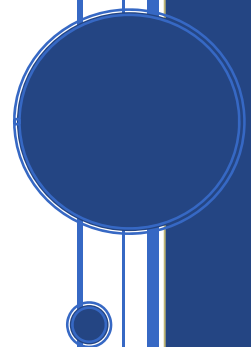




*MALAYSIAN EMPLOYERS FEDERATION*

**PRACTICAL GUIDELINES  
FOR EMPLOYERS ON THE  
RECRUITMENT,  
PLACEMENT,  
EMPLOYMENT AND  
REPATRIATION OF  
FOREIGN WORKERS IN  
MALAYSIA**

**DECEMBER 2014**





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Datuk Shamsuddin Bardan  
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## EXECUTIVE SUMMARY

In Malaysia, companies of all sizes, from large multinationals to small and medium enterprises rely on foreign labour. The management of foreign labour is complex; governed by various laws, policies and memoranda of understandings. The Malaysian Employers' Federation (MEF), with the support of the International Labour Organization (ILO) GMS TRIANGLE project, has carried out research on the recruitment, employment and repatriation of foreign workers. The MEF has also drawn together information on legislation, procedures and best practices to enable employers to comply with national laws and regulations. The research findings and guidance can contribute to improved productivity, as well as preventing labour disputes and promoting harmonious industrial relations. The study also serves the purpose of informing MEF's policy proposals to the Government on how to enhance the effective management of foreign labour.

Feedback from 101 member companies (76 of which employ foreign workers, and over half are in the manufacturing sector) to the survey identified current practices. Half of the respondents already have written policies related primarily to the employment of foreign workers, but also on recruitment and repatriation. These policies have been reviewed against the relevant Malaysian legislation, except for the relatively new Anti-Trafficking in Persons and Smuggling of Migrant Act 2007, for which greater awareness raising is needed.

The vast majority of respondent companies (87 per cent) give priority to local workers before applying to recruit foreign workers. The main reasons identified for recruiting foreign workers are the shortage of local workers to fill vacancies (78 per cent), foreign workers' willingness to work hard and perform overtime (53 per cent); and the low absenteeism rate of foreign workers (31 per cent). The survey findings also revealed that the average turnover rate for the local workers is higher at 14.8 per cent compared to foreign workers at 5.5 per cent.

The majority of respondents provide contracts to workers prior to departure from their home countries, and in a language that they understand. While these contracts are quite comprehensive, there are additional articles that could be considered, including information on the workers' next of kin, and details of wage payments and recruitment costs. Nearly half of the respondent companies shouldered the recruitment fees, while a third of respondents reported that foreign workers paid the fees up front, and a fifth of respondents advanced the payments and deducted the fees from workers' wages.

Nearly two-thirds of the respondent companies retained the passports of foreign workers, and two-thirds of these provided workers with access to their passports at any time. Employers require access to passports to renew work permits and process for medical checkups (both complicated

and time consuming processes), and also hold on to passports for safekeeping with workers' consent. About half of the respondents holding passports obtained written consent from foreign workers to do so (a sample letter of consent is contained within the Guidelines).

About two-thirds of the respondent companies indicated that there was no difference between the terms of employment and benefits between foreign and local workers. On wages, just over 9 per cent of the respondent companies applied for a deferment on payment of the national minimum wage to foreign workers in 2013. Nearly half have a probationary period (usually 3 months) for their foreign workers. The Cabinet Committee on Foreign Workers announced that the probation period is not applicable to foreign workers, but MEF is of the view that the Cabinet Committee cannot introduce an administrative policy that is not in line with Order 5 of the Minimum Wages Order 2012 and is discriminatory to the local workers who may be put on probation with up to 30% discount on the minimum wages for the first 6 months' period.

All the respondents provided an orientation to workers. An example of the content covered in an induction programme for foreign workers is included in the Guidelines. Almost all employers provided on-the-job training, more than half also provide coaching and a third recruited a training provider to develop the skills of the workers.

The majority of the respondent companies (93 per cent) have adopted a safety and health policy (a sample company safety and health policy is outlined). To carry out the policy, 90 per cent have set up a Safety and Health Committee. The survey findings reveal that the accident rate of local employees is 4.25 per cent compared to 4.14 per cent of foreign workers.

About 74 per cent of the respondent companies do not allow their foreign workers to join trade unions, despite Malaysian labour law not prohibiting it. The only restriction in the Trade Union Act, Section 28(1) is that foreign workers are not allowed to become office-bearers. They are also not allowed to form their own unions.

The survey findings reveal that 84 per cent of the respondent companies have a grievance mechanism for employees claiming unfair treatment, and 75 per cent have systems to handle sexual harassment complaints. Foreign workers' access to a grievance mechanism is hindered by lack of knowledge on how the local system works, inability to speak the local language, and fear of retribution or repatriation for voicing their concerns. A sample grievance procedure is contained in the Guidelines.

Over two-thirds of the respondent companies (69 per cent) handled disputes internally. Some of the companies work with MEF (28 per cent) and labour authorities (25 per cent) to address grievances and resolve disputes. The companies would be open to working with other partners to address grievances, including MEF, embassies, and recruitment and outsourcing companies.

The main challenges faced at the company level by respondents were communication problems (55.6 per cent), abscondment (46.7 per cent) and cultural differences (46.7 per cent). A guideline on how to report on the abscondment of foreign workers is included. Disagreement and rivalries between foreign workers of different nationalities sometimes lead to disruption in production, mostly over non-work issues.

The MEF hopes that this research and the guidance provided here can be the basis for informing and guiding employers on more effective management of foreign workers at the enterprise level. There are many employers that are already demonstrating good best practices from which others can learn. On management of foreign workers at the national level, this document also points to areas in which the MEF and employers would like to have further consultation with the Government of Malaysia. This will have mutual benefits for workers, employers and the Malaysian society and economy.

## CHAPTER 1: RESEARCH DESIGN

### 1.1 Background

Malaysia is primarily a destination country for foreign workers. Relative labour shortages in certain sectors of the economy have been filled by foreign workers seeking employment opportunities with higher incomes. The foreign workers are mainly from neighbouring South East Asian nations (Indonesia, Vietnam, Cambodia, the Philippines, and Myanmar) and South Asian countries (Nepal, India and Bangladesh). Foreign workers are employed in low skilled and semi- skilled work in manufacturing, plantation and agriculture, construction, the services sector and domestic work.

Companies of all sizes, from large multinationals to small and medium enterprises rely on foreign labour. The management of foreign labour is complex, transnational and is governed by various laws, policies and memoranda of understandings. Employers need to be familiar with these in order to comply with the laws and buyers' standards, and to promote a healthy and productive industrial relations environment.

In some cases the laws that are sometimes not adhered to – either knowingly or unknowingly – relate to the recruitment fees; employment contracts; withholding of personal documents; working hours; deduction of wages; provision of benefits such as annual leave, public holidays and paid sick leave; access to grievance procedures and redress mechanisms; accommodation and work environments; and restriction of freedom of association and movement. These issues have an obvious and immediate impact on foreign workers, but also have consequences for employers and the country. The issues on post-employment such as repatriation measures to be taken to ensure that foreign workers return to the home country after the end of employment need to be addressed appropriately.

There is a need for employers to address these issues and challenges and be equipped with information and practical guidelines in managing foreign workers. Practical guidelines help employers to comply with the labour and immigration laws. The guidelines can contribute to improved productivity and profitability of companies by minimizing the number of workers absconding, as well as preventing labour disputes and promoting harmonious industrial relations. The guidelines can also assist employers in establishing and implementing management systems

to carry out company policy on foreign workers and ensure compliance with buyers' codes of conduct.

## **1.2 Objectives and Scope of the Study**

The Malaysian Employers Federation (MEF) and the International Labour Organization (ILO), with the support of the ILO GMS TRIANGLE project<sup>1</sup>, are collaborating to provide practical guidance to employers on managing their foreign workforce, and identify and promote best practices. A survey was conducted among employers to identify issues and challenges faced by employers in the management of foreign labour, as well as best practices. Based on the priorities identified, the MEF compiled information and a set of practical guidelines for employers on the recruitment, placement, employment and repatriation of foreign workers in Malaysia. The guidelines will be made available to MEF members and also to other stakeholders through the MEF website. This exercise also informs MEF's policy proposals to strengthen and enhance the management of foreign labour.

## **1.3. Methodology**

### **1.3.1 Data Collection**

1.3.1.1 Data was collected through online survey based on structured questions which cover:

- Management Systems Policies
- Pre Departure
- Post Arrival
- Employment
- Repatriation

1.3.1.2 The survey questionnaire was sent to MEF members covering a wide cross section of employers in manufacturing and non-manufacturing sectors. A total of 101 employers responded to the survey. Of these, 76 companies employed foreign workers. Case studies

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<sup>1</sup> The ILO TRIANGLE Project (Tripartite Action to Protect the Rights of Migrant Workers) operates in six countries in the Greater Mekong Subregion and Malaysia. The project is supported by the Australian Government. The views expressed here do not represent those of the ILO. For more information, visit [www.ilo.org/asia/triangle](http://www.ilo.org/asia/triangle)

based on the responses from the survey data are selected to highlight the specific company initiatives and best practices through in-depth-interviews.

- 1.3.1.3 Dialogues and discussion with the relevant Government departments and agencies were incorporated into the survey findings.

#### 1.3.2 **Data analysis**

Data collected through the online survey powered by Vovici software were validated and processed using IBM SPSS Statistics 20.

#### 1.4 **Workshops**

- 1.4.1 A consultation workshop was held on 6 December 2013 with employers and other stakeholders to review the survey findings and provide further inputs where necessary.

- 1.4.2 A validation workshop was held on 4 July 2014 with employers and other stakeholders to validate the draft set of practical guidelines.

#### 1.5 **Outcomes of the Study**

- 1.5.1 Survey findings on current practices in managing foreign workers recruitment, pre-departure, post arrival and repatriation.
- 1.5.2 Information, practical guidelines and best practices in managing foreign workers in recruitment, pre-departure, post arrival, employment and repatriation.



## CHAPTER 2: FOREIGN WORKERS IN MALAYSIA

### 2.1 Profile of Foreign Workers in Malaysia

2.1.1 The Malaysian economy has consistently recorded impressive and sustained high growth over the period 1990-1997, i.e. prior to the Asian financial crisis. The robust growth led to substantial job creation, with employment expanding faster compared with labour force growth. The tight labour market spread to the manufacturing and services sectors and permeated across the Klang Valley and major towns including Penang, Johor Bahru and Ipoh. This attracted an influx of both legal as well as illegal foreign workers. Several measures were taken to ease the tight labour market conditions, including increasing the supply of skilled manpower and greater mechanisation of operations. As an immediate solution to the problem, foreign workers are allowed to be recruited in the construction, plantation, manufacturing, agriculture, services as well as domestic work. This is to avoid disruption to the economic growth process.

2.1.2 A **foreign worker** is defined as non Malaysian citizen or Permanent Residence (PR) but is allowed for employment and temporary stay on Visit Pass (Temporary Employment) – VP(TE) or Pas Lawatan (Kerja Sementara) – PL(KS). The legal foreign workers are employed under valid Temporary Employment Pass issued by the Department of Immigration.

Under Section 2 Employment Act 1955:

"foreign domestic servant" means a domestic servant who is not a citizen or a permanent resident

"foreign employee" means an employee who is not a citizen

In 2013, the number of registered Foreign Workers increased markedly to 2.47 million workers (2012: 1.57 million workers). The significant increase can be attributed to the legalisation of Foreign Workers through the 6P programme. They work in five formal sectors (construction, services, agriculture, plantation, and manufacturing) and domestic work (DW). They are equally protected under the various labour laws and regulations. They are generally employed in the low-skilled and unskilled jobs. Most foreign workers were employed in the manufacturing (35% of total Foreign Workers), agriculture (26%) and construction (20%) sectors. (Central Bank Annual Report 2013).

2.1.3 **Expatriates**, who are issued with an Employment Pass are largely professionals and highly skilled workers. In the 1980s there were about 80,000 expatriates, and in 2013 there were 44,938

expatriates. The majority of them are employed in the services sectors (15,746; 35%) as well as petroleum (8,654; 19.3%) and information technology (8,410; 18.7%) industries. The declining number of expatriates is a cause of concern since expatriates are vital in spurring competitiveness and innovative capabilities of the local workforce. Among the Government's measures introduced to facilitate employment of expatriates are the Residence Pass-Talent, which was introduced on 1 April 2011, and the establishment of a one-stop centre for expatriate services in the Immigration Department.

2.1.4 Another category of foreign workers are the illegal or undocumented foreign workers who enter the country illegally or having entered the country legally failed to renew the work permit and work in breach of the immigration laws. As the employment is illegal there is no protection and the illegal foreign workers are therefore vulnerable to abuse and exploitation.

Under the Immigration Act 1959/63: the penalties to the employer and illegal foreign worker are as follows:

S. 55B(1) : Fine of not less than RM10,000 and not more than RM50,000 for each worker illegally hired or to imprisonment for a term not exceeding twelve months or to both for each such employee

S. 55B(3) : If an employer employ more than 5 illegal workers, on conviction – imprisoned for not less than 6 months but not more than five years and shall also be liable to whipping of not more than six strokes.

The penalty - Illegal Foreign Worker under Section 6(3):

An illegal foreign worker 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.

2.1.5 **Refugees** who seek asylum in Malaysia are often issued with ID card by the UN High Commission for Refugees (UNHCR) for resettlement to third countries. At the end of March 2014, there were 143,435 refugees and asylum-seekers registered with UNHCR in Malaysia:

- 133,070 (93 per cent) are from Myanmar, comprising 51,845 Chins, 35,563 Rohingyas, 11,764 Myanmar Muslims, 7,828 Rakhine, 3,623 Burmese and Bamars, 5,396 Mon, 5,218 Kachins, and other ethnicities from Myanmar.

- 10,365 refugees and asylum-seekers from other countries, including 4,216 Sri Lankans, 1,139 Somalis, 902 Syrians, 776 Iraqis, and 319 Afghans.

Some 70% of refugees and asylum-seekers are men, while 30% are women. There are some 29,996 children below the age of 18. There are also a large number of persons of concern to UNHCR who remain unregistered (35,000).

(Source: United Nations High Commissioner For Refugees Factsheet on Refugees in Malaysia [http://www.unhcr.org.my/upload/1.1 Factsheet Refugees In Malaysia April2014.pdf](http://www.unhcr.org.my/upload/1.1_Factsheet_Refugees_In_Malaysia_April2014.pdf))

Refugees are not allowed to work and are not issued PL(KS). They are issued with UNHCR cards and to sustain themselves refugees seek employment normally in the informal sector, until the process of resettlement is finalized.

## **2.2 Statistics on Foreign Workers in Malaysia**

2.2.1 Table 2.2.1 shows the trend in the number of foreign workers from 2000 to 2013. Foreign workers from Indonesia account for about half of Foreign Workers in Malaysia.

Table 2.2.1: Foreign workers by source country 2000 - 2013

Year	Country Of Origin									Total
	Indonesia	Bangladesh	Thailand	Philippines	Pakistan	Myanmar	Nepal	India	Others	
2000	603,453	158,149	2,335	14,651	3,101	3,444	666	18,934	2,363	807,096
2001	634,744	114,308	2,508	11,944	2,392	6,539	48,437	26,312	2,645	849,829
2002	788,221	82,642	20,599	21,234	2,000	27,870	82,074	39,248	3,641	1,067,529
2003	988,165	94,541	10,158	17,400	2,141	48,113	109,067	63,166	4,229	1,336,980
2004	1,024,363	54,929	5,463	16,663	1,156	61,111	149,886	78,688	77,831	1,470,090
2005	1,211,584	55,364	5,751	21,735	13,297	88,573	192,332	134,947	91,655	1,815,238
2006	1,174,013	62,669	13,811	24,088	11,551	109,219	213,551	138,313	121,994	1,869,209
2007	1,148,050	217,238	18,456	23,283	16,511	104,305	189,389	142,031	185,542	2,044,805
2008	1,085,658	316,401	21,065	26,713	21,278	144,612	201,997	130,265	114,607	2,062,596
2009	991,940	319,020	19,402	24,384	21,891	139,731	182,668	122,382	96,728	1,918,146
2010	792,809	319,475	17,209	35,338	28,922	160,504	251,416	95,112	117,086	1,817,871
2011	785,236	116,663	5,838	44,359	26,229	146,126	258,497	87,399	102,714	1,573,061
2012	746,063	132,350	7,251	44,919	31,249	129,506	304,717	93,761	81,773	1,571,589
2013	1,021,655	322,750	17,044	69,126	50,662	161,447	385,466	124,017	98,155	2,250,322

Source: Temporary Work Visit Pass (PLKS), Immigration Department (Ministry Of Home Affairs)

Note: Other source countries including - Cambodia; China; Sri Lanka; Vietnam; Laos

2.2.2 Table 2.2.2 shows the breakdown of the sectors where foreign workers are employed for the period 2000 – 2013. Manufacturing, agricultural and construction are the major sectors where foreign workers are employed.

**Table 2.2.2: Employment of foreign workers by sectors 2000-2013**

Year	Sectors					Total
	Domestic Workers	Manufacturing	Construction	Services	Agriculture*	
<b>2000</b>	177,546	307,167	68,226	53,683	200,474	<b>807,096</b>
<b>2001</b>	194,710	312,528	63,342	56,363	222,886	<b>849,829</b>
<b>2002</b>	232,282	323,299	149,342	64,281	298,325	<b>1,067,529</b>
<b>2003</b>	263,465	385,478	252,516	85,170	350,351	<b>1,336,980</b>
<b>2004</b>	285,441	475,942	231,184	93,050	384,473	<b>1,470,090</b>
<b>2005</b>	320,171	581,379	281,780	159,662	472,246	<b>1,815,238</b>
<b>2006</b>	310,662	646,412	267,809	166,829	477,497	<b>1,869,209</b>
<b>2007</b>	314,295	733,372	293,509	200,428	503,201	<b>2,044,805</b>
<b>2008</b>	293,359	728,867	306,873	212,630	520,867	<b>2,062,596</b>
<b>2009</b>	251,355	663,667	299,575	203,639	499,910	<b>1,918,146</b>
<b>2010</b>	247,069	672,823	235,010	165,258	497,711	<b>1,817,871</b>
<b>2011</b>	184,092	580,820	223,688	132,919	451,542	<b>1,573,061</b>
<b>2012</b>	142,936	605,926	226,554	138,823	457,350	<b>1,571,589</b>
<b>2013</b>	169,936	751,772	434,200	269,321	625,093	<b>2,250,322</b>

Source: Temporary Work Visit Pass (PLKS), Immigration Department (Ministry Of Home Affairs)

Note: \* including plantation sector

Excluding illegal foreign workers

Including Foreign Workers through the 6P whitening process.

## **2.3 Government Policy and Process for Hiring Foreign Workers**

2.3.1 The policy on foreign workers is decided by the Cabinet Committee on Foreign Workers and Illegal Immigrants, comprising 19 Cabinet Ministers including the Chief Minister of Sabah and Sarawak and chaired by the Deputy Prime Minister with the Chief Secretary of the Ministry of Home Affairs as the secretariat.

2.3.2 Some of the current policies relating to Foreign Workers application and employment are:

- The foreign worker must be in the age group of 18 to 45 years.
- The foreign worker is not allowed to bring in his or her family to live in the country.
- The foreign worker cannot change jobs or change employers without obtaining permission from the Ministry of Home Affairs.
- The foreign worker is allowed to work within a period of 5 years. The period may be extended to 10 years of employment (5 + 5).
- The foreign worker is allowed to stay in the country according to the dates set in the VP(TE). To ensure continued validity, the VP(TE) should be submitted for renewal to any Immigration office three months before the expiry date of the VP(TE).
- The employer is solely responsible for all payments of deposit and visa payment to the Immigration Department of Malaysia.
- This deposit is refundable only if employer has presented evidence that foreign workers have left the country or have changed employers with approval by Immigration Department.
- The foreign worker should be repatriated to his country of origin upon completion of work, dismissal or when the PL (KS) has expired, or revoked or when the foreign worker has failed to obtain a clean bill of health.
- The foreign worker is not allowed to marry any local resident or migrant worker who works in the country.
- The employer is responsible for reporting to the Immigration Department if the foreign worker has absconded from his or her place of work.
- The approval of the PL (KS) may be withdrawn or revoked if the foreign worker violates the conditions set by the Immigration Department of Malaysia.

(Source: <http://www.imi.gov.my/index.php/en/main-services/foreign-worker> )

- Foreign workers are not allowed to work as front-line workers.
- Foreign workers are not allowed to work in fast food restaurants
- Foreign worker approvals are made based on total actual requirements of companies
- There is a 3-month 'cooling-off period' if an employer and foreign worker wish to extend the period of work beyond 10 years.

<http://www.imi.gov.my/index.php/en/component/content/article/40-pengumuman/1026-information-of-foreign-worker-i-kad-by-sector>

### BOX 1: COLOUR CODED FOREIGN WORKER IDENTITY CARD

#### BY SECTOR OF EMPLOYMENT

In 2014, the Immigration Department of Malaysia introduced the Foreign Workers Coloured Coded Identity Card (i-Kad) by sector of employment for every Visit Pass for Temporary Employment (VPTE) issued. The colour coded i-Kad are based on the following sectors of employment:

Bil	Sectors	Colour
1	Agriculture	Green
2	Plantation	Orange
3	Construction	Gray
4	Manufacturing	Maroon
5	Services	Yellow
6	Foreign domestic helper	Brown

#### The application procedure for i-Kad

The application of VP(TE) made by the employer is considered to be the application for i-Kad and it will be printed simultaneously with the issuance of VP(TE). The printed i-Kad will be sent directly to the employer's address as in the VP(TE) without involvement of agent or intermediaries. i-Kad will be issued based on the following categories:

First category	New application for first year VP(TE)
Second category	Renewal for the second year VP(TE) and subsequently

Source: <http://www.imi.gov.my/index.php/en/component/content/article/40->

2.3.3 The **Foreign Worker Management Division of the Ministry of Home Affairs** is the secretariat of the Foreign Worker One-Stop Approval Agency that was established to handle applications for foreign workers following the employers' failure to secure local workers. The establishment of the Foreign Worker One-Stop Approval Agency is in line with the aspiration of the Government to practise good corporate governance as well as to reduce bureaucracy, and subsequently enhance the quality of delivery of services. The objective is to expedite and simplify the application process for the admission of foreign workers according to approved sectors. The Foreign Worker Management Division is headed by an undersecretary and comprises four units:

- \* Application and Processing Unit
- \* Policy and Bilateral Negotiation Unit
- \* Inspection, Complaint and Outsourcing Unit; and
- \* Information System and Administration Unit

2.3.4 Through this procedure, applications that are complete and satisfy all the conditions stipulated in the checklist will be processed and the decisions given on the same day. The foreign worker admission process involves an interview with the company owner/employer or authorised representative by the panel. Members of the panel represent the following ministries/regulatory agencies:

- i. Ministry of International Trade and Industry
  - For applications from the manufacturing sector
- ii. Manpower Department of Peninsular Malaysia
  - For applications from the services sector
- iii. Construction Industry Development Board
  - For applications from the construction sector
- iv. Ministry of Plantation Industries and Commodities
  - For applications from the plantation sector
- iv. Ministry of Agriculture and Agro-Based Industries
  - For applications from the agriculture industry
- v. Ministry of Home Affairs
  - Secretariat and supplementary member for all sectors

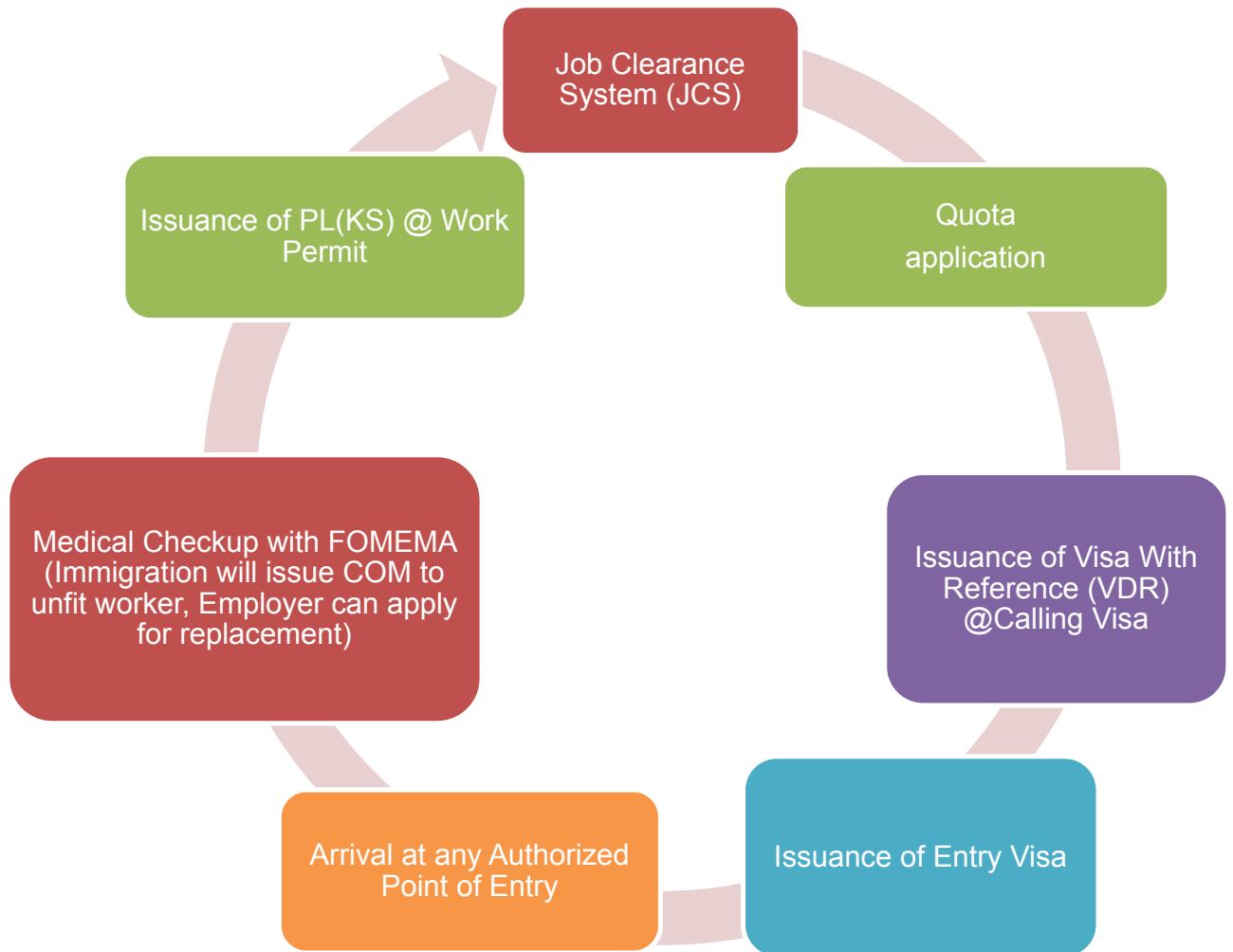


2.3.5 Before submitting an application for foreign worker admission, an employer must obtain confirmation from the Manpower Department of Peninsular Malaysia that the employer has used the services of the Job Clearing System (JCS)/Jobs Malaysia to recruit local workers. An application without a letter of declaration from the Manpower Department Peninsular Malaysia will not be processed. An employer whose foreign worker application has been approved will receive certification of approval and must make the levy payment within 48 hours of the date of approval. After the levy payment has been made, a conditional letter of approval will be issued to the employer.

