1), it is proved to the satisfaction of the court that the person has at the same time employed more than five such employees that person shall, on conviction be liable to imprisonment for a term of not less than six months but not more than five years and shall also be liable to whipping of not more than six strokes.”

Q: What happens to individuals who harbour illegal immigrant (PATI) to enter or stay in their premises?

- Section 55E of the Immigration Act 1959/63 provides that:

“(1) No occupier shall permit any illegal immigrant to enter or remain at any premises.”

“(2) An occupier who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a **fine of not less than five thousand ringgit and not more than thirty thousand ringgit or to imprisonment for a term not exceeding twelve months or to both** for each illegal immigrant found at the premises and, in the case of a second or subsequent conviction, to a fine of not less than ten thousand ringgit and not more than sixty thousand ringgit or to imprisonment for a term not exceeding two years or to both for each illegal immigrant found at the premises.”

Q: What happens to foreigners staying in Malaysia beyond the allowed period?

- **Section 15(1)(c) of the Immigration Act 1959/63** provides that:

“A person shall not remain in Malaysia after the expiration of the period of any Pass relating to or issued to him”

Cont...

Section 15(4) of the Immigration Act 1959/63 further provides that:

“Any person who without reasonable cause contravenes this section shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than ten thousand ringgit or to imprisonment for a term not exceeding five years or to both”

Q: What happens to foreigners enters Malaysia without a valid pass / permit to stay in Malaysia?

- **Section 6(1) of the Immigration Act 1959/63** provides that:

“No person other than a citizen shall enter Malaysia unless:-

- (a) he is in possession of a valid Entry Permit lawfully issued to him under section 10;
- (b) his name is endorsed upon a valid Entry Permit in accordance with section 12, and he is in the company of the holder of the Permit;
- (c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or
- (d) he is exempted from this section by an order made under section 55”

Cont...

- **Section 6(4) of the Immigration Act 1959/63** provides that:

“Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.”

Cases related to Illegal immigrants / workers

PP v MD Shamim [2019] 2 SMC 166

Brief Facts:

- The accused, a citizen of Bangladesh, was found to be in Kluang without a valid pass issued in accordance with the law for entry into this country. As such, the accused violated the provisions of Section 6(1)(c) of the Immigration Act 1959/63 (“**Immigration Act**”), which constitutes an offence punishable under Section 6(3) of the same Act. The charge was read and explained to the accused in the Bangladeshi language by a Bangladeshi interpreter. The accused pleaded guilty to the charge and was accordingly convicted of the offence.

Held: The Court has sentenced the accused with a fine of RM2,000.00, in default of payment four months imprisonment and two strokes of the cane.

Cont..

Zawiyah Ahmad Adam v PP [2006] 6 CLJ 258

Brief Facts:

- The accused, as an occupier of a stall, was found to have permitted a female Indonesian illegal immigrant to enter the said premises. The said illegal immigrant had entered Malaysia to work as a domestic maid in Petaling Jaya but breached the condition by working at the stall.

Held: The Accused was initially sentenced to RM8,000 fine with a 5 day custodial sentence, custodial sentence was set aside after the Appeal.

Summary:

SECTION	OFFENSE	PENALTY
Section 5(2)	Enter and leave Malaysia not via approved (gazette) routes such as immigration control post, authorized landing place, authorized airports or authorized points of entry.	A fine not exceeding RM10,000 or imprisonment not exceeding five years or both.
Section 6(3)	Not in possession of a valid Entry Permit lawfully issued to him or his name is not endorsed upon a valid Entry Permit or Not in possession of a valid Pass lawfully issued to him to enter Malaysia or	A fine of not more than RM10,000 or imprisonment not exceeding five years or both and shall also be liable to whipping of not more than 6 strokes.
Section 8	Prohibited Immigrants	A fine not exceeding RM10,000 or imprisonment not exceeding five years or both.
Section 9	Enter and remain in Malaysia after a pass or permit revoked by the Director General of Immigration.	A fine not exceeding RM10,000 or imprisonment not exceeding five years or both.
Section 15	Living in Malaysia after the permit is revoked or an expired pass.	A fine of not less than RM10,000 or imprisonment not exceeding five years or both.
Regulation 39(b)	Violated the condition of Pass, permit or border pass.	A fine not exceeding RM1,000 or imprisonment not exceeding six months or both.



QUESTIONS?

THANK YOU

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