2.3.6 In 2006, the Malaysian Government created a system in which outsourcing companies supply workers to the end users. Currently, 277 outsourcing companies are legally registered as outsourcing employers in Malaysia. The outsourcing system allows Malaysian companies to pay an outsourcing company to source and supply workers for them. The outsourcing company is responsible for negotiating contracts, arranging workers' visas, paying workers, and providing accommodation, food and insurance. The system is widely used by Malaysian companies. For employers recruiting less than 50 foreign workers, recruitment of foreign workers need to be made through outsourcing companies.

2.3.7 Malaysia and Bangladesh intend to carry out the recruitment of Bangladeshi workers to Malaysia on a government-to-government (G-to-G) arrangement, without the involvement of any third party, agent, outsourcing company or employer. The Human Resources Ministry said this mechanism would minimise the recruitment cost from RM13,000 to RM1,300, preventing the workers from debt bondage. This will also prevent any form of profiteering from human trafficking and smuggling activities. Employers and employees involved through the G-to-G mechanism will need to abide by the criteria specified in the memorandum of understanding on matters such as the conduct of security vetting, medical examination, suitability and genuineness of the employer. The recruitment of 12,000 Bangladeshi workers to work in the plantations in Sarawak aims to meet the shortage of workers in the sector. (Source: Bernama 24 October 2014)

**Chart 2.3.1 Application process flow for foreign workers**



## **BOX 2: APPLICATION PROCEDURES FOR FOREIGN WORKERS**

### **1. Application Procedures for Foreign Worker**

- a. Obtain approval and pay levy at the Local Centre of Approval, Ministry of Home Affairs.
- b. Employers apply for Visa With Reference (VDR)

#### **1. Documents required on submission of application: -**

- i. An application letter from employer
- ii. Visa applications by reference form
- iii. Letter of approval from the Ministry of Home Affairs
- iv. Original receipts of payment of levy
- v. Form IMM.12
- vi. Payment form
- vii. VDR Application form for new foreign workers
- viii. Bank draft (payment PLKS, PROCESS AND VISA)
- ix. Deposit / Insurance Guarantee / Bank Guarantee (valid for at least 18 months)
- x. Copy of worker's passport
- xi. Worker's photograph (1 piece)
- xii. Stamped personal bond
- xiii. Medical report from the country of origin approved by the Ministry of Health

### **2. Additional documents:**

Copies of the employer registration form (Form 49 / Form B & D) Representative Company Card (Yellow Card) for Foreign Workers Application VDR (Employer / Company Representative)

The original approval letter for outsourced foreign workers, and certified copies of VDR application for outsourced foreign workers (outsourcing company)

Foreign workers should remain outside the country while the application is being processed. Foreign workers will only be allowed to enter Malaysia after the application for VDR has been approved. The permitted entry points are:

- i. Through the Kuala Lumpur International Airport 1 and 2 (KLIA 1 & 2). Foreign workers must obtain a visa from Malaysian Representative Offices overseas
- ii. Other entry points: Foreign workers from Thailand and Indonesia must obtain a visa from the Malaysian Representative Office in that country
- iii. Conduct medical examinations at FOMEMA registered clinics to obtain a clean bill of health.
- iv. Obtain the Visitor's Pass (Temporary Employment) sticker at the State Immigration Office or at the Malaysian Immigration Headquarters, Putrajaya.

#### **Documents required:**

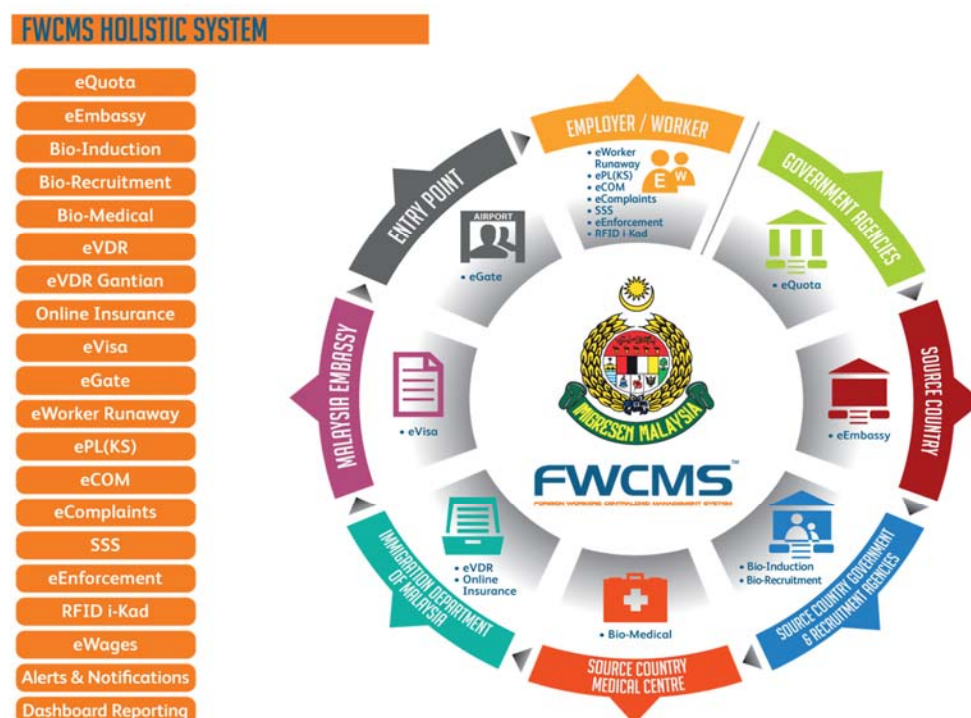
- i. The original approval letter from the Local Centre of Approval, Ministry of Home Affairs
- ii. Original receipts of payment made
- iii. Worker's passport

2.3.7 The Immigration Malaysia has recently implemented the Foreign Workers Centralised Management System (FWCMS). Effective 1st June 2014, all medical check-up at source country and VDR (Calling Visa) application will be processed online via the Foreign Workers Centralised Management System (FWCMS). It will be implemented in two phases:

- Phase 1 – effective 15 June 2014 (Foreign workers from Nepal, Sri Lanka, India, Pakistan)
- Phase 2 – effective 15 July 2014 (Indonesia, Thailand, Myanmar, Philippines, Vietnam, Cambodia, Laos and others)

Employers are advised to update the company's information with the Home Ministry's Foreign Worker Management Division and to register the company with the FWCMS portal, submit the VDR application and buy insurance via online.

FWCMS is an online integrated centralised system that link with all stakeholders namely the Government agencies, employers, source country embassies, recruitment agents and workers. All companies that wish to employ foreign workers are now required to register at FWCMS portal via [www.fwcms.com.my](http://www.fwcms.com.my). The FWCMS system is reproduced below:



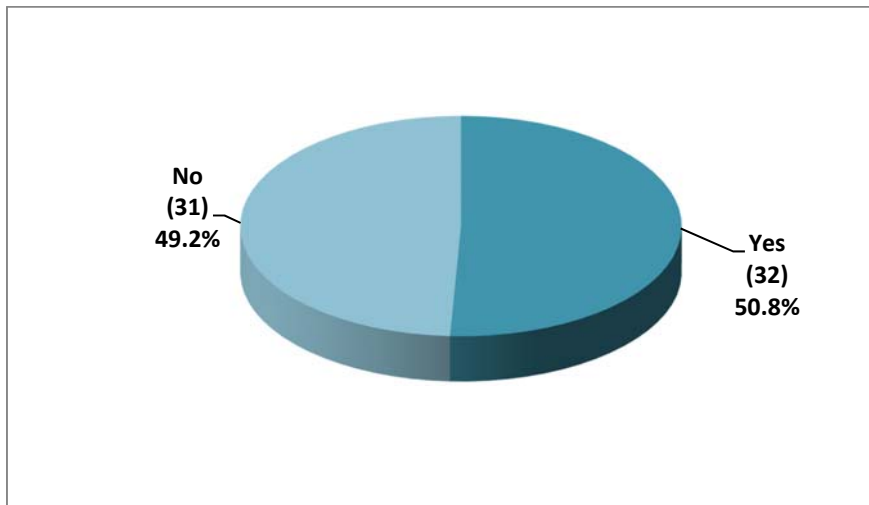
Source: <http://www.fwcms.com.my/>

## CHAPTER 3: COMPANY MANAGEMENT SYSTEMS AND POLICIES

### 3.1 Company Management Systems and Policies

3.1.1 The survey findings in Chart 3.1.1 reveals that half of the respondent companies have written policies on the management of foreign workers in their respective companies.

*Chart 3.1.1: Whether the companies have written policies on the management of foreign workers*



3.1.2 It can be noted in Table 3.1.1 that 34 companies have a written policy on employment and working conditions compared to 27 companies that have written policies on recruitment.

*Table 3.1.1: How the policies are articulated and content*

	Recruitment policy	Placement policy	Policy on employment and working conditions	Repatriation
Formal written policy	27	17	34	23
Broad guidelines	10	9	6	9
Case by case basis	5	9	5	0

3.1.3 It was found that almost all the respondent companies' policies relating to foreign workers management are in compliance with the provisions of the Employment Act 1955 which covers "employees" employed by an employer under a contract of service. The policies are also in compliance with the Industrial Relations Act 1967, Immigration Act 1959/63, Workmen Compensation Act 1952, Occupational Safety and Health Act 1994 and National Wages Consultative Council Act 2012. In the case of the Anti Trafficking In Persons and Smuggling of Migrant Act 2007, there is a need for more awareness programmes.

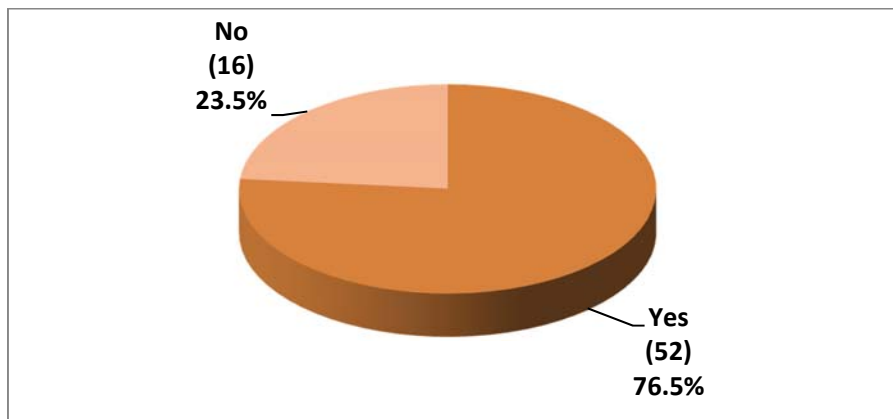
**Table 3.1.2: Review of policies or practices against Malaysian laws**

	Yes		No		Don't know	
	No.	%	No.	%	No.	%
Anti Trafficking In Persons and Smuggling of Migrant 2007	25	54.3	11	23.9	10	21.7
Employment Act 1955	55	91.7	4	6.7	1	1.7
Trade Union Act 1959	20	44.4	21	46.7	4	8.9
Industrial Relations Act 1967	45	83.3	6	11.1	3	5.6
Immigration Act 1959/63	48	85.7	6	10.7	2	3.6
Workmen Compensation Act 1952	49	89.1	4	7.3	2	3.6
Occupational Safety and Health Act 1994	49	87.5	5	8.9	2	3.6
National Wages Consultative Council Act 2012	49	87.5	5	8.9	2	3.6

3.1.4 In addition to the laws stated above, companies adopt voluntary standards, particularly in the electronics sector and the Code of Conduct issued by the Electronic Industry Citizenship Coalition. The EICC Code of Conduct is reproduced as Appendix 1.

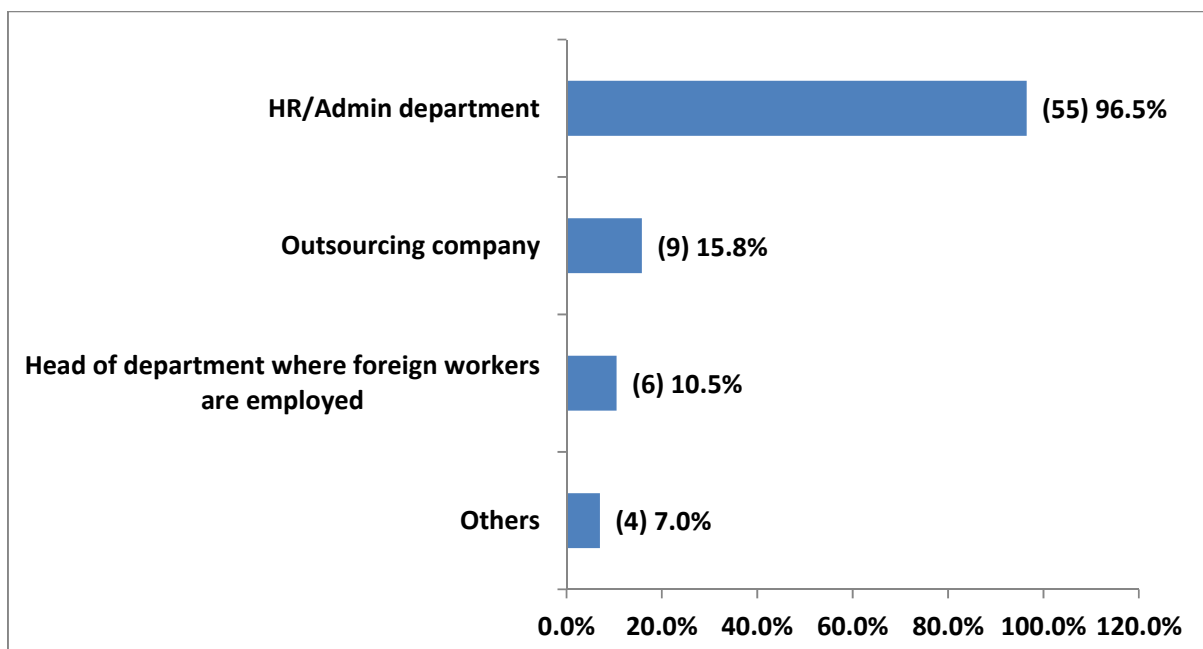
3.1.5 About 77% of the respondent companies have designated a particular department to implement the company's policy in relation to foreign workers' affairs. This may be due to the different procedures and legislation relating to the process of recruitment and employment of foreign workers.

**Chart 3.1.2: Whether the company has designated a particular department to carry out the company policy on foreign workers**



3.1.6 As can be seen in Chart 3.1.3, most of the respondent companies (96.5%) designate the management of foreign workers to the HR/Administration department. In the case of some companies (15.8%) who utilize outsourcing companies, the responsibility would lie with these outsourcing companies. In the case of the 15.8% of respondent companies, they sometimes intervene in management of foreign workers assigned to them by outsourcing companies to ensure compliance with the provisions of the related laws. The HR/Administration Department is also tasked with maintaining the register of Foreign Workers in the company including details of date of arrival and departure, job designation, etc.

**Chart 3.1.3: Departments that carry out the policy on foreign workers**



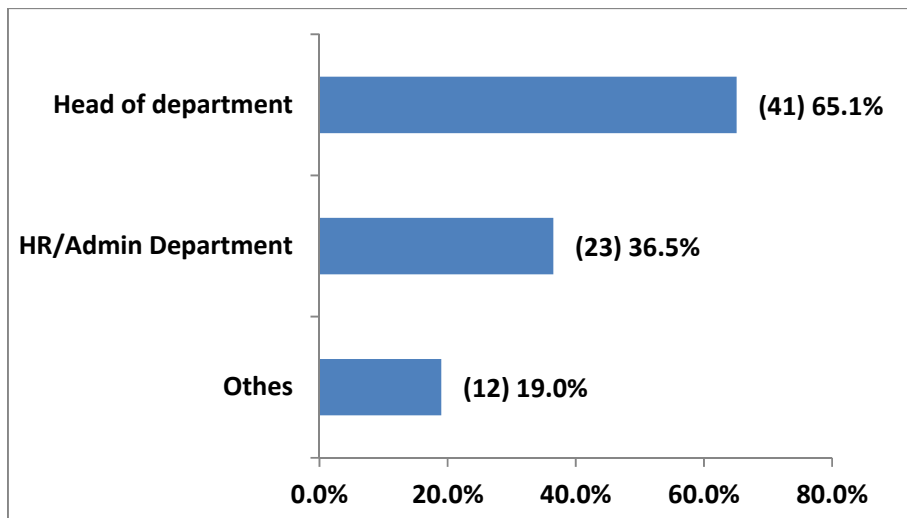
**BOX 3: CHECKLIST OF RESPONSIBILITIES OF HR DEPARTMENT IN RELATION  
TO FOREIGN WORKERS MANAGEMENT**

- ✓ Liaise with Government agencies such as Wisma Putra, MIDA, Immigration, and Manpower Department on relevant policies and procedures
- ✓ Coordinate and implement the entire recruitment process of foreign workers
- ✓ Liaise with advertisers on recruitment advertisements and internal advertisements
- ✓ Coordinate and participate in outstation recruitment exercise
- ✓ Participate in headcount forecast with other departments
- ✓ Maintain good relations and cooperate with relevant Embassies pertaining to foreign labour issues.
- ✓ Coordinate application of company's foreign workers with Immigration Department
- ✓ Submit foreign workers bio data for Visa with Reference application
- ✓ Monitoring renewal of Employment Pass for foreign workers
- ✓ Extension and cancellation of Employment Pass
- ✓ Orientation for directly recruited labour
- ✓ Ensure commonality/standardization among same process/system

3.1.7 As to who in the company initiates the employment of foreign workers, Chart 3.1.4 indicated that it is usually the heads of department (65%) that request Foreign Workers to meet the needs of the operation. This is followed by the HR Department that oversees the manpower requirements of the company.

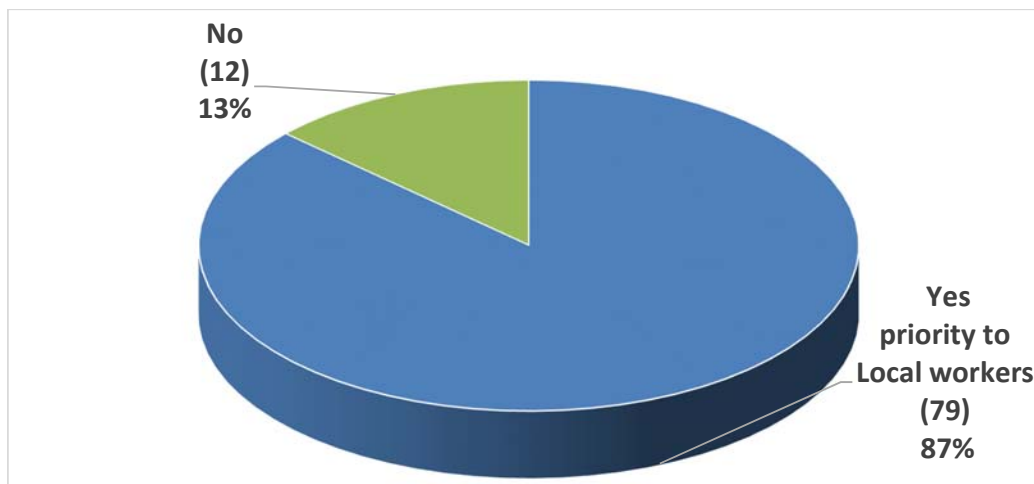


**Chart 3.1.4: Who initiates the request for Foreign Workers?**



3.1.8 In line with the government policy of seeking Malaysian workers first to fill vacancies, 87% of respondent companies have given priority to local workers before applying to recruit Foreign Workers. It is noted in the survey findings as illustrated in Chart 3.1.5 that companies have followed this policy for giving priority to local workers before applying to recruit foreign workers.

**Chart 3.1.5 Whether companies have a policy of giving priority to recruitment of local workers**



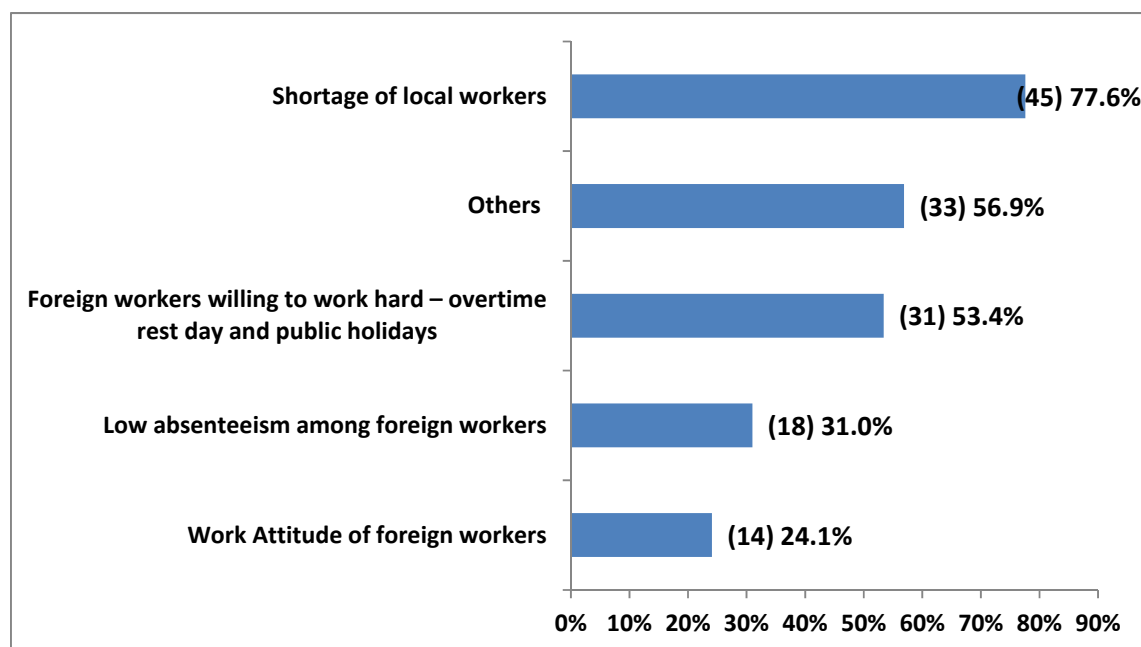
3.1.9 The respondent companies reported that the main reasons for recruiting foreign workers are:

- Shortage of local workers to fill vacancies (78%)
- Foreign workers willing to work hard and perform overtime (53%)
- Low absenteeism rate of Foreign Workers (31%)

The survey findings reveal that the average turnover rate for the local workers is higher at 14.8% compared to Foreign Workers at 5.5%.

Some employers may prefer to employ foreign workers as they are considered easier to manage and control and they are perceived to have a better commitment towards work. Some labour-intensive sectors like agriculture and construction are not attractive to local workers and thus rely heavily on Foreign Workers where the percentage of foreign workers is about 70% of the workforce in these two sectors.

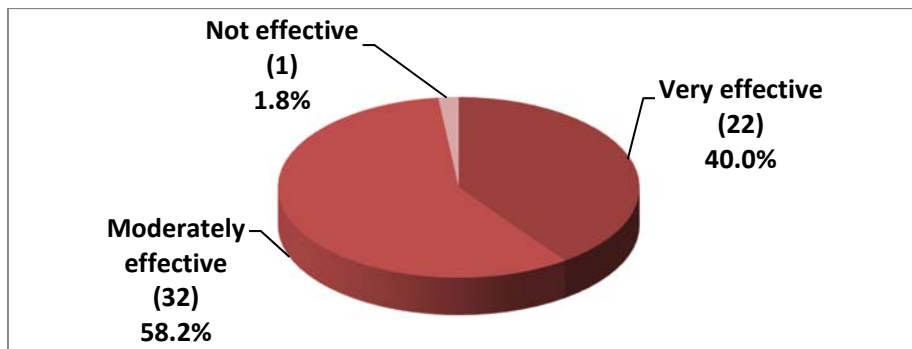
**Chart 3.1.6: Reasons for Recruiting Foreign Workers**



### 3.2 Effectiveness of the Present Management System

3.2.1 On the query on the effectiveness of their company's present management system in communicating with foreign workers, 58% felt that it was moderately effective, with room for improvement. Companies face language and cultural barriers in communicating effectively with the foreign workers. These challenges can be overcome by having frequent meetings to iron out problems in understanding the nature of work, employment conditions, occupational safety and health (OSH) regulations and methods to increase productivity.

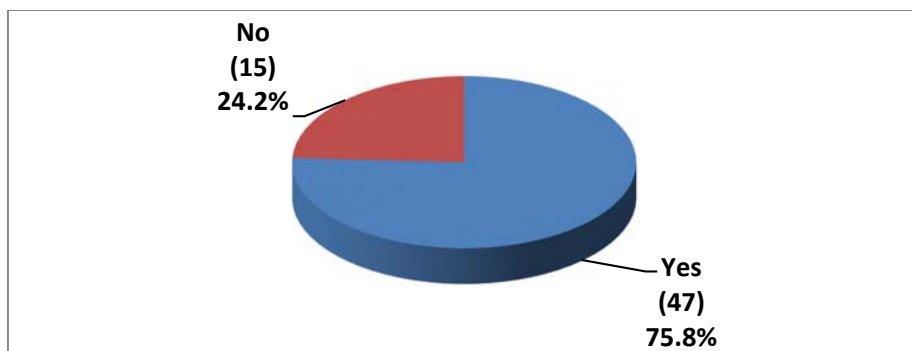
**Chart 3.2.1: Effectiveness of management system**



### **3.3 Monitoring System for Renewal of Work Permits**

3.3.1 The majority of the respondent companies (75.8%) had in place a system to monitor the renewal of work permits. This was crucial in ensuring that there would not be any problems on the renewal of work permits which may affect the operations or production schedule. It is a common problem among companies as they often face delays in getting the renewal approval at the Immigration Department. It is also important to note that employers need to retain the passports of foreign workers in order to renew their work permits.

**Chart 3.3.1: Whether the companies have a system to monitor the renewal of work permits**



#### **BOX 4: APPLICATION PROCEDURES FOR EXTENSION OF WORK PERMIT**

VP(TE) is valid for a period of 12 months. Employers can apply for VP(TE) extension 3 months before the expiry date.

- Employers must ensure the extension application is made before the VP(TE) expires. Any application submitted after the expiry date will be referred to the Immigration Enforcement Division for consideration.
- Application of VP(TE) extension must adhere to this checklist :
  - Passport of the foreign worker is still valid for 12 months and above
  - Application letter to extend the VP(TE)
  - Identification document of employee/ company representative (SSM company / Form 49 / Form B & D / Card Company Representative / Form Company representatives have endorsed / copy of the employer 's identity card)
  - Security bond in a form of bank guarantee / insurance guarantee / deposit ( validity period of bank guarantee / insurance guarantee is at least 18 months )
  - Insurance policy of Health Insurance Protection Scheme Foreign Workers (SPIKPA) – except for plantation sector
  - Slip of Foreign Workers Compensation Scheme ( FWCS )
  - Foreign workers must undergo medical examination and certified fit by the clinic/ medical centre registered with FOMEMA (for 2nd and 3rd year extension

Foreign workers are allowed to work in this country on a yearly basis up to 10 years. However, those registered under the 6P Program is allowed to work up to 3 years only.

- Upon completion or termination of employment, the employers must ensure that foreign workers are deported to their origin countries by using Check Out Memo. Security bond can be claimed provided the repatriation process is done accordingly through Check Out Memo.

Last Updated on Tuesday, 04 November 2014

Source: <http://www.imi.gov.my/index.php/en/main-services/foreign-worker>

### **3.4 Challenges in Applying and Renewal of Work Permits of Foreign Workers**

There are a number of challenges faced in applying for and renewing work permits of foreign workers. They include:

- Lengthy and unclear procedures
- Constantly changing procedures
- Delays in obtaining permits
- Poor counter service

3.4.1 Company representatives complain of the long wait to renew the workers' permits. They have to queue up early before the Immigration Department opens to get the numbered ticket to process the permit renewal. There are a limited number of queue tickets issued daily. (The Star 23 April 2014)

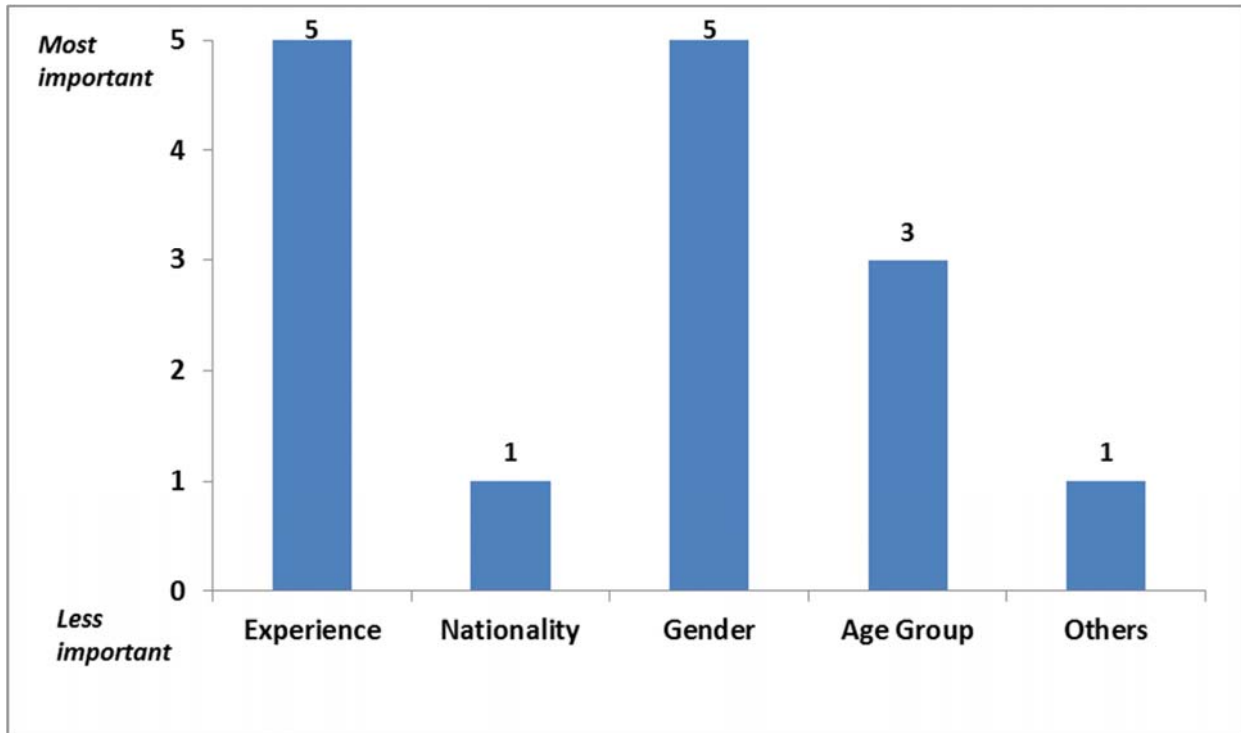
3.4.2 Processing of application for Calling Visa/Visa Dengan Rujukan (VDR) as stated in the AP is 30 working days, while previously it only took one week. However, in reality the approval takes much longer (>3 months). Renewal of work permits takes from two weeks to more than a month. For applications for more than five workers, the processing time is more than two months.

## CHAPTER 4: PRE-DEPARTURE

### 4.1 Recruitment and Hiring Policy

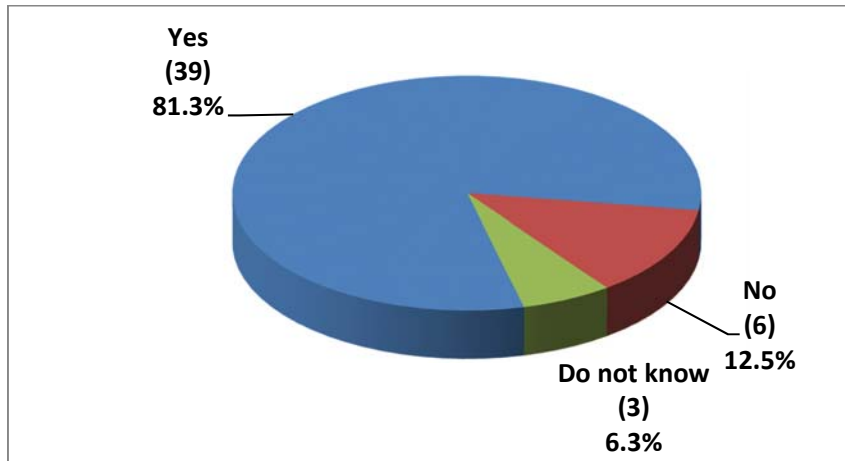
4.1.1 The most important criteria used in evaluating potential foreign workers are experience and gender followed by age group. (Chart 4.1.1)

*Chart 4.1.1: Criteria adopted in evaluating potential foreign workers*

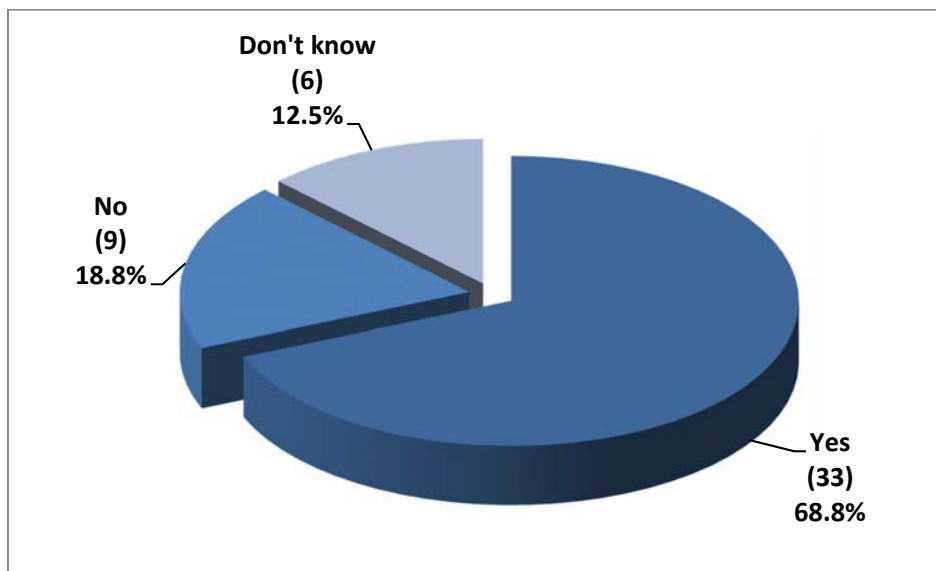


4.1.2 81% of the respondent companies reported that foreign workers would receive a written contract of employment before arriving in Malaysia to work (Chart 4.1.2) and 68% indicate that it would have been written in a language that they understand. (Chart 4.1.3).

**Chart 4.1.2: Whether the foreign workers receive a written employment contract before arriving in Malaysia to work**

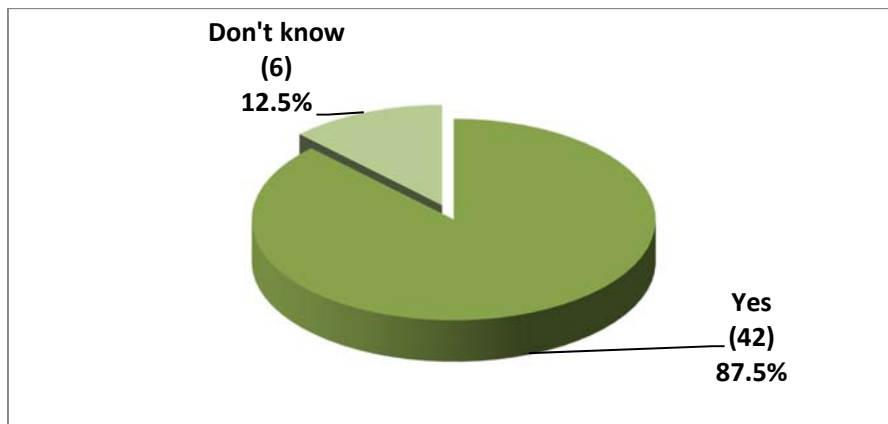


**Chart 4.1.3: Whether the contract is written in a language the foreign workers understands**

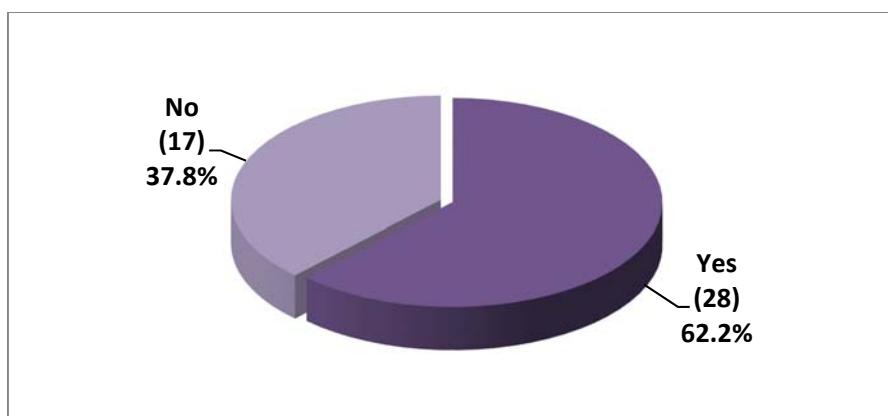


4.1.3 About 88% of the respondent companies believed that the terms of employment would have been explained to the foreign workers before they depart to Malaysia. About 62% of the respondent companies stated that the contract is signed in the source country. (Chart 4.1.5)

**Chart 4.1.4: Whether the terms explained to the foreign workers prior to departure to Malaysia**



**Chart 4.1.5: Is the contract signed by workers in the source country?**



4.1.4 The common elements in the contract as reported by the respondent companies are:

- Worker's full name, date and place of birth, and passport number (72%)
- Expected regular working hours, overtime hours, frequency of rest days, and holidays, sick, emergency, and annual leave (70%)
- Contract duration and conditions of renewal (65%)
- Clearly defined regular wage rate, fixed/guaranteed overtime, and holiday wage rates (65%)

Less common elements include:

- Worker's emergency contact information in source country
- Mechanism for wage payment



- Conditions under which and extent to which the contractor may be authorized to make any deductions from pay
- Breakdown of costs the worker is responsible for - costs associated with levy, medical and passport
- Breakdown of costs on what the employer is responsible for - travel, medical and visa

**Table 4.1.2: Contents of contract**

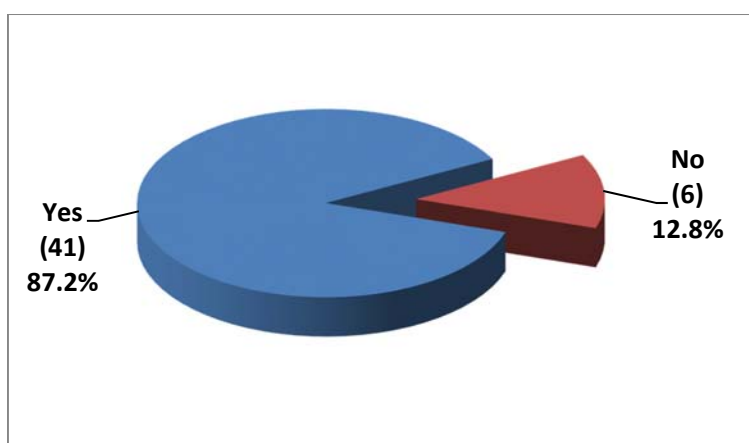
Elements of contract	Yes		No	
	No.	%	No.	%
Worker's full name, date and place of birth, and passport no.	43	71.7	17	28.3
Worker's emergency contact information in source country	22	36.7	38	63.3
Contract duration and conditions of renewal	39	65.0	21	35.0
Clearly defined regular wage rate	36	60.0	24	40.0
Clearly defined regular wage rate	36	60.0	24	40.0
Expected regular working hours, overtime hours, frequency of rest days, and holidays, sick, emergency, and annual leave	42	70.0	18	30.0
Clearly defined regular wage rate, fixed/guaranteed overtime, and holiday wage rates	39	65.0	21	35.0
Bonuses and allowances and work-related benefits	30	50.0	30	50.0
Mechanism for wage payment – Cash or Bank Account	29	48.3	31	51.7
Description of living conditions, including costs for accommodation food	33	55.0	27	45.0
Conditions under which and extent to which the contractor may be authorized to make any deductions from pay	20	33.3	40	66.7
Breakdown of costs the worker is responsible for - costs associated with levy, medical, passport	23	38.3	37	61.7

Elements of contract	Yes		No	
	No.	%	No.	%
Breakdown of costs the what the employer is responsible for - travel, medical, visa	24	40.0	36	60.0
Transportation clauses to country/place of employment, and return;	35	58.3	25	41.7
Dispute settlement procedures, and the grounds on which a contract may be prematurely terminated	35	58.3	25	41.7

## 4.2 Recruitment at Source Country

4.2.1 About 87% of the respondent companies recruit foreign workers through recruiting agencies from both the host and source countries.

**Chart 4.2.1: Whether the companies recruiting foreign workers through recruiting agents**

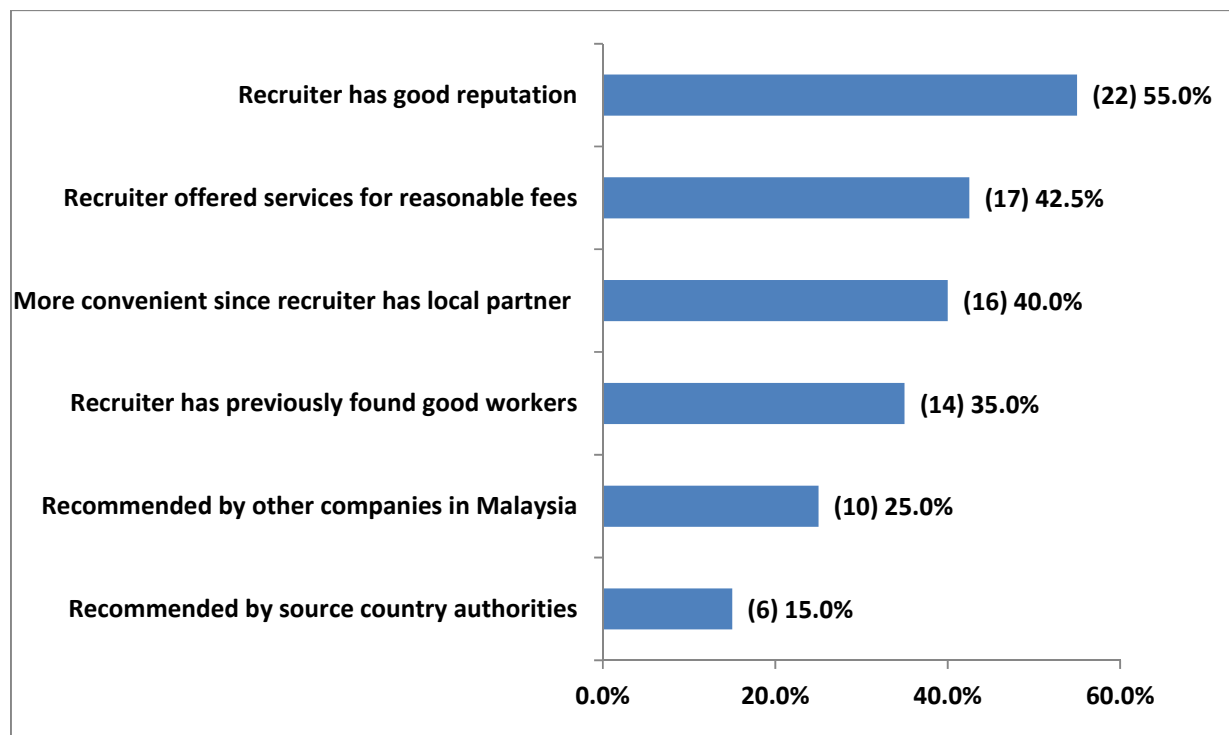


4.2.2 In the selection of the labour agent or recruitment partner, the top criterion for about half of the respondent companies would be a recruiter which has a good reputation. Other criteria adopted include:

- Recruiter offered services for reasonable fees (41%)
- More convenient since recruiter has local partner (40%)

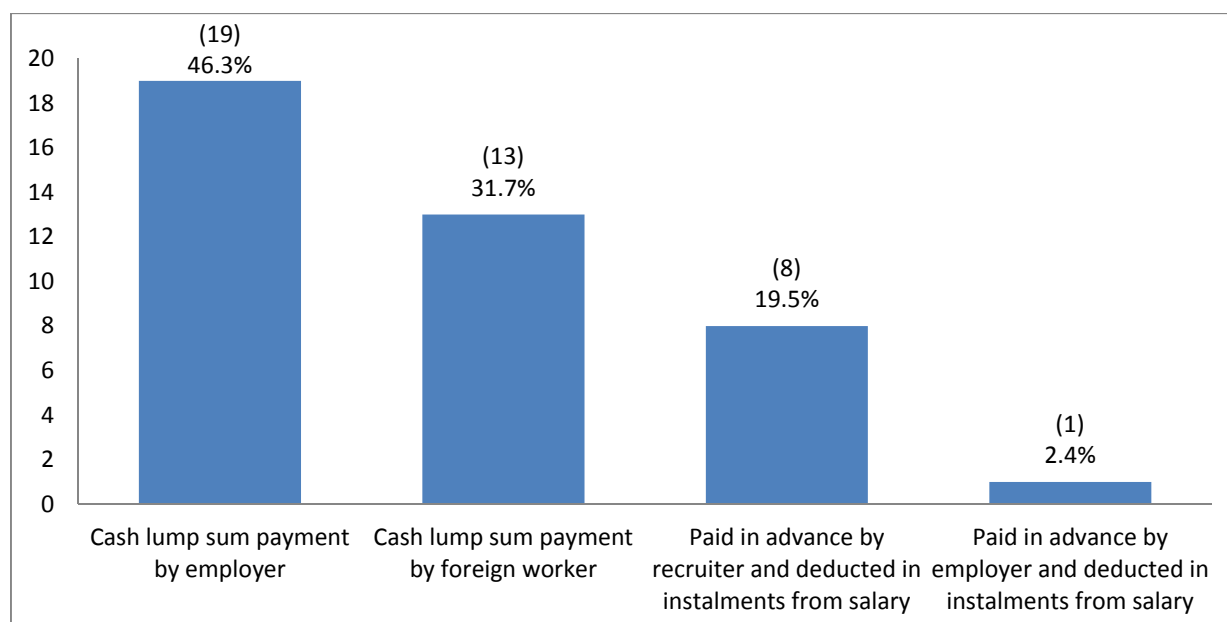
For some companies, the foreign employment agency must be accredited and/or registered by the appropriate government agency in the source countries. Good relations are also established with village chiefs and headmasters of schools to provide fresh school leavers who are interested to work in the companies.

**Chart 4.2.2: Selection of labour agent/recruitment partner**



4.2.3 Chart 4.2.3 shows that how the recruitment agencies' fees were paid. Nearly half of the respondent companies paid in cash in a lump sum, implying that recruitment fees were borne by the employer. For the others, a third of respondents reported that the foreign workers paid the fees up front (32%), and for just over a fifth of respondents, the recruitment fees were deducted from the foreign workers' wages (20%)

**Chart 4.2.3: Payment method for recruitment fees**

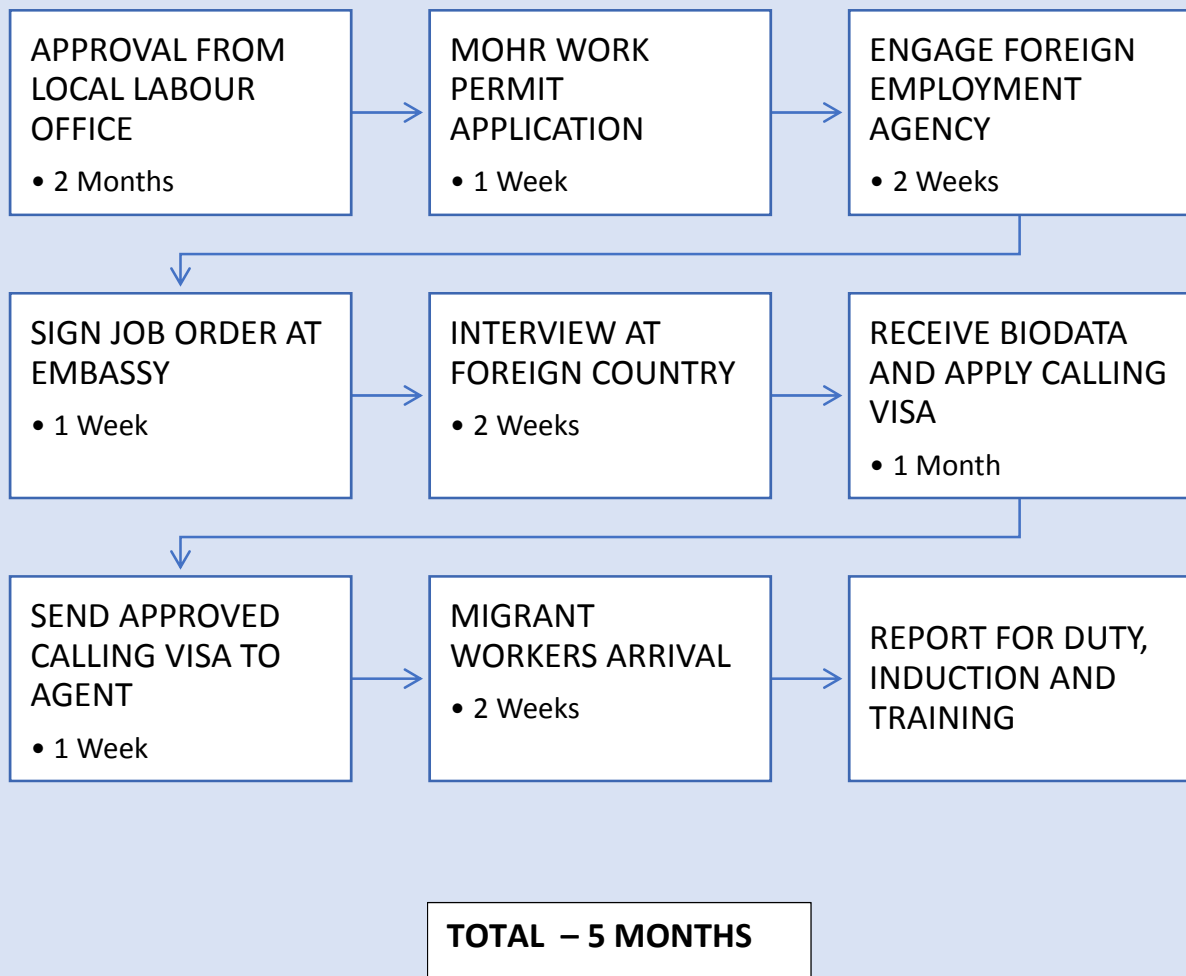


4.2.4 The work permits/visa were arranged by the employer (71%) and the recruitment agent (29%). The same applied for medical checkup – employers (60%) and recruitment agent (33%). In the case of passports, they were arranged for by the foreign worker (44%) and recruitment agent (40%).

**Table 4.2.3: Parties responsible for obtaining the documents**

	Work permit/visa		Passport		Medical check-up certificate	
	No.	%	No.	%	No.	%
Employer	32	71.1%	7	15.6%	27	60.0%
Recruitment Agent	13	28.9%	18	40.0%	15	33.3%
Foreign worker	0	0.0%	20	44.4%	3	6.7%
<b>TOTAL</b>	<b>45</b>	<b>100.0%</b>	<b>45</b>	<b>100.0%</b>	<b>45</b>	<b>100.0%</b>

**BOX 5: RECRUITMENT PROCESS FOR DIRECT RECRUITMENT BY COMPANY**



## **BOX 6: PROCEDURE FOR OVERSEAS DIRECT RECRUITMENT OF FOREIGN WORKERS – ON-SITE RECRUITMENT**

The arrangements are made by the source country labor supply agency contracted by the Company. There is an “Opening Meeting” held in the source country between the Company Team and local agent at least one day before the actual on-site recruitment.

### **1. On-Site Registration of Candidates, Introductory Briefing, Tests, Interviews and Selection**

(Assisted by Agent). Candidates gather at designated interview venue in source country for registration and preliminary vetting of their bio-data in accordance with the Company’s specification by appointed labour agent of the same source country. HR/IR Manager or representative shall explain in a language common to local candidates the introduction to the mission, main and standard employment terms, and conditions of offer. The local agent must be present on-site at all times to ensure the security of Company personnel. All valid permits must be available on-site. After checking and authenticating copies of relevant documents produced by candidates, selection and interviews commence.

**2. Color Blindness Test** – A non-negotiable employment condition (quality and safety concerns) that applies to all nationalities. All candidates must pass this Color Blindness Test conducted by HR personnel who have been trained in this competency using only an original “Ishihara Chart” brought to the site.

**3 Mathematical Test** - Candidates shall complete a Mathematical Test. Generally prefer those who have scored well.

**4 Division/ Department Test (Optional)** - some candidates may be required to complete Division/ Department Test customized to suit the needs of the user Division/ Department representative.

**5. Interview** with the candidates that have progressed until this stage (with or without the use of translator. This interview also provides a chance for interviewers to assess the interviewees’ psychological readiness, aptitude, attitude and physical fitness (for this not less than two years employment in Malaysia). The candidates too can have their own assessment first-hand of the Company and ask for employment information from the interviewers. This is all with a view for a good and lasting job-matching. The Company’s basic policy is “hide no fact, tell no lie”. It is usually encouraged for the interviewees to stay on after the interview to hear the outcome or else the outcome would be relayed to them later via the local agent.

**6. Short listing of Interviewees & Closing Meeting with Local Agent.** The Interview Team conclude the interview session and select those interviewed to be offered employment. Those selected shall also include certain numbers of interviewees as second choice back up. A Closing Meeting with its appointed agent to iron out and finalize formalities or documentation.

## CHAPTER 5: POST ARRIVAL

### 5.1 Procedure in Receiving Workers at Port of Disembarkation

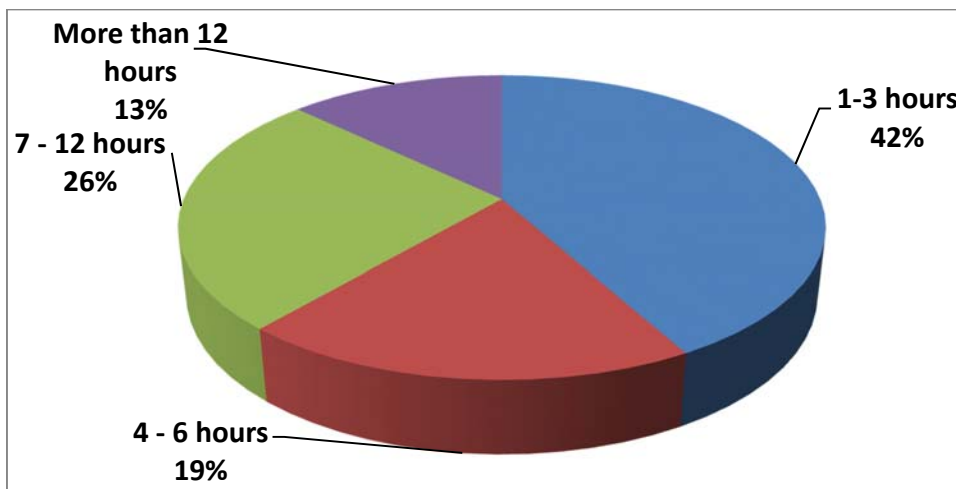
5.1.1 Most of the respondent companies received foreign workers at the airport and assist them through immigration and customs. In the case of 48% of the companies, they provided the Foreign Workers with uniforms for easier identification and projecting corporate image.

**Table 5.1.1: Procedure in receiving workers at the port of disembarkation**

	Met at the airport/port		Assistance for clearance through immigration		Assistance for clearance through customs		Provide Company's uniform for easy identification		Others	
	No.	%	No.	%	No.	%	No.	%	No.	%
Company's representative	29	74.4%	27	65.9%	22	57.9%	9	47.4%	7	77.8%
Recruiting agent	10	25.6%	14	34.1%	16	42.1%	10	52.6%	2	22.2%
<b>TOTAL</b>	<b>39</b>	<b>100%</b>	<b>41</b>	<b>100%</b>	<b>38</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>9</b>	<b>100%</b>

5.1.2 The survey findings revealed that 42% of the respondent companies were able to process the arrival procedures and clearance within 1 – 3 hours at the port of disembarkation. After immigration clearance the newly recruited foreign workers are sent to hostel to be familiarised on the hostel rules, living environment and surrounding conditions (where to buy food and provisions).

**Chart 5.1.1: Maximum period to receive foreign workers upon arrival at port of disembarkation**



**5.1.3** The Minister of Home Affairs announced on 12 June 2014 that with immediate effect Foreign Workers must be received by the employers/agents within 24 hours of arrival at KLIA 1 and 2, the airports in Kuala Lumpur. Following the recommendations of the PEMUDAH Working Group on Efficiency Issues (WGEI), the Immigration Department, after consultation with MEF and other stakeholders, reviewed the previous practice of giving employers 72 hours to pick up their foreign workers. The at the airport is too long and causes hardship to the foreign workers, as well as to the immigration officers who, on humanitarian grounds, frequently took it upon themselves to offer sustenance to the foreign workers during the transit period. The situation would deteriorate further on occasions when there are large numbers of foreign worker arrivals, resulting in negative portrayal of Malaysia's image to tourists arriving at the airport at the same time.

**5.1.4** Under Section 60K of the Employment Act 1955, employers are required to furnish particulars of the foreign employees in Form PA 2 which has to be submitted to the nearest office of the Director General of Labour within fourteen days of the employment.



**EMPLOYMENT ACT 1955 PART XIIB EMPLOYMENT OF FOREIGN  
EMPLOYEES**

**60K Duty to furnish information and returns.**

(1) An employer who employs a foreign employee shall, within fourteen days of the employment, furnish the Director General with the particulars of the foreign employee by forwarding the particulars to the nearest office of the Director General in such manner as may be determined by the Director General.

[Prior text read - "(1) An employer who employs a foreign employee shall, within fourteen days of the employment, furnish the nearest office of the Director General with the particulars of the foreign employee in such manner as may be determined by the Director General."]

[Am. by Act A1419:s.21]

(2) An employer or any specified class or classes of employers, whenever required to do so by the Director General, shall furnish returns of particulars relating to the employment of a foreign employee in such manner and at such intervals as the Director General may direct.

(5) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

[60K. Ins. Act A1026:s.22; (5) Ins. by Act A1419:s.21]

**60O Permanent resident exempted from this Part.**

For the purposes of this Part, the term "foreign employee" shall not include a foreign employee who is a permanent resident of Malaysia.

[60O. Ins. Act A1026:s.22]

## 5.2 Payment of Levy and Renewal of Work Permit

5.2.1 It can be seen from Table 5.2.1 that employers are responsible for the renewal of work permit and annual medical check-up. In the case of levy, Foreign Workers employed by employers implementing minimum wages have to pay for the levy effective 31 January 2013. This change in policy was to assist employers in reducing their financial burden, following the implementation of the minimum wages policy, which made it mandatory for them to increase their employees' wages to minimum wages of RM900 for Peninsular Malaysia and RM800 for Sabah and Sarawak. This was aimed especially at small and medium-sized enterprise employers. In the case of some companies, employers pay the levy in a lump sum on behalf of Foreign Workers and later deduct from their monthly salary.

**Table 5.2.1: Payment of Levy, Renewal of Work Permit and Annual Medical Check Up**

	Levy		Renewal of Work Permit		Annual Medical Check Up	
	No.	%	No.	%	No.	%
Employer	20	45.5%	36	81.8%	39	88.6%
Outsourcing company	2	4.5%	4	9.1%	4	9.1%
Foreign Worker	22	50.0%	4	9.1%	1	2.3%
<b>TOTAL</b>	<b>44</b>	<b>100.0%</b>	<b>44</b>	<b>100.0%</b>	<b>44</b>	<b>100.0%</b>

### PAYMENTS TO IMMIGRATION DEPARTMENT FOR FOREIGN WORKERS

The current payment to Immigration department for Foreign Workers are as follows:

Sector	Levy	VP(TE)	Processing	Visa	Bond
Manufacturing and Construction	RM1,250	RM60	RM125*	Based on Nationality	
Plantation	RM590	RM60	RM125*		
Agriculture	RM410	RM60	RM125*		
Service	RM1,850	RM60	RM125*		
Domestic Worker	RM410	RM60	RM125*		

\* Effective 1st April 2014

Nationality	Visa	Bond
Indonesia	RM15	RM250
Bangladesh	RM20	RM500
Vietnam	RM13	RM1,500
Cambodia	RM20	RM250
Nepal	RM20	RM750
Philippines	RM36	RM1,000

### 5.3 Medical Checkup

5.3.1 FOMEMA Sdn. Bhd. was awarded a 15-years' concession in 1997 by the Government of Malaysia to implement, manage and supervise a nationwide mandatory health screening programme for all legal foreign workers in Malaysia. The objectives of the concession are to ensure that foreign workers in Malaysia are free of an identified list of communicable diseases and to ensure that Malaysia's public health facilities are not burdened by foreign workers with medical conditions or diseases that require prolonged and extensive treatment. This includes pregnancy tests.

### **5.3.2 Registration Procedure**

Every foreign worker has to undergo and pass this prescribed medical procedure upon first entry onto Malaysian soil for employment, and every year thereafter until the third year of service (with the same employer).

#### **First Time Registration**

- Original and Photocopy of the worker's passport;
- A copy of Immigration Department's letter of approval or visa;
- Medical report from country of origin;
- Registration fees payable to FOMEMA Sdn. Bhd. – RM190 for female and RM180 for male
- Completed Registration Form.

Note: \*(1) Selection of clinic based on the list of clinics displayed at FOMEMA's Branch Office

#### **Renewal Registration**

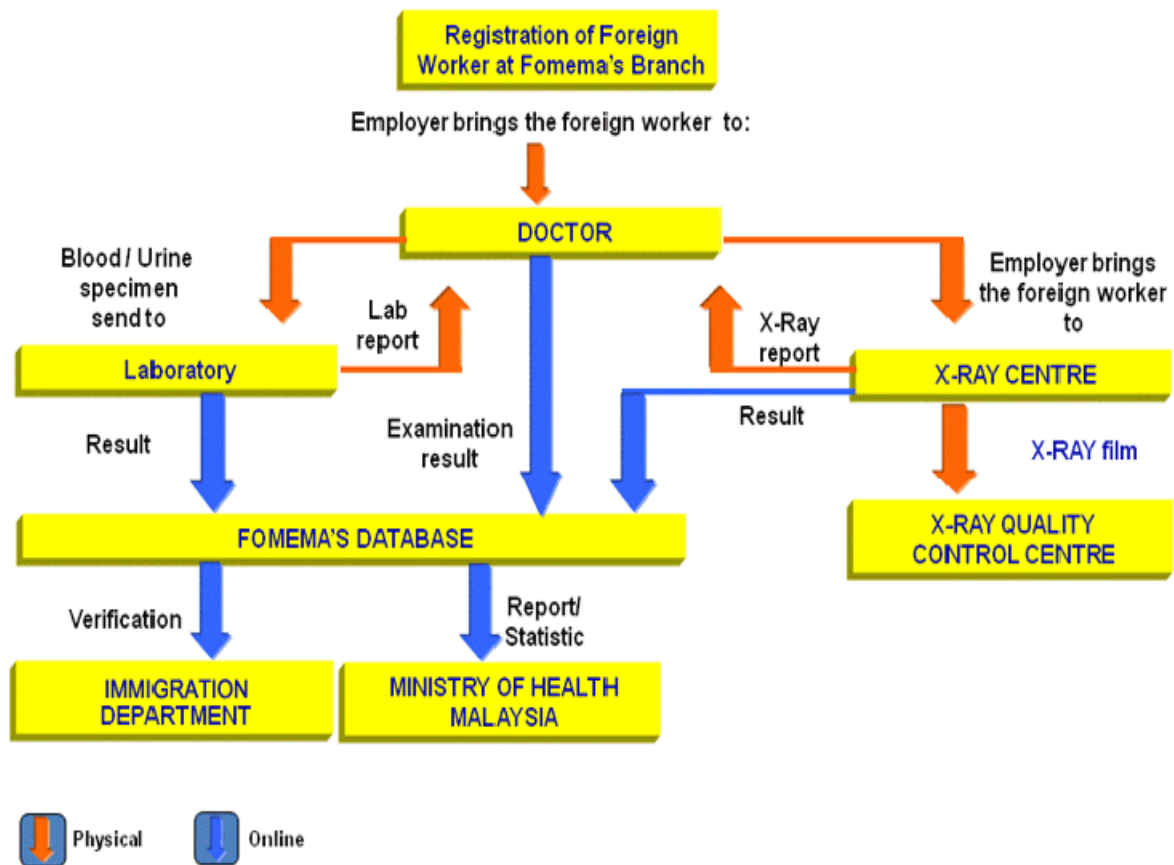
- Registration fees;
- Photocopy of the worker's passport (first page);
- Photocopy of work permit;
- Completed Registration Form.

### **5.3.3 Medical examination**

Details of medical examination covered under the system as stipulated by the Ministry of Health are as follows:

1. Medical history
2. Physical examination
3. Systemic Examination
4. Laboratory tests – blood and urine
5. Chest x ray

The procedure is reflected in the Chart below:



#### 5.3.4 Medical check results

Medical Examination Result can be obtained online. Foreign workers certified “UNFIT” shall be repatriated to home country at the earliest instance, with or without appeal to FOMEMA. Only those who are certified “FIT” shall be allowed to continue employment in Malaysia.

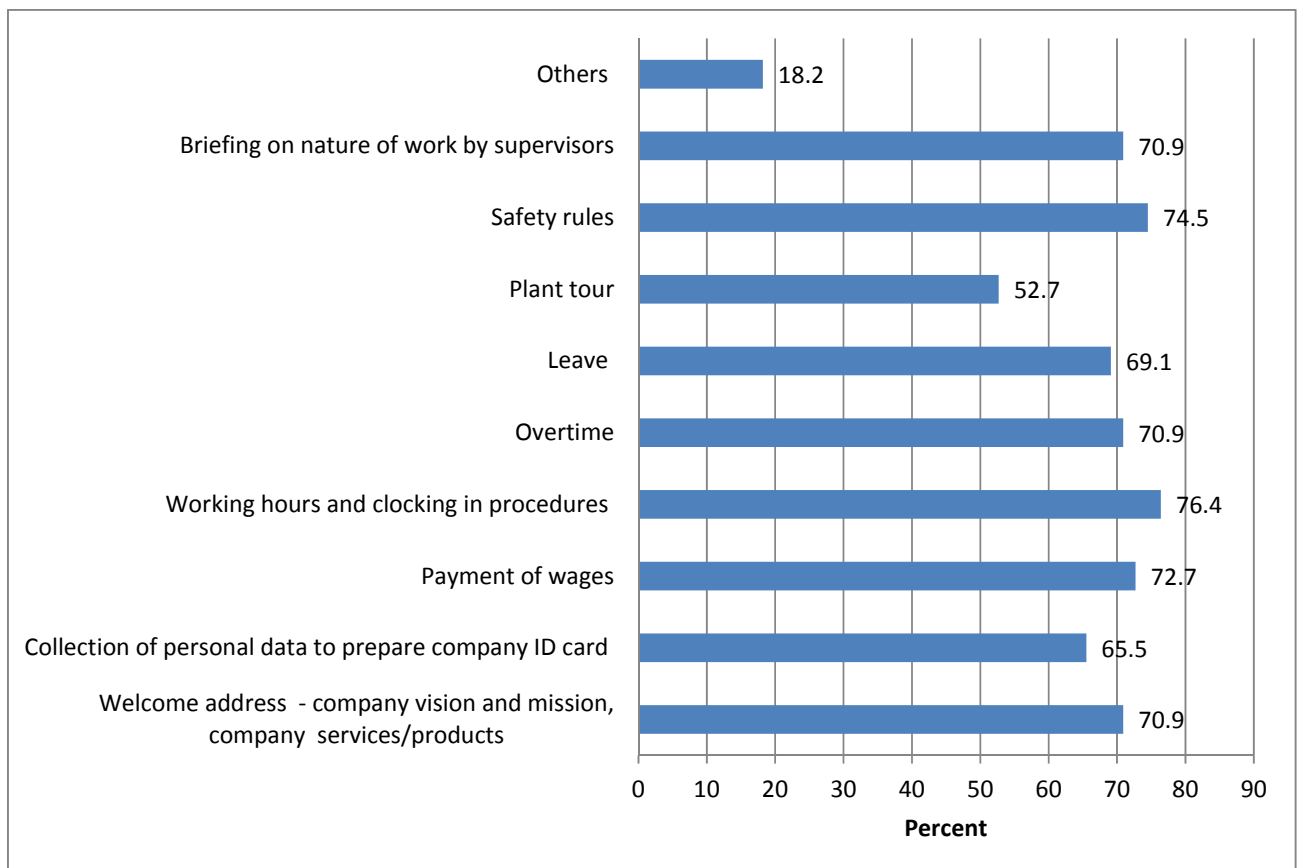
## CHAPTER 6: EMPLOYMENT

### 6.1 Orientation

6.1.1 The survey revealed that all of the respondent companies which employed foreign workers had conducted an orientation programme for new Foreign Workers. The common elements of the orientation programme are:

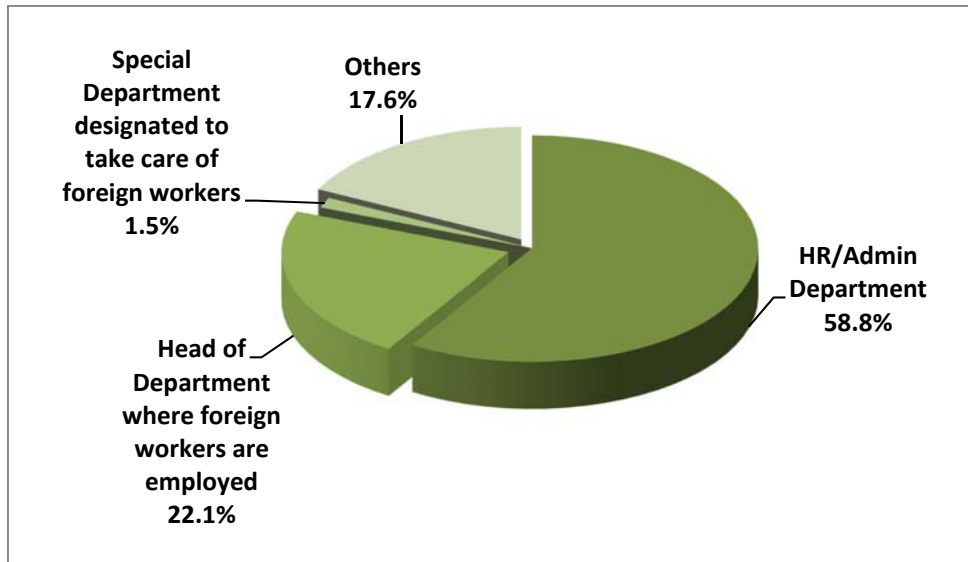
- Working hours and clocking in procedures (76.4%)
- Safety rules (75%)
- Payment of wages (73%)
- Briefing on nature of work by supervisors (71%)
- Company vision, mission and nature of business (71%)

**Chart 6.1.1: Contents of the orientation programme**



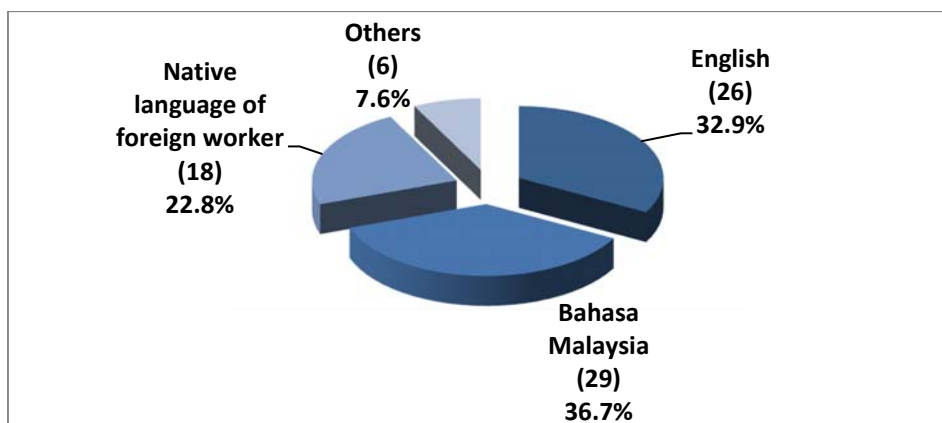
6.1.2 In almost 59% of the respondent companies, the orientation programme is conducted by the HR/Administration department while in 22%, it is conducted by the Head of Department where foreign workers are employed.

**Chart 6.1.2: Department that conducts the orientation programme for foreign workers**



6.1.3 The common languages used in the orientation programme are Bahasa Malaysia (37%) (understood by many workers from Indonesia) and English (33%) (understood by some workers from South Asia). In the case of 23% of the respondent companies it is conducted in the native language of the foreign workers. This may be in cases where there a number of foreign workers from a particular country and is generally conducted using a translator or existing foreign worker who is from the same country.

**Chart 6.1.3: Languages used in the orientation programme for foreign workers**



**BOX 7: EXAMPLE OF COMPANY INDUCTION PROGRAMME  
FOR FOREIGN WORKERS**

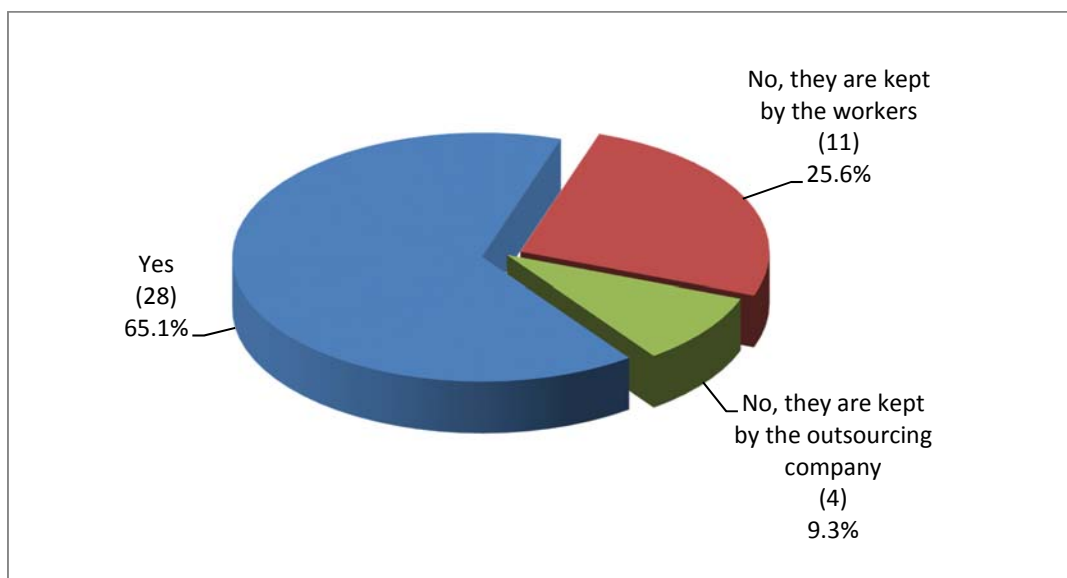
Day 1	Arrival at KLIA and immigration clearance
	Hostel briefing
Day 2	New employee orientation and opening ceremony
	Uniform distribution
	Take individual photo for employee card
	Company rules and regulations a. Request Company to safekeeping of passport b. Offer letter and signing c. Collective Agreement and in house union
	Briefing of hostel and transport Rules and Regulations
Day 3	Briefing on Company Code of Conduct and cases involving foreign workers
	Briefing on sexual harassment
	Briefing on on FOMEMA, SPIKA, FWCS and other matters
Day 4	Bank account registration
	Briefing on ISO 9001
	Factory tour
	Briefing on ISO 14001
	Briefing on safety and health matters
Day 5	Company culture
	Briefing by police
	Handing over to departments where FW will be stationed



## 6.2 Procedure on Travel Documents

5.2.1 As can be seen in Chart 6.2.1, 65% of the respondent companies retained the passports of foreign workers as compared to 26% of the companies, where the foreign workers keep their own passports.

**Chart 6.2.1: Retaining of travel/personal documents of the foreign workers under employment**



### PASSPORTS ACT 1966

#### Offences

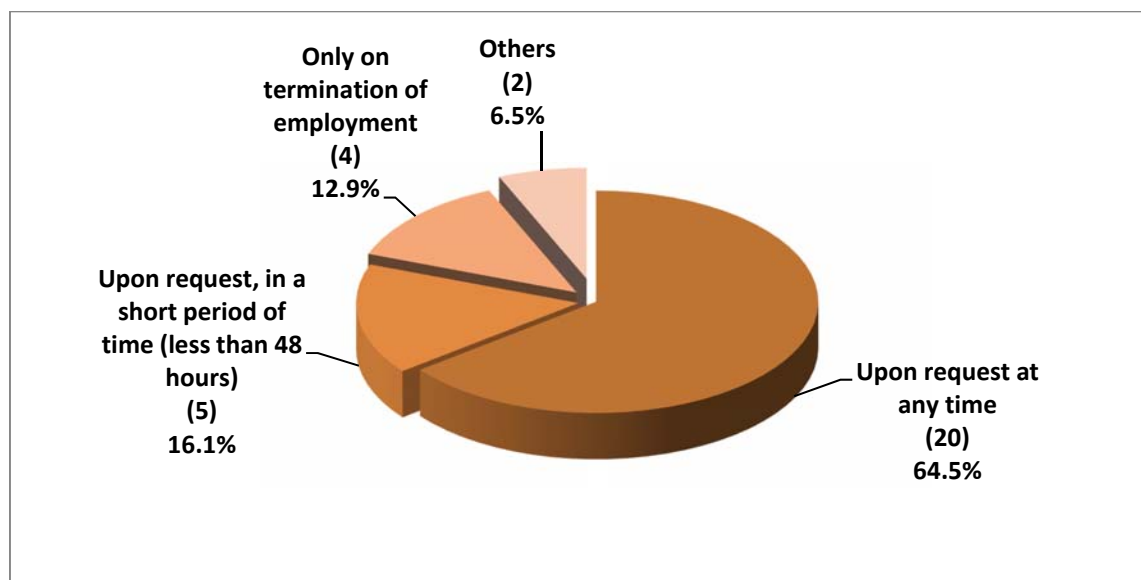
12. (1) Any person who—

(f) without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself;

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.

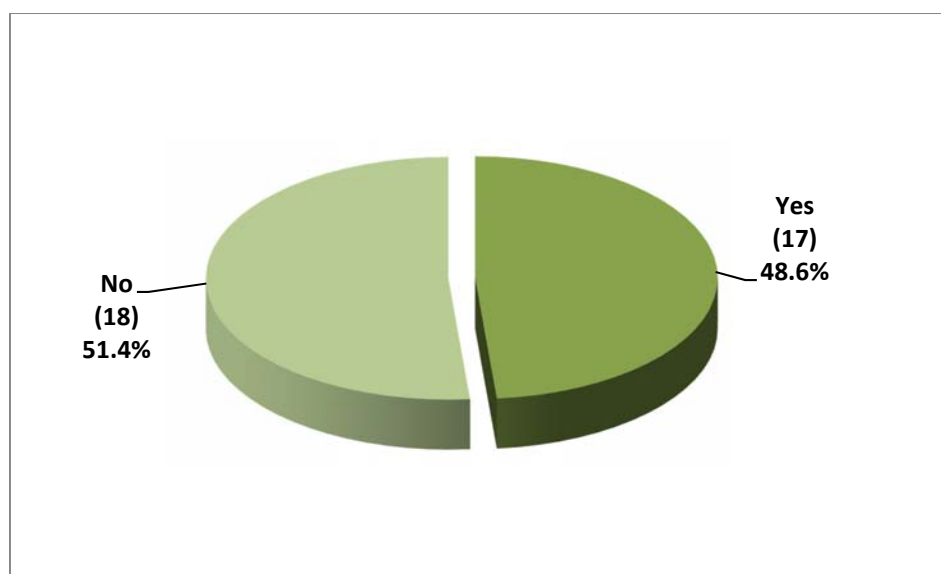
In Chart 6.2.2, 65% of the companies that keep the passport of foreign workers, provided Foreign Workers access to their passports at any time. In the case of foreign workers who keep their passports themselves, they have to allow employer access to them when renewing their work permit and during medical checkups.

**Chart 6.2.2: How do workers have access to their passport/documents**



6.2.2 On the question of obtaining written consent from foreign workers to keep their passport/personal documents, about half of the respondent companies obtained their foreign worker's written consent. It should be noted that there are instances where workers may want their employers to keep their documents for safe-keeping and purposes of renewal of work permits. Some employers provide workers with lockers in which to keep personal items including passports, which can be deemed a good practice.

**Chart 6.2.3: Obtaining written consent of Foreign Workers to keep their foreign worker's passport/personal documents**



**BOX 8: SAMPLE LETTER OF CONSENT TO EMPLOYER TO KEEP FOREIGN WORKERS'  
PASSPORT FOR SAFE KEEPING**

Nama:

No. Employee:

No Passport:

Tarikh:

HR/IR Department Manager

**KEBENARAN MENYIMPAN PASPOT BAGI TUJUAN KESELAMATAN**

Adalah saya seperti nama diatas, dengan ini memberi kebenaran kepada pihak majikan untuk menyimpan paspot saya yang bernombor \_\_\_\_\_ untuk tujuan keselamatan dan mengelakkan daripada kecurian dan kehilangan.

Saya maklum dan paham bahawa saya boleh mendapatkan semula paspot tersebut apabila perlu untuk apa-apa urusan saya tanpa halangan dari pihak Syarikat dan juga apabila saya telah menamatkan perkhidmatan saya dengan Syarikat ini.

Sekian terimakasih.

Yang Benar

\_\_\_\_\_  
(Nama)

.....Translation.....

Name :

Employee No;

Passport No:

Date:

HR Department Manager/ Company name and address:

**CONSENT TO KEEP PASSPORT FOR SAFE KEEPING**

I .....(name) give consent to the employer to keep my passport No. .... for safe keeping and to prevent theft and loss.

I understand that I can have access to my passport whenever needed without any delay and barriers and upon my completion of the contract of employment.

Yours faithfully

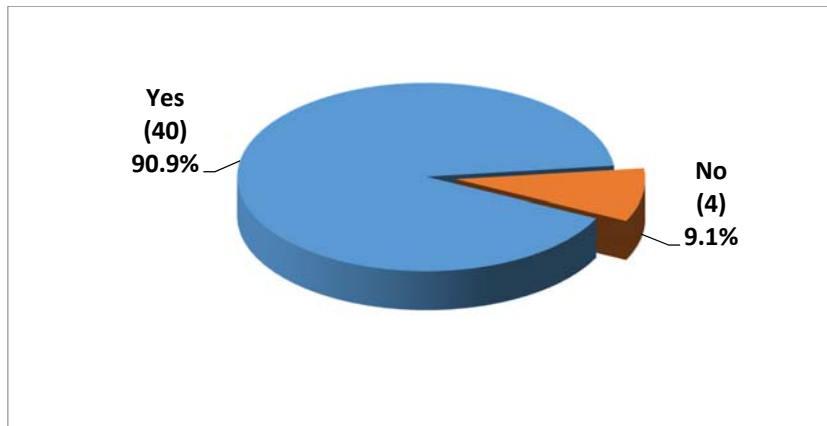
.....(signed)

Name

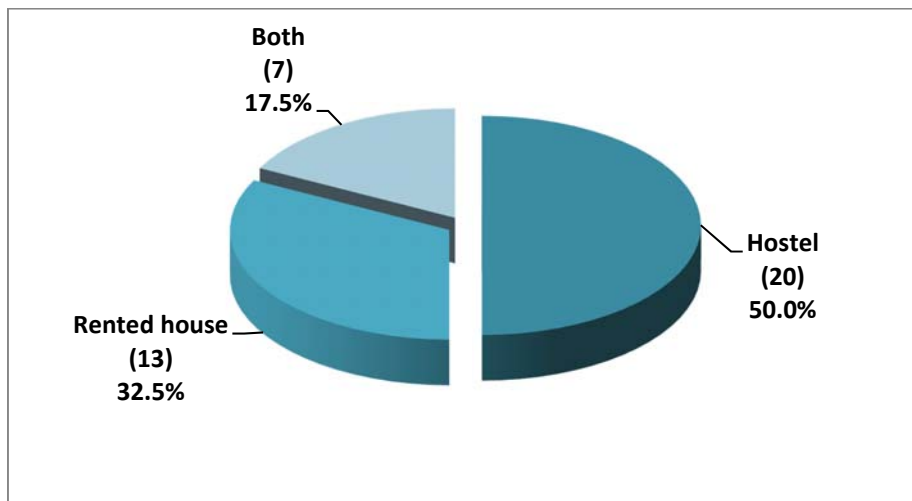
### 6.3 Accommodation

6.3.1 The survey findings revealed that about 91% of the respondent companies provided accommodation to the foreign workers. Chart 6.3.2 shows that half of the respondent companies provided hostel facilities while one third rent houses for their foreign workers. Regular hostel visits are made by the embassy staff of the source countries.

**Chart 6.3.1: Provision of accommodation for foreign workers**



**Chart 6.3.2: Type of accommodation provided to foreign workers**



6.3.2 In Table 6.3.1, it can be noted that about 64% of the respondent companies charge rental on foreign workers while 36% provided free accommodation. In the case of transportation about 53% do not charge the costs of transportation to the foreign workers.

**Table 6.3.1: Charges imposed to foreign workers**

	Rent		Utilities- water, electricity		Transport to and from work		Others	
	No.	%	No.	%	No.	%	No.	%
Yes	25	64.1%	23	62.2%	17	47.2%	3	37.5%
No	14	35.9%	14	37.8%	19	52.8%	5	62.5%
<b>TOTAL</b>	<b>39</b>	<b>100.0%</b>	<b>37</b>	<b>100.0%</b>	<b>36</b>	<b>100.0%</b>	<b>8</b>	<b>100.0%</b>

6.3.3 The Government allows employers who are implementing minimum wages to make deductions for the levy and costs of accommodation. The amount of levy to be deducted is the actual amount on a prorated monthly basis and the amount of deduction for cost of accommodation shall not exceed RM50 a month for each foreign worker. Both the deductions above need to be notified to the nearest Labour Department via email or letter. Where the employer wish to charge more than RM50 per worker for accommodation, the employer must obtain approval from the Director General of Labour.

## **6.4 Compensation, leaves and allowances**

6.4.1 The main criteria used in determining wages of foreign workers are:

- National Minimum Wages (69%)
- Employment contract (51%)

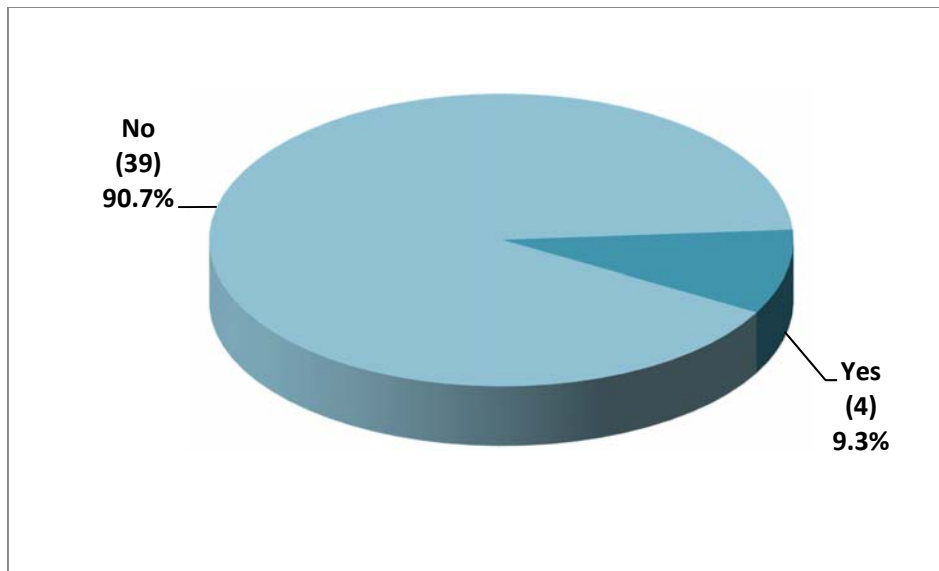
**Table 6.4.1: Criteria in determining the wages of foreign workers**

	National minimum wages		Employment contract		Same as local workers		Collective agreement		Nationality of foreign workers		Others	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	38	69.1%	28	50.9%	14	25.5%	4	7.3%	2	3.6%	3	5.5%
No	17	30.9%	27	49.1%	41	74.5%	51	92.7%	53	96.4%	52	94.5%
<b>TOTAL</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>

6.4.2 The Minimum Wages Order 2012 requires employers with 6 employees and above to pay minimum wages of RM900 a month in Peninsular Malaysia and RM800 a month in Sabah, Sarawak and Federal Territory of Labuan, with effect from 1 January 2013. Based on an appeal from employers in small and medium enterprises (SMEs), they were given blanket deferment of the implementation of the minimum wages for their foreign workers until 31 December 2013.

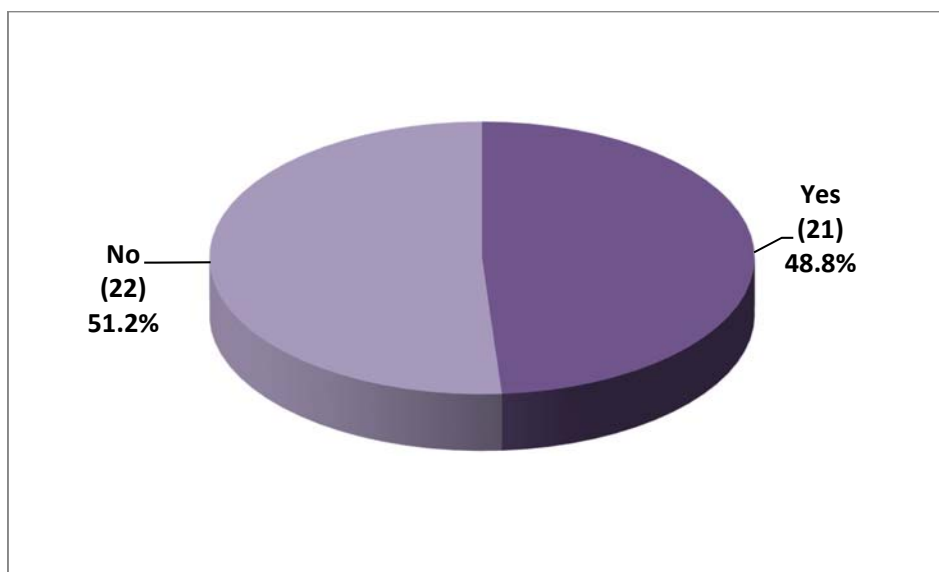
Most of the respondent companies (91%) reported that they did not defer the implementation of the National Minimum Wages.

***Chart 6.4.1: Deferment on payment of the minimum wages for Foreign Workers***

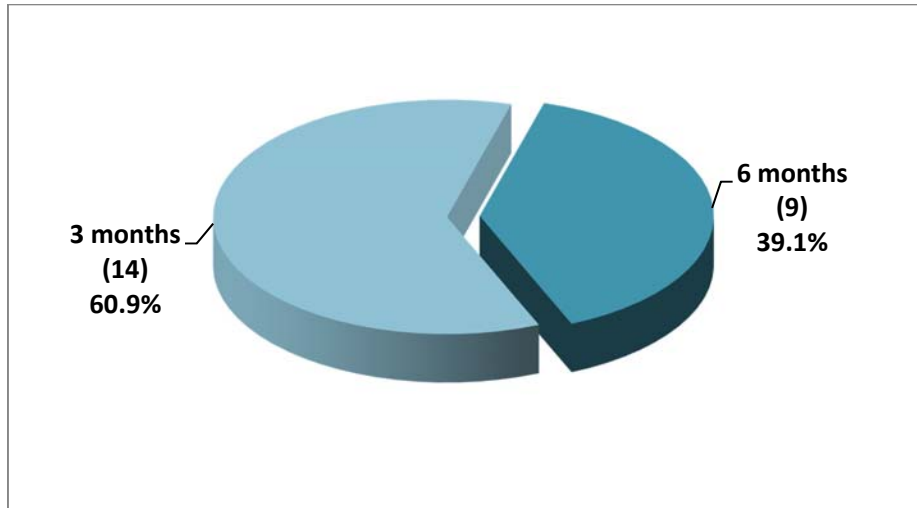


6.4.3 As can be seen from Chart 6.2.3 about 49% of the respondent companies have a policy relating to probationary period for their foreign workers. The duration of probation period for 61% of the respondent companies is 3 months.

***Chart 6.4.2: Whether there is a probation period for foreign worker***

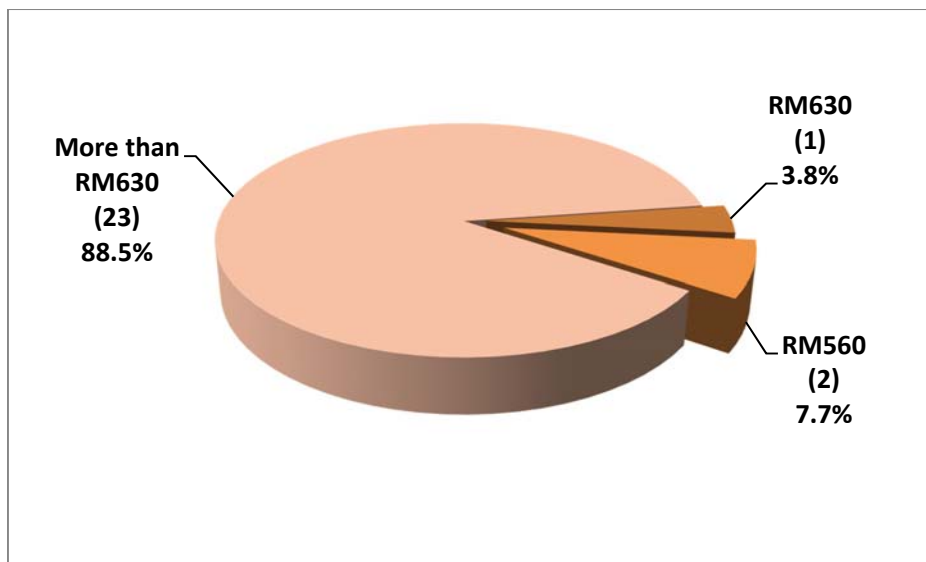


**Chart 6.4.3: Duration of probation period for newly recruited foreign worker**



6.4.4 The average salary of the foreign workers on probation is more than RM630 in the case of 89% of the respondent companies.

**Chart 6.4.4: Average salary of foreign workers on probation period**



6.2.5 Order 5 of the Minimum Wages Order allows the employer to pay at 30% lower than the minimum wages for the first six months of the probation period. However, the Cabinet Committee

on foreign workers on 1 July 2013 announced that probation period is not applicable to Foreign Workers.

6.4.6 MEF is of the view that the Cabinet Committee cannot introduce an administrative policy which is not in line with Order 5 of the Minimum Wages Order 2012.

6.4.7 The types of allowances commonly provided to foreign workers include:

- Shift allowance (46%)
- Overtime meal allowance (31%)

**Table 6.4.2: Provision of allowances to foreign workers**

	Shift allowance		Overtime meal allowance		Attendance allowance		Laundry allowance		Others	
	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	25	45.5%	17	30.9%	13	23.6%	1	1.8%	11	20.0%
No	30	54.5%	38	69.1%	42	76.4%	54	98.2%	44	80.0%
<b>TOTAL</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>

6.4.8 Foreign workers are granted annual leave and sick leave by about 78% of the respondent companies.

**Table 6.4.3: Provision of leaves to foreign workers**

	Annual leave		Sick leave		Others	
	No.	%	No.	%	No.	%
Yes	43	78.2%	43	78.2%	14	25.5%
No	12	21.8%	12	21.8%	41	74.5%
<b>TOTAL</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>

6.4.9 About 76% of the respondent companies provide medical consultation and treatment and hospitalization benefits to their foreign workers. About 29% provide dental benefits.



**Table 6.4.4: Provision of medical benefits to foreign workers**

	Medical consultation and treatment		Hospitalisation		Dental		Others	
	No.	%	No.	%	No.	%	No.	%
Yes	42	76.4%	42	76.4%	16	29.1%	3	5.5%
No	13	23.6%	13	23.6%	39	70.9%	52	94.5%
<b>TOTAL</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>

6.4.10 Ministry of Health (MOH) has implemented the Hospitalisation and Surgical Scheme for Foreign Workers / Skim Perlindungan Insurans Kesihatan Pekerja Asing (SPIKPA) with effect from 1 January 2011. Enforced by the Ministry of Health, all foreign workers are required to take up this compulsory scheme with a premium of RM120 and a total coverage of RM10,000. The premium for the insurance policy is borne by the foreign workers themselves. The schedule of Benefits is depicted in the box below:

### Schedule of Benefits

ITEMS	BENEFITS	AMOUNT (RM)
1(a)	Daily Hospital Room & Board (Maximum up to 30 days)	As charged – In accordance to charges consistent with third (3rd) Class Room & Board to a maximum of RM50 per day, In a Non-Corporatised Malaysian Government Hospital in conformance to the charges specified under Akta FI 1951, Perintah FI (Perubatan) 1982
1(b)	Intensive Care Unit (Maximum up to 15 days)	
2	Hospital Supplies and Services	
3	Operating Theatre	
4	Surgical fees (Excluding organ transplantation)	
5	Anaesthetist Fees	
6	In-Hospital Physician Visits (Maximum up to 30 days)	
7	In-Hospital Specialist Consultation Visits (Maximum up to 30 days)	
8	Ambulance Fees/Medical Report Fees	
<b>Maximum Overall Annual Limit (Item 1-8)</b>		<b>RM10,000</b>
<b>Premium Per Person</b>		<b>RM120</b>

6.4.11 Under the Workmen's Compensation Act, 1952, every employer is obliged to insure the foreign workers. Benefits include:

- Lump sum payment for injuries or death;
- Payments for injuries sustained during work; and
- Payment for repatriating the deceased body to the country of origin.

Under Section 26(2) of the amended Workmen's Compensation Act 1952, it is mandatory for every employer to insure all foreign workers under an approved insurance scheme in respect of any liability that the employer may incur under the said Act. Any employer who fails to insure the Foreign Workers under the said scheme shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding RM20,000.00 or to imprisonment for a term not exceeding 2 years or both.

The Labour Department is empowered to assess the claim, receive payment and execute the disbursement. The survey findings revealed that 71% respondent companies cover their foreign

workers under Workmen Compensation Act 1952. About a third purchase personal accident insurance for their Foreign Workers.

**Table 6.4.5: Provision of insurances to foreign workers**

	Workmen Compensation		Personal accident		Others	
	No.	%	No.	%	No.	%
Yes	39	70.9%	19	34.5%	13	23.6%
No	16	29.1%	36	65.5%	42	76.4%
<b>TOTAL</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>	<b>55</b>	<b>100.0%</b>

6.4.12 About 66% of the respondent companies indicated that there was no difference between the terms of employment and benefits between foreign and local workers. Under Part XII B Employment Act, 1955, every employer is required to report / submit information pertaining to foreign workers under his employment to the Director General of Labour within 14 days of their employment. The Director General of Labour is empowered to investigate and take action on any discriminatory and/or unfair treatment of Foreign Workers.

6.4.13 It can be seen that there would be differences in statutory contributions to the Employees Provident Fund and the Social Security Organisation. In terms of social security – the Government is of the view that it is not feasible to insure foreign workers under Social Security Act as payments based on accident and disability are on monthly basis and it is not practical for Foreign Workers who need to return to source country. This is especially so in cases of permanent disability or death of the foreign worker, where the survivor's benefits need to be made on a monthly basis. Foreign Workers are therefore insured under the Workers Compensation Act where payment due is made on a lump sum basis, which is more practical. It should be noted that Malaysia has ratified ILO Convention on Equal Treatment (Accident Compensation), No 19. The Malaysian Government is considering how it can develop the system to be in compliance with this commitment to equal treatment for nationals and foreign workers. Foreign workers may contribute to the EPF where the employer is to contribute RM5 for each foreign worker per month.

## **BOX 9: WORKMEN COMPENSATION - SCOPE OF COVERAGE AND BENEFITS**

### **Workmen's Compensation**

Covers the Insured's foreign worker against personal injury due to accident or disease arising out of or in the course of employment with the Insured. The minimum annual premium is RM 72.00 (RM 67.00 + SPPA service fee RM5.00) per foreign worker (Before RM10.00 Stamp Duty and 5% service tax, if applicable)

<b>Scope of coverage</b>	<b>Benefits</b>
Accidental death due to employment injury	60 months earnings or RM18,000.00 whichever is less Additional payment of RM7,000 as provided under FWCS.
Permanent Total Disablement	60 months earnings or RM23,000.00 whichever is less
Permanent Partial Disablement	A sum of money based on the capital sum of RM23,000 calculated in accordance with the First Schedule of the Workmen's Compensation Act.
Temporary Total / Partial Disablement	A sum of money calculated in accordance with Section 8(e) of the Workmen's Compensation Act.
Hospitalisation and Medical Expenses	Pays in accordance with the provisions of the Workmen's Compensation Act (max. RM750)
Occupational Disease	as per Second Schedule of the Act.

**Note:** Compensation shall not be payable for first 4 days of disablement unless the disablement lasts for a period of at least 14 days.

### **Repatriation Expenses**

Will indemnify the Insured for the actual repatriation expenses incurred or RM4,800.00 whichever is the lesser, in the event the insured worker dies or suffers permanent total disablement.

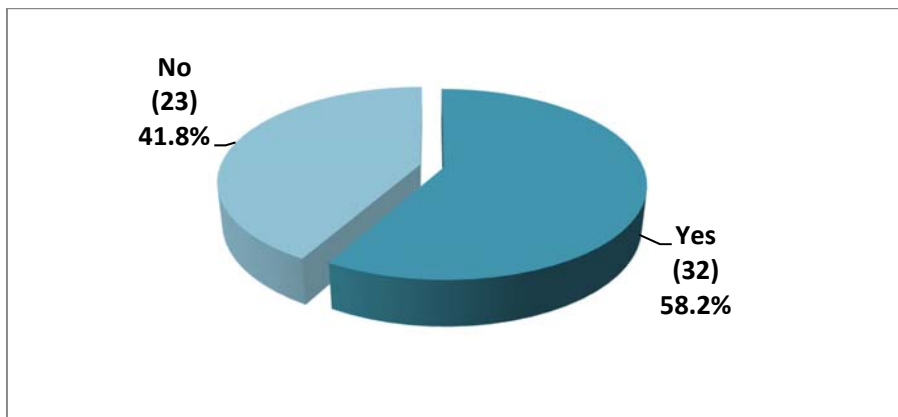
### **Personal Accident Insurance (Off-Work Hours)**

Will pay to the Insured person or his legal representative for personal injury sustained in an accident, which occurs outside the working hours

6.4.14 Chart 6.2.7 shows that 58% of the respondent companies make deductions from the salary for:

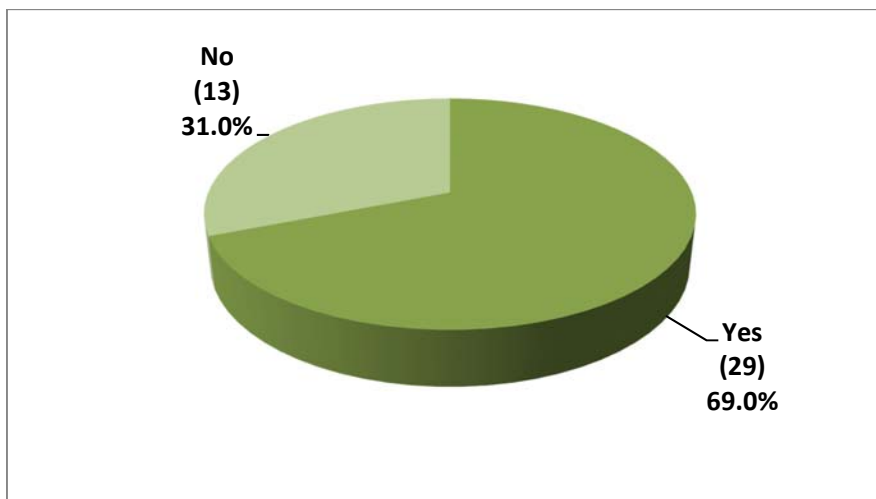
- Levy
- Accommodation
- Hospitalisation Insurance
- Advances

***Chart 6.4.5: Deductions from salary of foreign workers***



6.4.15 The survey findings revealed that 69% of the respondent companies conducted performance appraisal on their foreign workers.

***Chart 6.4.6: Whether the Companies conduct performance appraisal for foreign workers***

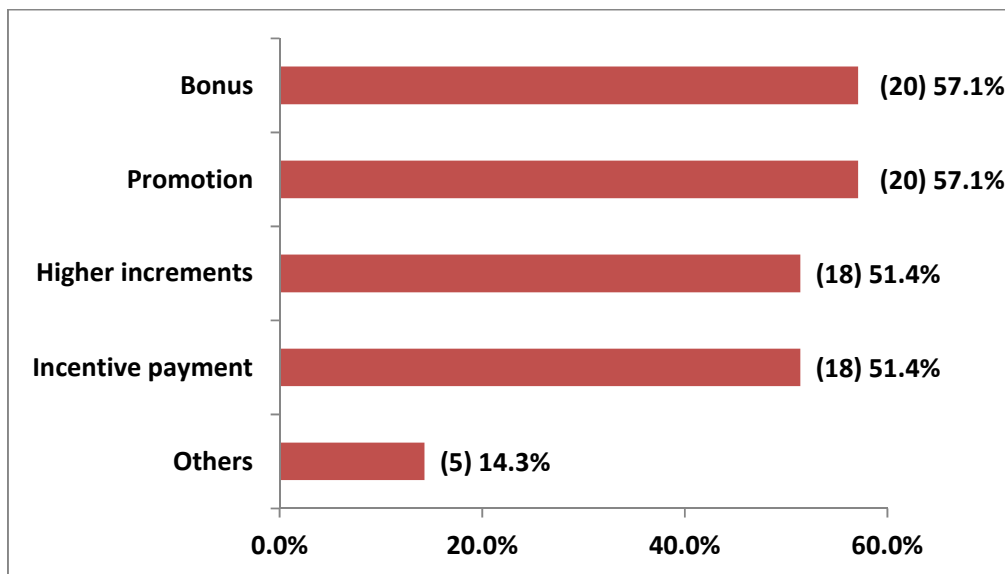


Based on high performance, respondent companies rewarded foreign workers with:

- Bonus (57%)
- Promotion (57%)
- Higher increments (51%)
- Incentive payments (51%)

In addition, workers who actively participate in the company's monthly suggestion scheme to improve the production processes are rewarded with monetary payments.

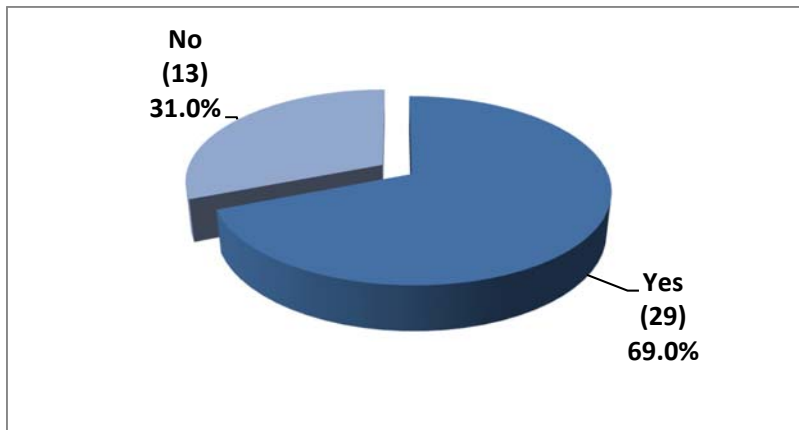
**Chart 6.4.7: Reward for high performance of foreign workers**



## 6.5 Training

6.5.1 69% of the respondent companies provided training to the foreign workers.

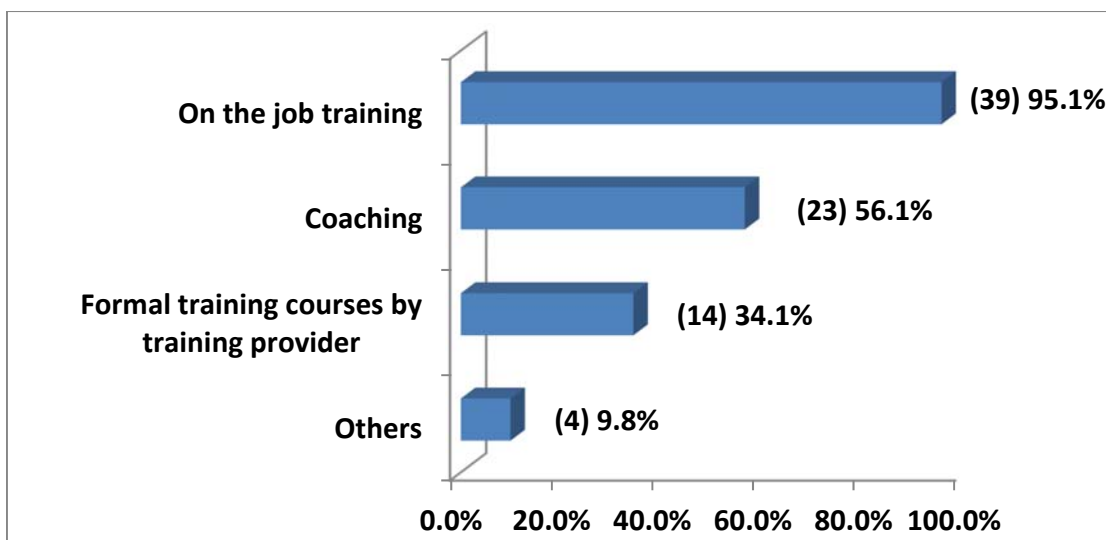
**Chart 6.5.1: Provision of training to foreign workers**



6.5. 2 The types of training given to foreign workers were:

- On-the-job training (95%)
- Coaching (56%)
- Formal training courses by training provider (34%)

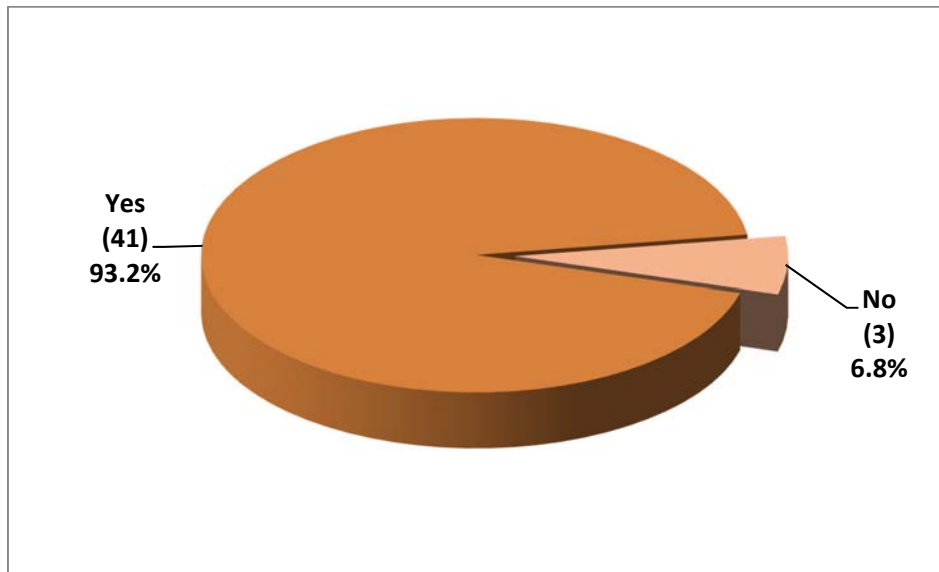
**Chart 6.5.2: Types of training given to foreign workers**



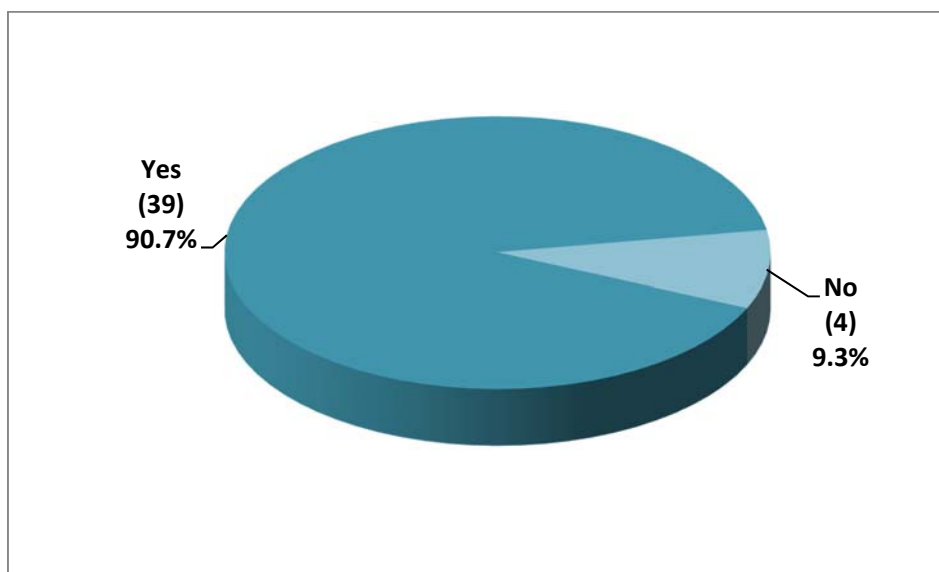
## 6.6 Health and Safety

6.6.1 The survey findings reveal that the accident rate of local employees is 4.25% compared to 4.14% of foreign workers. The majority of the respondent companies (93%) have adopted a safety and health policy in their companies. To carry out the policy, 90% have set up a Safety and Health Committee.

**Chart 6.6.1: Implementation of Safety and Health Policy**



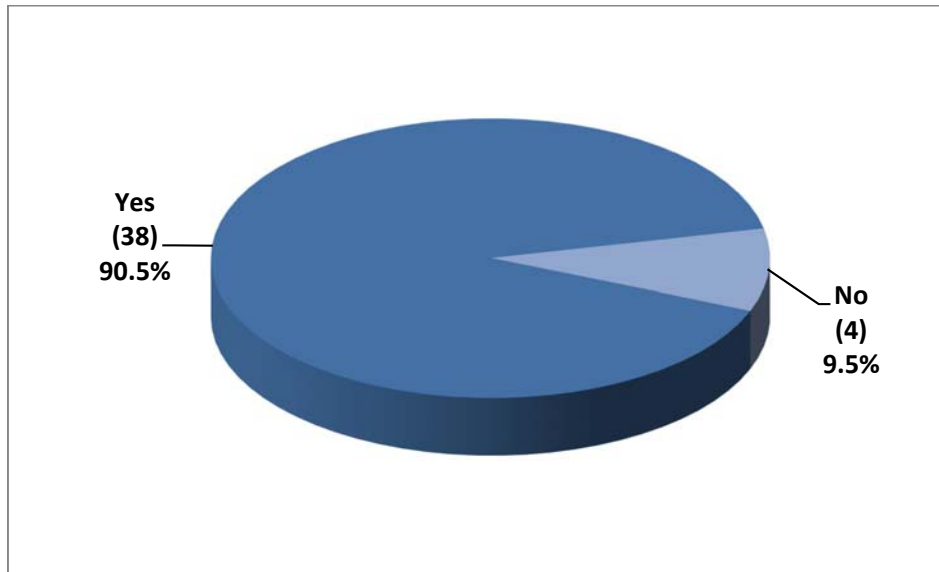
**Chart 6.6.2: Setting up of Safety and Health Committee in the Company**



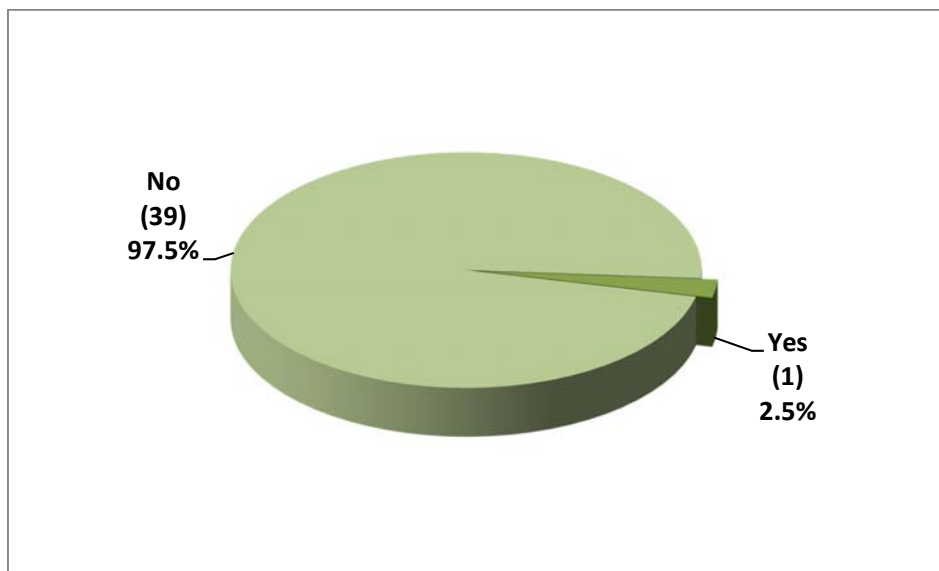


6.6.2 90% of the respondent companies were of the view that the company has effectively communicated the safety and health rules to the Foreign Workers. Employees attend safety induction programmes based on the industry conducted by the National Institute of Occupational Safety and Health (NIOSH).

***Chart 6.6.3: Whether the Safety and Health rules of the Company had effectively been communicated to the foreign workers***



***Chart 6.6.4: Whether the Companies are required to train their foreign workers under special training programmes that are industry based***



### **BOX 10: COMPANY SAFETY AND HEALTH POLICY**

Under Section 16 of the Occupational Safety and Health Act 1994 all employers with more than 5 employees are required to formulate a written Safety and Health Policy of their workplaces. The Safety and Health Policy demonstrates the company's concern and commitment to ensure safety and health of the employees. It acts as a basis for developing and implementing programmes for securing safety and health at the workplace. As a result it should affect the overall work culture and system of work of the organisation.

#### **Content of Written Statement**

A comprehensive written statement of the policy is the evidence of the organization to have such a policy in place. It should be written in simple language that could be understood by all people at the workplace. It is recommended that the policy should be written in the national language and in English. If the workers are foreign workers, the employers should take an effort to make them understand the policy by any appropriate means. It could be translated to their native language. The policy can be addressed to the workers during the induction and training session.

Three main parts of the written policy are General Policy Statement, Organisation and Arrangements

#### **General Policy Statement**

The first part can be a simple and brief statement of the overall intent of the employer to secure safety and health of the workforce.

#### **Organisation**

The second part should explain the organisation of safety and health responsibilities. This will be mainly on "who shall do what". It should address:

- a. The list of safety and health responsibilities of all levels of management.
- b. The role of workers in the implementation of the policy. Each employee has a duty not to endanger himself or others by his action of omission, and to co-operate in all measures provided for his safety and health.
- c. The structure and functions of safety and health committees and other in-house safety and health organisations.

**Arrangements**

The third part of the written policy document deals with practical systems and procedures. It concerns mainly the potential hazards and methods and specifies detailed arrangements for ensuring that the General Policy is implemented:

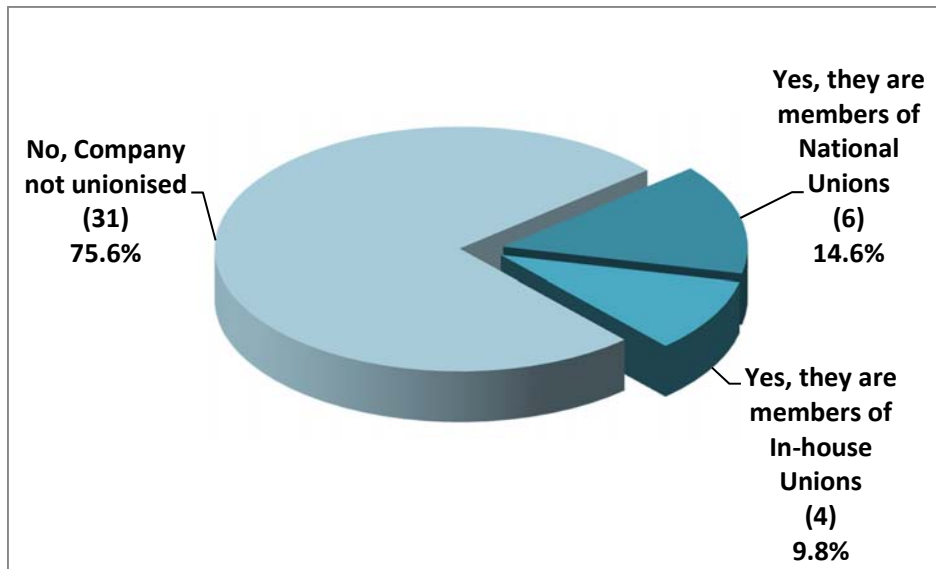
- a. arrangements for training and instruction; information about hazards in certain processes, control measures and ways in which employees should co-operate for their own safety and health; specify the company's safe system of work, including safe work procedures and work instructions;
- b. scheme for issuance, use and maintenance of personal protective equipment
- c. the procedure for reporting and investigation of accidents, and
- d. emergency measures such as fire and first aid arrangements

The process of formulating the policy should involve both employers and employees. The employer should also take into account issues and problem relating to women's affairs, such as pregnancy, sexual harassment, and shift work. The policy also should address health issues such as alcohol and drug abuse. The policy should be developed through an open, participatory process. Once the policy is ready, employers should inform all employees. It should be explained and understood by the employees. To reflect the seriousness of the employer, it would be useful to have staff sign that they have been informed of the policy and procedures.

## 6.7 Freedom of Association and Right to Collective Bargaining

6.7.1 The survey findings revealed that 76% of the respondent companies are not unionized.

**Chart 6.7.1: Whether the workers are unionized**



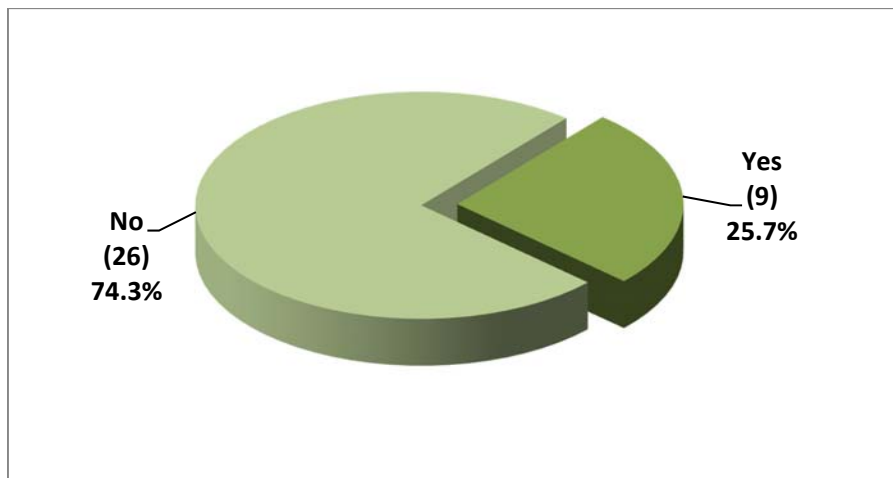
6.7.2 About 74% of the respondent companies do not allow their foreign workers to join unions. Malaysian labour laws do not prohibit foreign workers from joining trade unions. The only prohibition in the Trade Union Act Section 28(1) is that they are not allowed to become office-bearers. They are also not allowed to form their own unions.

### TRADE UNIONS ACT 1959

28. (1) A person shall not act as a member of the executive of a trade union or any branch thereof, or of any federation of trade unions, and shall be disqualified for election as such member, if—

(a) he is not a citizen of the Federation;

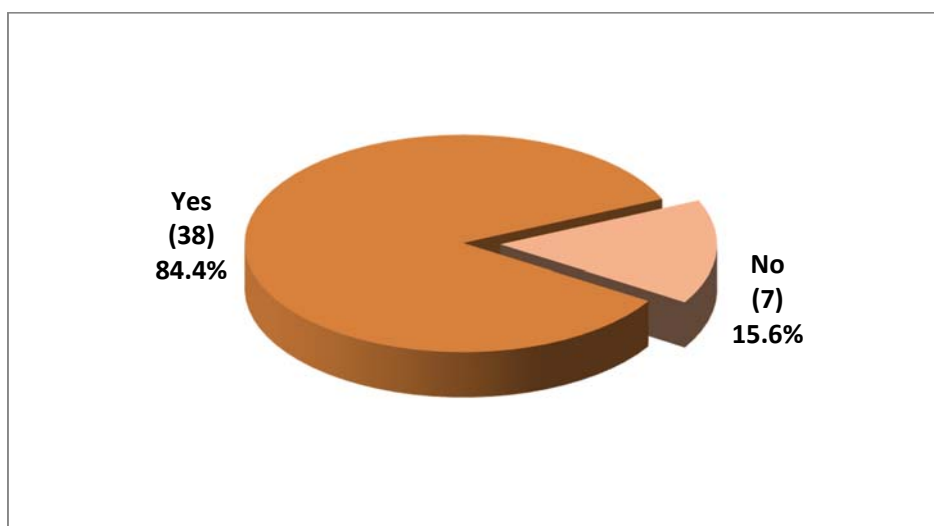
**Chart 6.7.2: Whether the Company allows their foreign workers to join Unions**



## **6.8 Grievance Mechanism**

6.8.1 84% of the respondent companies have a grievance mechanism for employees claiming unfair treatment. The grievance procedure is available to foreign workers in 92% of these companies. Partnerships between foreign workers and employers can be built based on information sharing, openness, and the establishment of clear grievance procedures. These procedures underline an environment for a collective commitment to mutual respect leading to higher productivity and efficiency.

**Chart 6.8.1: Whether the companies have a grievance mechanism for employees claiming unfair treatment**



### BOX 11: COMPANY GRIEVANCE PROCEDURE

#### Step One

Within three working days of the grievance arising, the employee concerned may approach the superior. Complaints should be in writing; if verbal, a statement is recorded from the employee.

#### Step Two

If the matter is not settled within five working days, the employee may within a further period of three working days, bring the matter to the attention of the Department Manager / Head of Department.

#### Step Three

If the matter is not settled within a period of five working days, bring the matter to the attention of the Human Resources Manager within a further period of three working days.

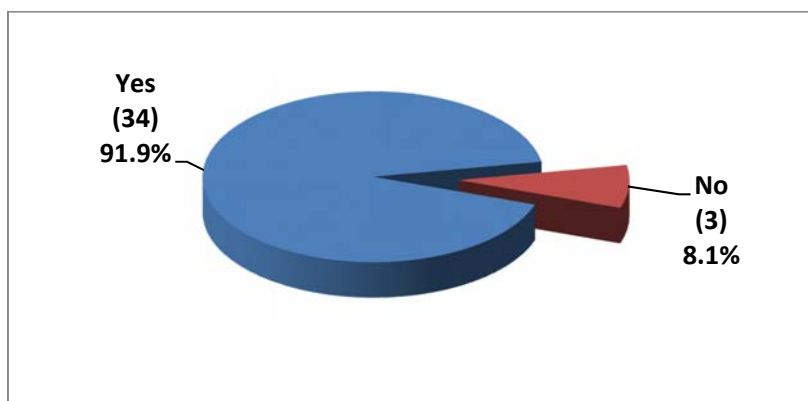
#### Step Four

If the matter is not settled within five working days, the matter is referred to the General Manager within a further period of three working days.

#### Step Five

If the matter is not settled within a period of five working days, refer for mediation by Labour/ IR Dept.

**Chart 6.8.2: Whether the grievance mechanism for employees claiming unfair treatment applies to all employees including foreign workers**



## **EMPLOYMENT ACT PART XIIB EMPLOYMENT OF FOREIGN EMPLOYEES**

### **60L Director General may inquire into complaint.**

(1) The Director General may inquire into any complaint from a local employee that he is being discriminated against in relation to a foreign employee, or from a foreign employee that he is being discriminated against in relation to a local employee, by his employer in respect of the terms and conditions of his employment; and the Director General may issue to the employer such directives as may be necessary or expedient to resolve the matter.

(2) An employer who fails to comply with any directive of the Director General issued under subsection (1) commits an offence.

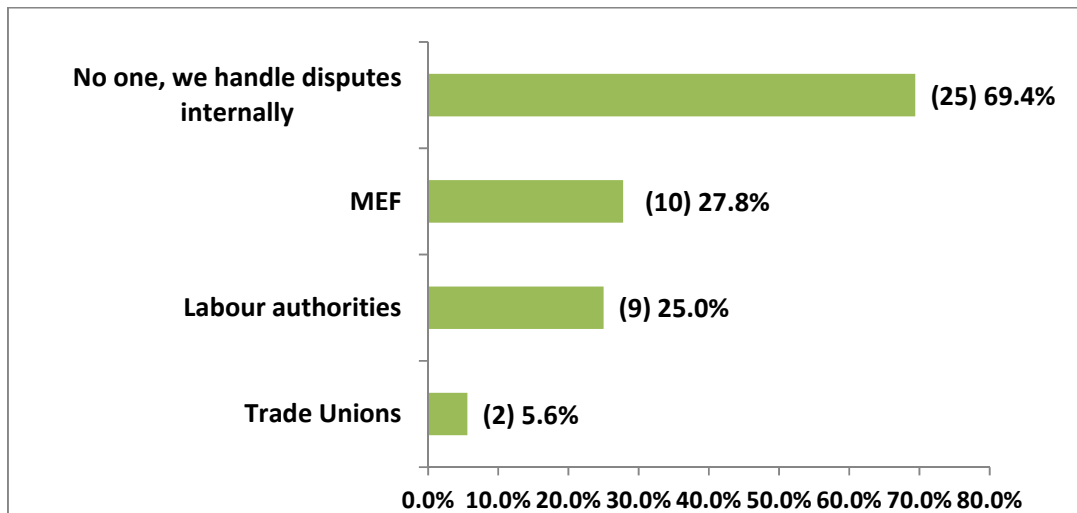
6.8.2 Foreign workers' access to a grievance mechanism is hindered by lack of knowledge of how the local system works, inability to speak the local language, and fear of retribution or repatriation for voicing their concerns. Malaysia has a "Special Pass" process that allows a terminated migrant worker to temporarily remain in the country while the foreign worker's case is still going on. Special Pass will be issued include complaints under consideration by the Industrial Relations Department or Industrial Court or before the Labour Office (Workman's Compensation Act or Employment Act), or in the Civil Courts when the decision of the relevant Department is appealed.

6.8.3 The common types of complaints received by the Labour Department are:

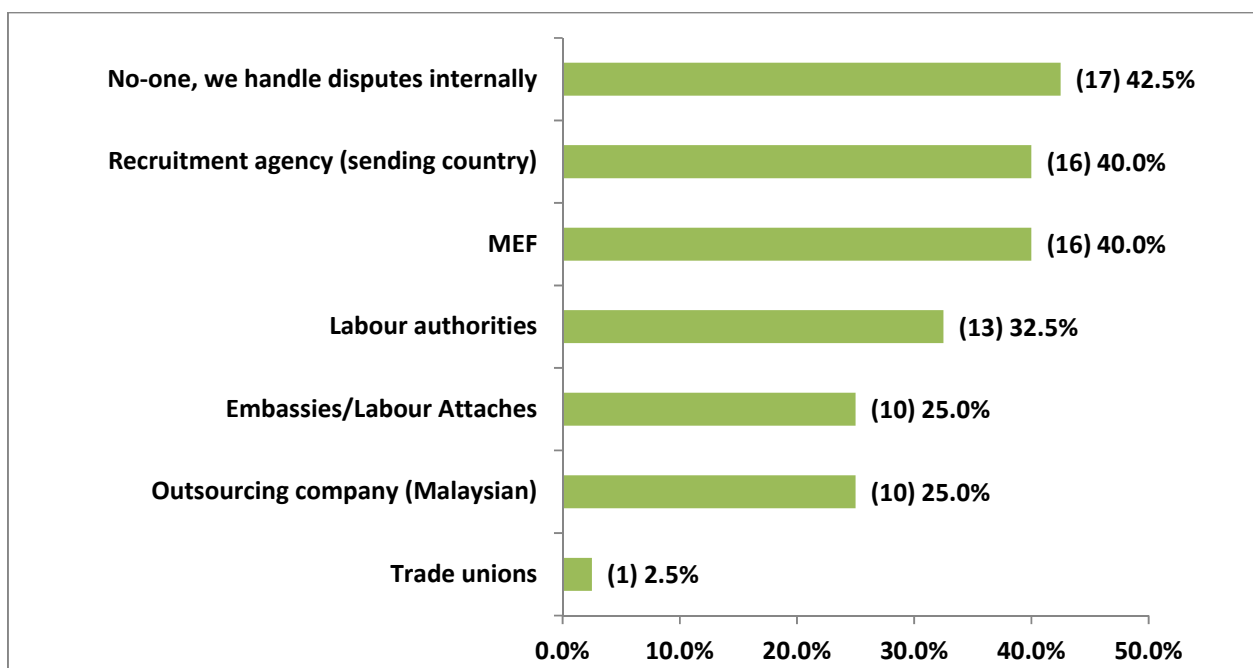
- Non-payment of wages / statutory benefits overtime;
- Wages paid is less than what was agreed in the contract;
- Excessive deduction from wages (without consent and /or approval);
- Job specification differs from the original offer;
- Annual leave / rest days not granted;
- Forced to work with different employers;
- Poor living conditions.

6.8.4 The survey findings showed that the majority of the respondent companies (69%) handled the disputes internally. Some of the companies work with MEF (28%) and labour authorities (25%) to address grievances and resolve disputes. The companies would like to work with other partners to address grievances, including MEF, embassies, recruitment and outsourcing companies.

**Chart 6.8.3: Organisation which companies worked with to address grievances and resolve disputes with foreign workers**



**Chart 6.8.4: Organisations which companies would like to work more closely with to address grievances and resolve disputes with foreign workers**

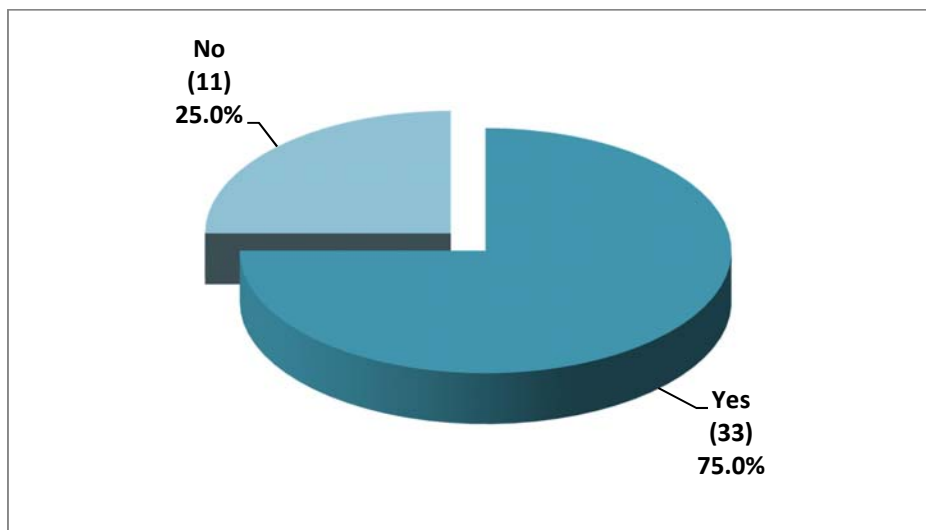




## 6.9 Sexual Harassment

6.9.1 The survey findings reveal that 75% of the respondent companies have systems to handle sexual harassment complaints.

**Chart 6.9.1: Establishment of systems to handle sexual harassment complaints**



## 6.10 Discipline and Termination

6.10.1 In the management of foreign workers, most of the respondent companies have policies dealing with:

- Absenteeism (72%)
- Performance (70%)
- Misconduct (76%)

**Table 6.10.1: Policies to handle various discipline problems**

	Absenteeism		Performance problems		Misconduct		Others	
	No.	%	No.	%	No.	%	No.	%
Yes	38	71.7%	37	69.8%	40	75.5%	5	9.4%
No	15	28.3%	16	30.2%	13	24.5%	48	90.6%
<b>TOTAL</b>	<b>53</b>	<b>100.0%</b>	<b>53</b>	<b>100.0%</b>	<b>53</b>	<b>100.0%</b>	<b>53</b>	<b>100.0%</b>

6.10.2 In the case where the respondent companies find that the foreign workers are guilty of misconduct, they would institute the following penalties:

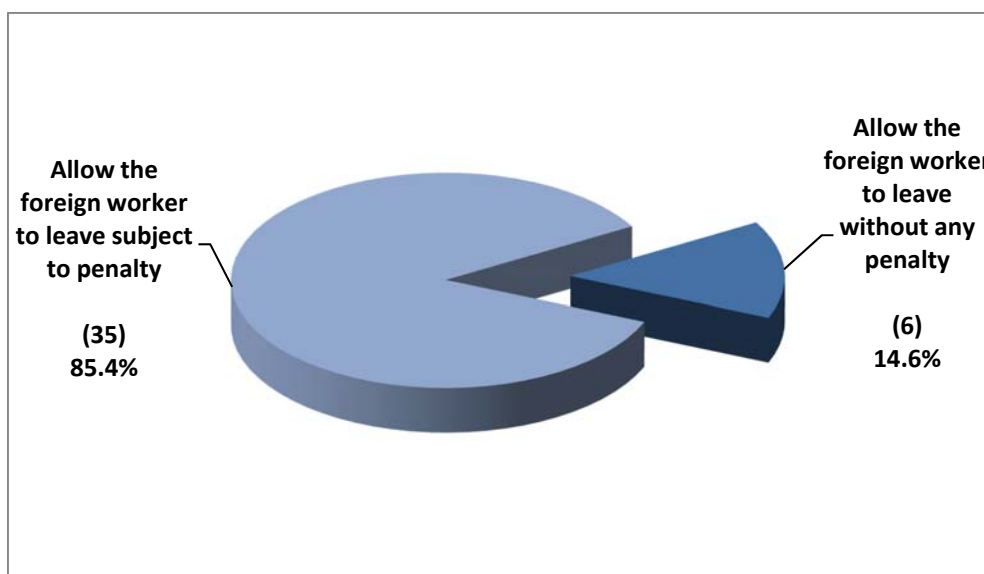
- Warning (70%)
- Suspension (66%)
- Termination (66%)

**Table 6.10.2: Whether the companies had instituted these penalties in the event of finding the foreign workers guilty of misconduct**

	Warning		Suspension		Demotion		Withholding increment/bonus		Termination		Other	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Yes	37	69.8%	35	66.0%	17	32%	19	35.8%	35	66%	4	7.5%
No	16	30.2%	18	34.0%	36	68%	34	64.2%	18	34%	49	92.5%
<b>TOTAL</b>	<b>53</b>	<b>100%</b>	<b>53</b>	<b>100%</b>	<b>53</b>	<b>100%</b>	<b>53</b>	<b>100.0%</b>	<b>53</b>	<b>100%</b>	<b>53</b>	<b>100%</b>

6.10.3 In the case where foreign worker leaves before the end of the contract, about 85% of the respondent companies would allow the worker to leave employment, subject to a penalty.

**Chart 6.10.1: Steps to be taken if a foreign worker wants to leave before the end of the contract**

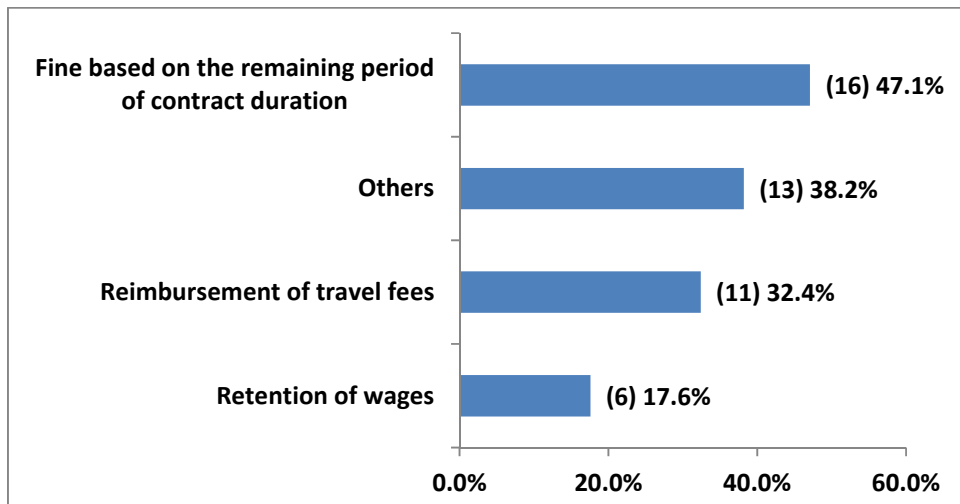


6.10.4 The most common types of penalties imposed on foreign workers are:

- Fine based on the remaining period of contract duration (47%)
- Reimbursement of travel fees (32%)

In the case of retention of wages, deductions to the wages will be made for the levy advanced to the foreign worker by employer on a pro-rated basis and deduction for the bond paid by the Company.

**Chart 6.10.2: Types of penalty imposed to a foreign worker who wants to leave before the end of the contract**



**EMPLOYMENT ACT 1955 PART XIIB EMPLOYMENT OF FOREIGN  
EMPLOYEES**

**60K Duty to furnish information and returns.**

(3) If the service of a foreign employee is terminated-

- (a) by the employer;
- (b) by the foreign employee;
- (c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or
- (d) by the repatriation or deportation of the foreign employee,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

[ (3) Ins. by Act A1419:s.21]

(4) For the purpose of paragraph (3)(b), the termination of service by a foreign employee includes the act of the foreign employee absconding from his place of employment.

[ (4) Ins. by Act A1419:s.21]

**60M Prohibition on termination of local for foreign employee.**

No employer shall terminate the contract of service of a local employee for the purpose of employing a foreign employee.

[60M. Ins. Act A1026:s.22]

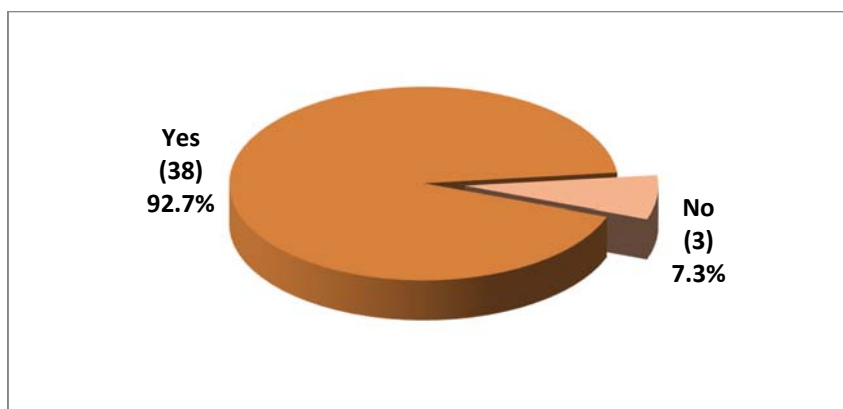
**60N Termination of employment by reason of redundancy.**

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.

[60N. Ins. Act A1026:s.22]

6.10.5 The survey findings revealed that 93% of the respondent companies would lodge a report with the Immigration Department in cases of abscondment. In cases where the foreign worker did not resume duty after the lapse of their overseas home leave, some companies' HR departments will within a grace period of 7 days from the expiry of the home leave lodge a Police Report that the employee has abandoned his/her employment with the Company. Following that, the HR department will report to the Immigration Department to cancel the PL(KS) of the Foreign Worker. The HR department will also report it to the Embassy of the source country.

**Chart 6.10.3: Whether the Company lodge a report to the Immigration Department if a foreign worker absconds**



#### **BOX 12: HOW TO REPORT ON FOREIGN WORKERS WHO HAVE ABSCONDED**

To cancel the PL (KS) of a Foreign Worker / Domestic worker, the employer / informant must be present at the relevant Immigration Office to submit the following documents:

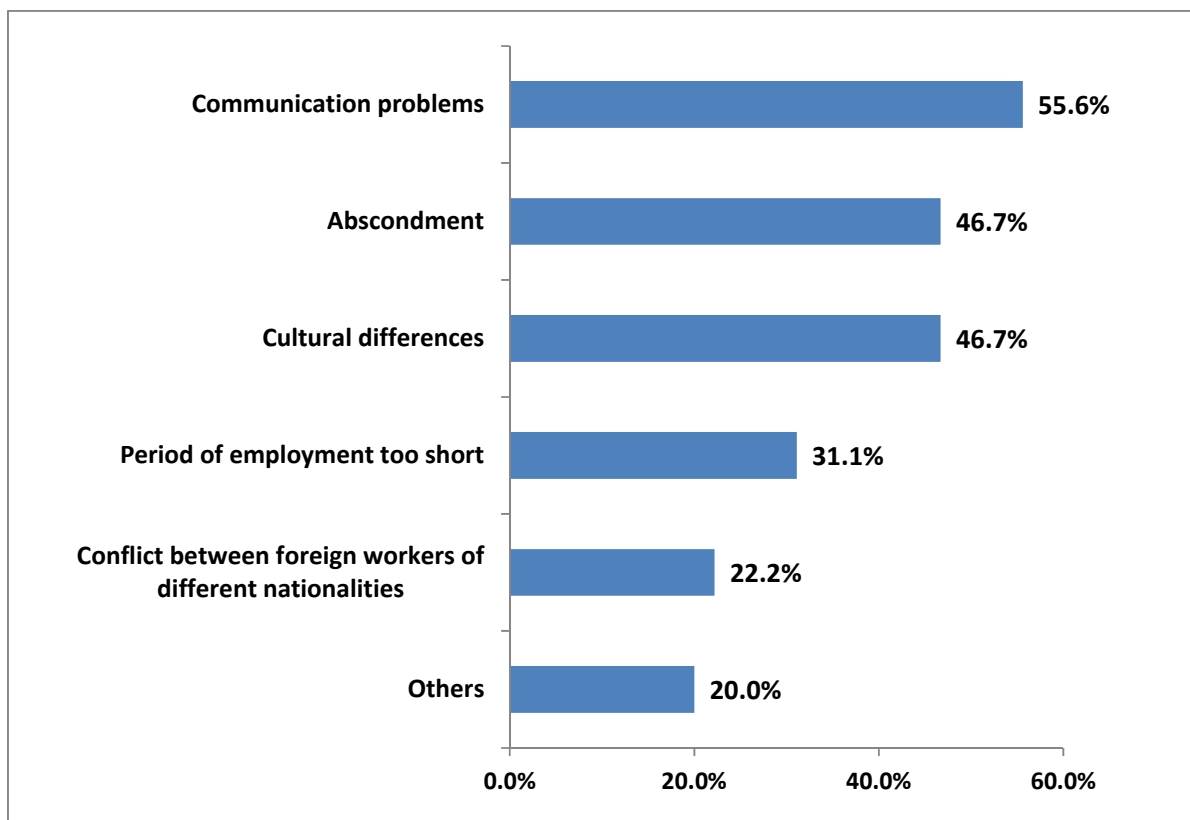
1. Letter of request to cancel the PL (KS) of the foreign worker who had fled.
2. Copy of identity card of the employer / employer representative
3. Foreign worker's passport from country of origin
4. Form to report on the foreign worker who had absconded. This form is issued by the Immigration Department of Malaysia
5. Certified Copy of Police report.

Source: <http://www.imi.gov.my/index.php/en/main-services/foreign-worker>

## 6.11 Issues and Challenges in Employment of Foreign Workers

6.11.1 The survey findings revealed that the main challenges faced by employers at the company level were communication problems (55.6), abscondment (46.7%) and cultural differences (46.7%). Disagreement and rivalry between different nationalities lead to disruption in production mostly over non-work issues.

**Chart 6.11.1: Issues and challenges**

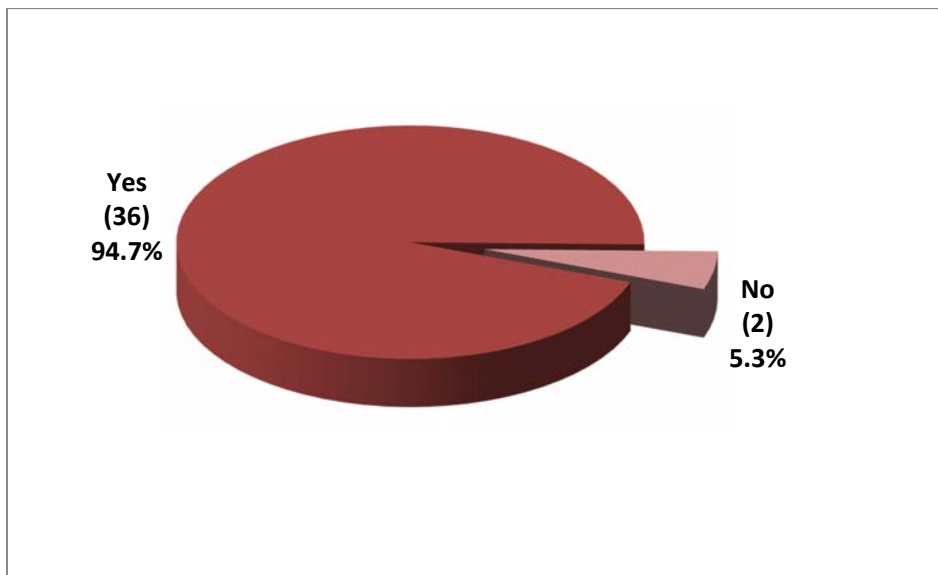


## CHAPTER 7: REPATRIATION

### 7.1. Employers' Responsibilities

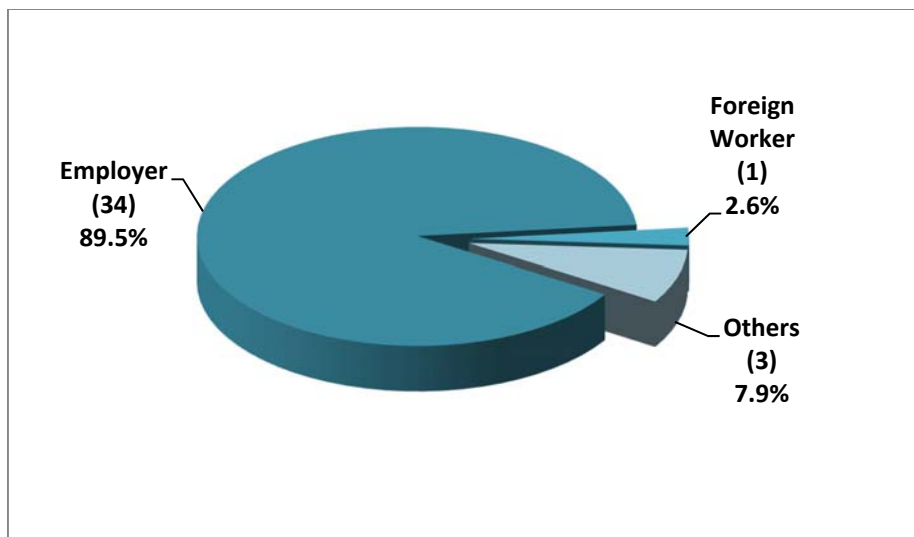
7.1.1 It can be noted in Chart 7.1 that 95% of the respondent companies would arrange the repatriation of foreign workers on completion of their contract.

***Chart 7.1: Whether the Company will arrange for repatriation of foreign workers on completion of their contract***



7.1.2 The employers in 90% of the respondent companies bear the cost of repatriation for the foreign workers.

**Chart 7.2: Party that bear the cost of repatriation**



7.1.3 On completion of their contract, employers may provide to foreign workers:

- Reference letters (38%)
- Certificates of performance (27%)

The reference letters, award certificates and certificates of performance are given to foreign workers so they can enhance their employment opportunities when they return to seek employment in their home countries.

**Table 7.1: Whether the Company provides certificates to the foreign workers**

	Certificates of performance		Reference letters		Others	
	No.	%	No.	%	No.	%
Yes	12	26.7%	17	37.8%	8	17.8%
No	33	73.3%	28	62.2%	37	82.2%
<b>TOTAL</b>	<b>45</b>	<b>100.0%</b>	<b>45</b>	<b>100.0%</b>	<b>45</b>	<b>100.0%</b>



## **CHAPTER 8: MEF VIEWS AND PROPOSALS**

### **8.1 MEF Views on Foreign Workers Policies**

8.1.1 MEF views that policies, legislation and procedures relating to foreign workers should not be ad hoc but should be clear, comprehensive and sustainable. Government should not regulate employment of Foreign Workers based on security issues, but rather they should be based on labour market requirements. Presently there is a fragmented approach in the management of Foreign Workers. There are a number of ministries and agencies involved (para 2.17).

8.1.2 MEF views that there may be vulnerabilities at recruitment, pre departure and during the journey due to inadequate access to accurate and reliable information about the labour market abroad. MEF advocates for a government-to-government (G-to-G) system of recruitment to replace intermediaries. The outsourcing system carries too many risks and is costly to both workers and employers. A G-to-G system would improve regulation and transparency and reduce costs. Government needs to establish and implement policies for ethical recruitment through effective monitoring and record keeping of employment agency practices.

8.1.3.4 To improve the efficiency in the recruitment process as well as to reduce costs and abuses MEF proposes the followings:

- Establish more one stop centres
- To reduce the burden around the renewal of work permits, MEF is of the view that permits may be approved for specific duration, but levy can be paid on a yearly basis without having to renew the permit.
- Maximum duration of contract of employment be extended to maintain productivity and reduce the disruption of frequent training every time new workers are recruited
- Recruitment should be direct because third party involvement will increase cost, and dealings should be on G-to-G basis involving only official payments
- Multiple health checks at source and at host countries should be reviewed to introduce one comprehensive health check at source country
- On the issue of probation period for foreign workers, MEF is of the view that the Cabinet Committee cannot introduce an administrative policy which is not in line with Order 5 of the Minimum Wages Order 2012 and is discriminatory to the local workers who may be put on probation with up to 30% discount on the minimum wages for the first 6 months' period.

## CHAPTER 9: PROFILE OF RESPONDENT COMPANIES

9.1 Out of the 101 respondent companies, 55% were from the manufacturing sector and 45% from the non manufacturing sector. The largest number of respondent companies (19) were from the electrical/electronics industry.

**Table 9.1: Companies by industry**

TYPES OF INDUSTRY		No.	%
<b>Manufacturing</b>	Basic & Fabricated Metallic Products	7	6.9%
	Electrical/Electronics	19	18.8%
	Food/Beverage/Textile Products	4	4.0%
	Non Metallic/Mineral & Cement Products	5	5.0%
	Petroleum/Chemical/Gases	3	3.0%
	Plastic/Rubber	5	5.0%
	Printing/Publishing/Timber/Wood/Paper Products	8	7.9%
	Transport/Machinery/Parts Manufacturing & Assembling	4	4.0%
	<b>Sub Total</b>	<b>55</b>	<b>54.5%</b>
<b>Non Manufacturing</b>	Banking/Finance/Insurance	3	3.0%
	Hotel/Restaurant/Entertainment	8	7.9%
	IT/Communication	6	5.9%
	Medical & Health Services	4	4.0%
	Mining/Plantation	3	3.0%
	Professional Services & Consultancy/Education & ...	6	5.9%
	Property/Construction	5	5.0%
	Transport/Warehouse/Logistics/Business Services	4	4.0%
	Wholesale/Retail/Trading	7	6.9%
	<b>Sub Total</b>	<b>46</b>	<b>45.5%</b>
<b>TOTAL</b>		<b>101</b>	<b>100.0%</b>

9.2 The largest component of the respondent companies were from the Klang Valley (62%)

**Table 9.2: Companies by location**

LOCATION	No.	%
Perlis and Kedah	2	2.0%
Penang	7	6.9%
Perak	2	2.0%
Kuala Lumpur	19	18.8%
Petaling Jaya and Subang	12	11.9%
Shah Alam and Klang	15	14.9%
Rest of Selangor/Putrajaya	17	16.8%
Negeri Sembilan/Melaka	9	8.9%
Pahang, Terengganu, Kelantan	2	2.0%
Johor	9	8.9%
Sabah/Sarawak	7	6.9%
<b>TOTAL</b>	<b>101</b>	<b>100.0%</b>

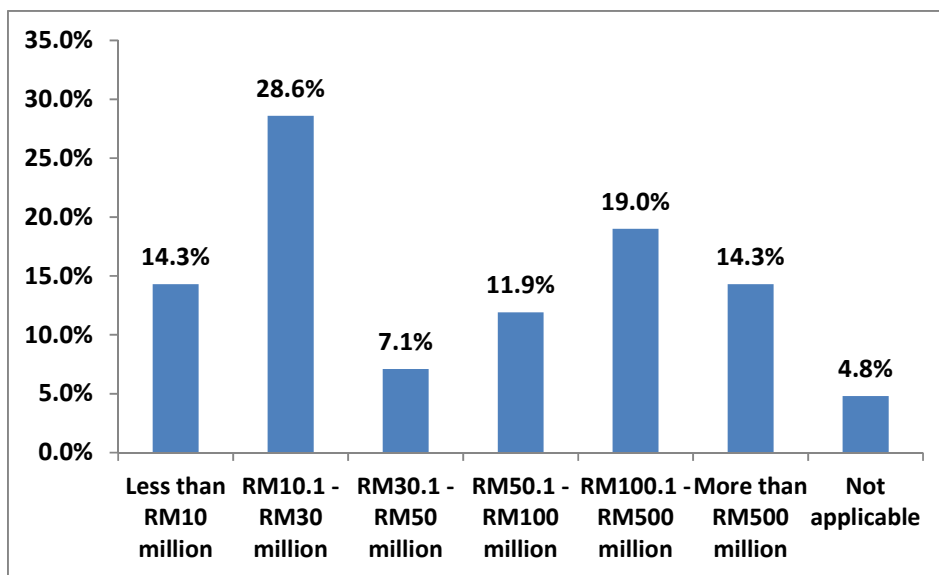
**Table 9.3: Employment size**

Employment Size	No.	%
50 employees & below	8	7.9%
51 - 100 employees	18	17.8%
101 - 250 employees	23	22.8%
251 - 500 employees	20	19.8%
501 - 1,000 employees	12	11.9%
More than 1,000 employees	20	19.8%
<b>TOTAL</b>	<b>101</b>	<b>100.0%</b>

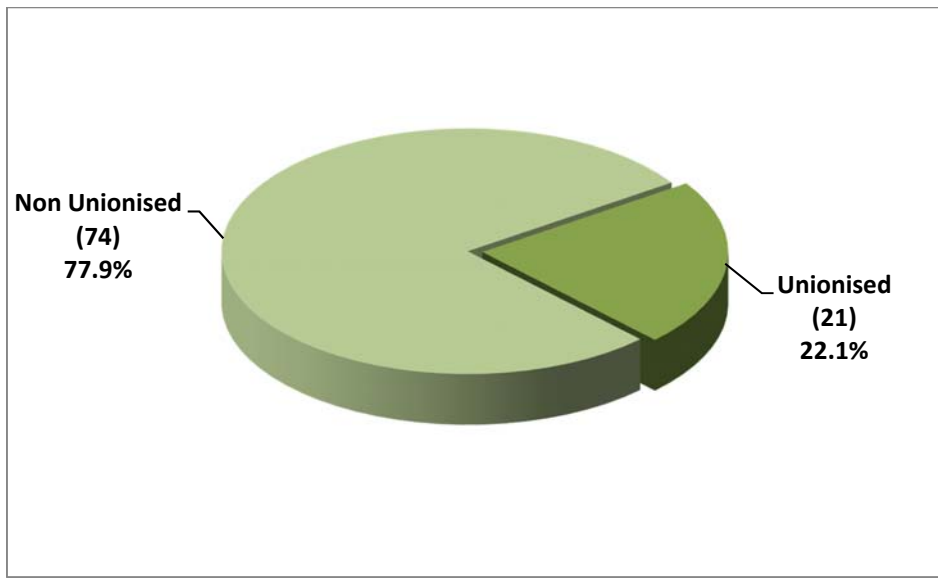
**Table 9.4: Source of capital ownership**

Source of Capital Ownership	No.	%
Malaysia	49	48.5%
Japan	17	16.8%
Other Asian countries	8	7.9%
UK/Europe	13	12.9%
USA	7	6.9%
Other Countries	7	6.9%
<b>TOTAL</b>	<b>101</b>	<b>100.0%</b>

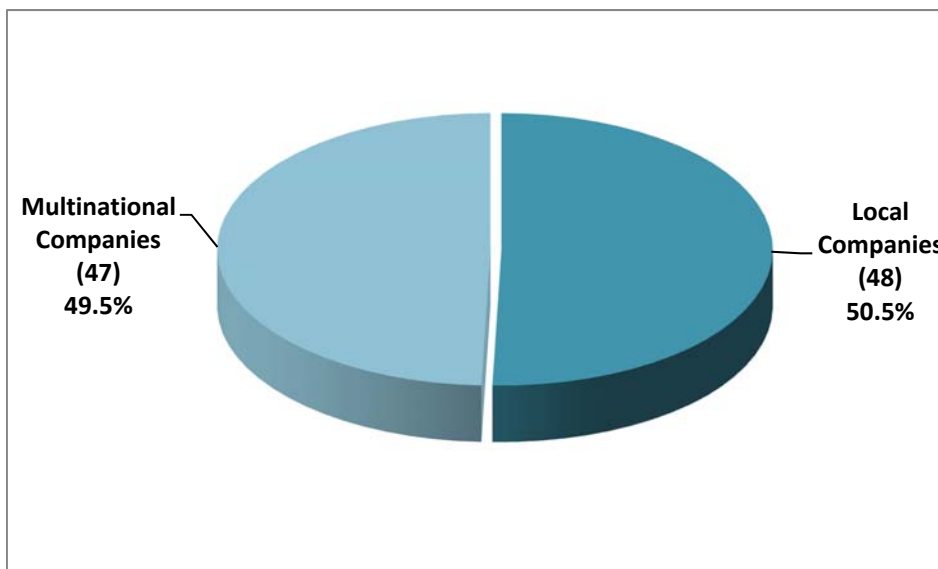
**Chart 9.1: Company's sales turnover**



**Chart 9.2: Unionised/Non unionised Companies**



**Chart 9.3: Local/Multinational companies**



### 9.3 Profile of Foreign Workers under Survey

Out of the 101 respondent companies, 75% (76 companies) employ foreign workers. The profile of the Foreign Workers in the Survey is given in Table 2.1.2. It also reflects that Indonesian Foreign Workers form the largest category.

**Table 9.5: Profile of foreign workers under survey**

Nationality	Male	Female	Total
Bangladesh	523	0	523
Cambodia	0	6	6
China	19	9	28
India	43	0	43
Indonesia	5960	7944	13,904
Myanmar	812	287	1,099
Nepal	1966	116	2,082
Philippines	32	31	63
Thailand	18	28	46
Vietnam	409	99	508
Others	68	30	98
<b>TOTAL</b>	<b>9850</b>	<b>8550</b>	<b>18,400</b>

**ELECTRONIC INDUSTRY CITIZENSHIP COALITION® CODE OF CONDUCT - Version 5.0 (2014)**

The Electronic Industry Citizenship Coalition® (EICC®) Code of Conduct establishes standards to ensure that working conditions in the electronics industry supply chain are safe, that workers are treated with respect and dignity, and that business operations are environmentally responsible and conducted ethically.

Considered as part of the electronics industry for purposes of this Code are all organizations that may design, market, manufacture or provide goods and services that are used to produce electronic goods. The Code may be voluntarily adopted by any business in the electronics sector and subsequently applied by that business to its supply chain and subcontractors, including providers of contract labor.

To adopt the Code and become a participant (“Participant”), a business shall declare its support for the Code and actively pursue conformance to the Code and its standards in accordance with a management system as herein.

Participants must regard the Code as a total supply chain initiative. At a minimum, Participants shall also require its next tier suppliers to acknowledge and implement the Code.

Fundamental to adopting the Code is the understanding that a business, in all of its activities, must operate in full compliance with the laws, rules and regulations of the countries in which it operates.<sup>1</sup> The Code encourages Participants to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility and business ethics. In alignment with the UN Guiding Principles on Business and Human Rights, the provisions in this Code are derived from key international human rights standards including the ILO Declaration on Fundamental Principles and Rights at Work and the UN Universal Declaration of Human Rights.

The EICC is committed to obtaining regular input from stakeholders in the continued development and implementation of the Code of Conduct.

The Code is made up of five sections. Sections A, B, and C outline standards for Labor, Health and Safety, and the Environment, respectively. Section D adds standards relating to business ethics; Section E outlines the elements of an acceptable system to manage conformity to this Code.

The Code is not intended to create new and additional third party rights, including for workers.

## **A. LABOR**

Participants are committed to uphold the human rights of workers, and to treat them with dignity and respect as understood by the international community. This applies to all workers including temporary, migrant, student, contract, direct employees, and any other type of worker. The recognized standards, as set out in the annex, were used as references in preparing the Code and may be a useful source of additional information.

The labor standards are:

### **1) Freely Chosen Employment**

Forced, bonded (including debt bondage) or indentured labor, involuntary prison labor, slavery or trafficking of persons shall not be used. This includes transporting, harboring, recruiting, transferring or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company-provided facilities. As part of the hiring process, workers must be provided with a written employment agreement in their native language that contains a description of terms and conditions of employment prior to the worker departing from his or her country of origin. All work must be voluntary and workers shall be free to leave work at any time or terminate their employment. Employers and agents may not hold or otherwise destroy, conceal, confiscate or deny access by employees to employees' identity or immigration documents, such as government-issued identification, passports or work permits, unless the holding of work permits is required by law. Workers shall not be required to pay employers or agents recruitment fees or other aggregate fees in excess of one month's salary. All fees charged to workers must be disclosed and fees in excess of one month's salary must be returned to the worker.

### **2) Young Workers**

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 (Young Workers) shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Participant shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable law and regulations. Participant shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student



workers, interns and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks.

**3) Working Hours**

Studies of business practices clearly link worker strain to reduced productivity, increased turnover and increased injury and illness. Workweeks are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. Workers shall be allowed at least one day off every seven days.

**4) Wages and Benefits**

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

**5) Humane Treatment**

There is to be no harsh and inhumane treatment including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

**6) Non-Discrimination**

Participants should be committed to a workforce free of harassment and unlawful discrimination. Companies shall not engage in discrimination based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests or physical exams that could be used in a discriminatory way.

**7) Freedom of Association**

In conformance with local law, participants shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively and to engage in

peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation or harassment.

## **B. HEALTH and SAFETY**

Participants recognize that in addition to minimizing the incidence of work-related injury and illness, a safe and healthy work environment enhances the quality of products and services, consistency of production and worker retention and morale. Participants also recognize that ongoing worker input and education is essential to identifying and solving health and safety issues in the workplace.

Recognized management systems such as OHSAS 18001 and ILO Guidelines on Occupational Safety and Health were used as references in preparing the Code and may be a useful source of additional information.

The health and safety standards are:

### **1) Occupational Safety**

Worker exposure to potential safety hazards (e.g., electrical and other energy sources, fire, vehicles, and fall hazards) are to be controlled through proper design, engineering and administrative controls, preventative maintenance and safe work procedures (including lockout/tagout), and ongoing safety training. Where hazards cannot be adequately controlled by these means, workers are to be provided with appropriate, well-maintained, personal protective equipment and educational materials about risks to them associated with these hazards. Workers shall be encouraged to raise safety concerns.

### **2) Emergency Preparedness**

Potential emergency situations and events are to be identified and assessed, and their impact minimized by implementing emergency plans and response procedures including: emergency reporting, employee notification and evacuation procedures, worker training and drills, appropriate fire detection and suppression equipment, adequate exit facilities and recovery plans. Such plans and procedures shall focus on minimizing harm to life, the environment and property.

### **3) Occupational Injury and Illness**

Procedures and systems are to be in place to prevent, manage, track and report occupational injury and illness including provisions to: encourage worker reporting;

classify and record injury and illness cases; provide necessary medical treatment; investigate cases and implement corrective actions to eliminate their causes; and facilitate return of workers to work.

**4) Industrial Hygiene**

Worker exposure to chemical, biological and physical agents is to be identified, evaluated, and controlled. Engineering or administrative controls must be used to control overexposures. When hazards cannot be adequately controlled by such means, worker health is to be protected by appropriate personal protective equipment programs.

**5) Physically Demanding Work**

Worker exposure to the hazards of physically demanding tasks, including manual material handling and heavy or repetitive lifting, prolonged standing and highly repetitive or forceful assembly tasks is to be identified, evaluated and controlled.

**6) Machine Safeguarding**

Production and other machinery shall be evaluated for safety hazards. Physical guards, interlocks and barriers are to be provided and properly maintained where machinery presents an injury hazard to workers.

**7) Sanitation, Food, and Housing**

Workers are to be provided with ready access to clean toilet facilities, potable water and sanitary food preparation, storage, and eating facilities. Worker dormitories provided by the Participant or a labor agent are to be maintained to be clean and safe, and provided with appropriate emergency egress, hot water for bathing and showering, adequate heat and ventilation, and reasonable personal space along with reasonable entry and exit privileges.

**8) Health and Safety Communication**

Participant shall provide workers with appropriate workplace health and safety training in their primary language. Health and safety related information shall be clearly posted in the facility.

## C. ENVIRONMENTAL

Participants recognize that environmental responsibility is integral to producing world class products. In manufacturing operations, adverse effects on the community, environment and natural resources are to be minimized while safeguarding the health and safety of the public. Recognized management systems such as ISO 14001 and the Eco Management and Audit System (EMAS) were used as references in preparing the Code and may be a useful source of additional information.

The environmental standards are:

**1) Environmental Permits and Reporting**

All required environmental permits (e.g. discharge monitoring), approvals and registrations are to be obtained, maintained and kept current and their operational and reporting requirements are to be followed.

**2) Pollution Prevention and Resource Reduction**

The use of resources and generation of waste of all types, including water and energy, are to be reduced or eliminated at the source or by practices such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials.

**3) Hazardous Substances**

Chemicals and other materials posing a hazard if released to the environment are to be identified and managed to ensure their safe handling, movement, storage, use, recycling or reuse and disposal.

**4) Wastewater and Solid Waste**

Participant shall implement a systematic approach to identify, manage, reduce, and responsibly dispose of or recycle solid waste (non-hazardous).

Wastewater generated from operations, industrial processes and sanitation facilities are to be characterized, monitored, controlled and treated as required prior to discharge or disposal. In addition, measures should be implemented to reduce generation of wastewater. Participant shall conduct routine monitoring of the performance of its wastewater treatment systems.

**5) Air Emissions**

Air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations are to be characterized, routinely monitored, controlled and treated as required prior to discharge. Participant shall conduct routine monitoring of the performance of its air emission control systems.

**6) Materials Restrictions**

Participants are to adhere to all applicable laws, regulations and customer requirements regarding prohibition or restriction of specific substances in products and manufacturing, including labeling for recycling and disposal.

**7) Storm Water Management**

Participant shall implement a systematic approach to prevent contamination of storm water runoff. Participant shall prevent illegal discharges and spills from entering storm drains.

**8) Energy Consumption and Greenhouse Gas Emissions**

Energy consumption and greenhouse gas emissions are to be tracked and documented, at the facility and/or corporate level. Participants are to look for cost-effective methods to improve energy efficiency and to minimize their energy consumption and greenhouse gas emissions.

## **D. ETHICS**

To meet social responsibilities and to achieve success in the marketplace, Participants and their agents are to uphold the highest standards of ethics including:

**1) Business Integrity**

The highest standards of integrity are to be upheld in all business interactions. Participants shall have a zero tolerance policy to prohibit any and all forms of bribery, corruption, extortion and embezzlement. All business dealings should be transparently performed and accurately reflected on Participant's business books and records. Monitoring and enforcement procedures shall be implemented to ensure compliance with anti-corruption laws.

**2) No Improper Advantage**

Bribes or other means of obtaining undue or improper advantage are not to be promised, offered, authorized, given or accepted. This prohibition covers promising, offering, authorizing, giving or accepting anything of value, either directly or indirectly through a third party, in order to obtain or retain business, direct business to any person, or otherwise gain an improper advantage.

**3) Disclosure of Information**

Information regarding participant labor, health and safety, environmental practices, business activities, structure, financial situation and performance is to be disclosed in accordance with applicable regulations and prevailing industry practices.

Falsification of records or misrepresentation of conditions or practices in the supply chain are unacceptable.

**4) Intellectual Property**

Intellectual property rights are to be respected; transfer of technology and know-how is to be done in a manner that protects intellectual property rights; and, customer information is to be safeguarded.

**5) Fair Business, Advertising and Competition**

Standards of fair business, advertising and competition are to be upheld. Appropriate means to safeguard customer information must be available.

**6) Protection of Identity and Non-Retaliation**

Programs that ensure the confidentiality, anonymity and protection of supplier and employee whistleblowers<sup>2</sup> are to be maintained, unless prohibited by law. Participants should have a communicated process for their personnel to be able to raise any concerns without fear of retaliation.

**7) Responsible Sourcing of Minerals**

Participants shall have a policy to reasonably assure that the tantalum, tin, tungsten and gold in the products they manufacture does not directly or indirectly finance or benefit armed groups that are perpetrators of serious human rights abuses in the Democratic Republic of the Congo or an adjoining country. Participants shall exercise due diligence on the source and chain of custody of these minerals and make their due diligence measures available to customers upon customer request.

**8) Privacy**

Participants are to commit to protecting the reasonable privacy expectations of personal information of everyone they do business with, including suppliers, customers, consumers and employees. Participants are to comply with privacy and information security laws and regulatory requirements when personal information is collected, stored, processed, transmitted, and shared.

<sup>2</sup> Whistleblower definition: Any person who makes a disclosure about improper conduct by an employee or officer of a company, or by a public official or official body.

## E. MANAGEMENT SYSTEM

Participants shall adopt or establish a management system whose scope is related to the content of this Code. The management system shall be designed to ensure: (a) compliance with applicable laws, regulations and customer requirements related to the participant's operations and products; (b) conformance with this Code; and (c) identification and mitigation of operational risks related to this Code. It should also facilitate continual improvement.

The management system should contain the following elements:

**1) Company Commitment**

A corporate social and environmental responsibility policy statements affirming Participant's commitment to compliance and continual improvement, endorsed by executive management and posted in the facility in the local language.

**2) Management Accountability and Responsibility**

The Participant clearly identifies senior executive and company representative[s] responsible for ensuring implementation of the management systems and associated programs. Senior management reviews the status of the management system on a regular basis.

**3) Legal and Customer Requirements**

A process to identify, monitor and understand applicable laws, regulations and customer requirements, including the requirements of this Code.

**4) Risk Assessment and Risk Management**

A process to identify the legal compliance, environmental, health and safety<sup>3</sup> and labor practice and ethics risks associated with Participant's operations. Determination of the relative significance for each risk and implementation of appropriate procedural and physical controls to control the identified risks and ensure regulatory compliance.

**5) Improvement Objectives**

Written performance objectives, targets and implementation plans to improve the Participant's social and environmental performance, including a periodic assessment of Participant's performance in achieving those objectives.

<sup>3</sup> Areas to be included in a risk assessment for environmental health and safety are production areas, warehouse and storage facilities, plant/facilities support equipment, laboratories and test areas, sanitation facilities (bathrooms), kitchen/cafeteria and worker housing/dormitories.

- 6) Training**  
Programs for training managers and workers to implement Participant's policies, procedures and improvement objectives and to meet applicable legal and regulatory requirements.
- 7) Communication**  
A process for communicating clear and accurate information about Participant's policies, practices, expectations and performance to workers, suppliers and customers.
- 8) Worker Feedback and Participation**  
Ongoing processes to assess employees' understanding of and obtain feedback on practices and conditions covered by this Code and to foster continuous improvement.
- 9) Audits and Assessments**  
Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the Code and customer contractual requirements related to social and environmental responsibility.
- 10) Corrective Action Process**  
A process for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.
- 11) Documentation and Records**  
Creation and maintenance of documents and records to ensure regulatory compliance and conformity to company requirements along with appropriate confidentiality to protect privacy.
- 12) Supplier Responsibility**  
A process to communicate Code requirements to suppliers and to monitor supplier compliance to the Code.



## REFERENCES

The following standards were used in preparing this Code and may be a useful source of additional information. The following standards may or may not be endorsed by each Participant.

Dodd-Frank Wall Street Reform and Consumer Protection Act

<http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

Eco Management & Audit System [www.quality.co.uk/emas.htm](http://www.quality.co.uk/emas.htm)

Ethical Trading Initiative [www.ethicaltrade.org/](http://www.ethicaltrade.org/)

ILO Code of Practice in Safety and Health

[www.ilo.org/public/english/protection/safework/cops/english/download/e000013.pdf](http://www.ilo.org/public/english/protection/safework/cops/english/download/e000013.pdf)

ILO International Labor Standards

[www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm](http://www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm)

ISO 14001 [www.iso.org](http://www.iso.org)

National Fire Protection Agency [www.nfpa.org/catalog/home/AboutNFPA/index.asp](http://www.nfpa.org/catalog/home/AboutNFPA/index.asp)

OECD Due Diligence Guidance

[http://www.oecd.org/document/36/0,3746,en\\_2649\\_34889\\_44307940\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3746,en_2649_34889_44307940_1_1_1_1,00.html)

OECD Guidelines for Multinational Enterprises [www.oecd.org](http://www.oecd.org)

OHSAS 18001 [www.bsi-global.com/index.xalter](http://www.bsi-global.com/index.xalter)

Universal Declaration of Human Rights [www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html)

United Nations Convention Against Corruption

[www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html)

United Nations Global Compact [www.unglobalcompact.org](http://www.unglobalcompact.org)

United States Federal Acquisition Regulation [www.acquisition.gov/far/](http://www.acquisition.gov/far/)

SA 8000 [www.cepaa.org/](http://www.cepaa.org/)

SAI [www.sa-intl.org](http://www.sa-intl.org)

## **DOCUMENT HISTORY**

Version 1.0 – Released October 2004.

Version 1.1 – Released May 2005. Converted document to EICC format, minor page layout revisions; no content changes.

Version 2.0 – Released October 2005 with revisions to multiple

provisions. Version 3.0 – Released June 2009 with revisions to multiple

provisions. Version 4.0 – Released April 2012 with revisions to multiple

provisions. Version 5.0 – Released November 2014 with revisions to

multiple provisions.

The EICC Code of Conduct was initially developed by a number of companies engaged in the manufacture of electronics products between June and October 2004. Companies are invited and encouraged to adopt this Code. You may obtain additional information from [eiccoalition.org](http://eiccoalition.org).