

# Navigating Dependency: Analysing Recruitment Practices and Challenges in Malaysia's Construction Industry

## Navegando la dependencia: análisis de las prácticas de contratación y los desafíos en la industria de la construcción de Malasia

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This article investigates how Malaysia's construction industry's dependency on irregular foreign workers stems from recruitment frameworks that intertwine with exploitative industry practices. It examines current practices in the foreign workers' recruitment in the construction sector by selected construction companies and the major factors in the recruitment policies that contribute to the reliance on and irregularity of foreign workers in the construction industry. This research uses a single-case study design involving G3 and G7 classified contractors, in-depth interviews with selected companies and utilizes the migration industry theory, deepened by the idea of bureaucratic informality. The current practices reveal challenges in recruitment method, high recruitment cost and lack of redress system. The results suggest high recruitment costs, bureaucratic challenges, and exploitative subcontracting practices contribute to the reliance on and irregularity of foreign workers in the construction in-



**Abstract**

dustry. This research recommends comprehensive irregular foreign workers' policy reforms to improve labour rights and exploitative industry practices.

*Este estudio explora la arraigada dependencia de la industria de la construcción de Malasia de la mano de obra extranjera irregular, destacando cómo los marcos de contratación se ven influenciados por las prácticas explotadoras de la industria y cómo estas las refuerzan. La investigación identifica factores clave en las políticas de contratación que contribuyen tanto a la dependencia como a la situación irregular de los trabajadores extranjeros en el sector, centrándose en los métodos de contratación actuales utilizados por las empresas constructoras seleccionadas. Se utilizó un diseño de caso único de estudio que se basa en entrevistas exhaustivas con contratistas G3 y G7 clasificados, guiado por la teoría de la industria migratoria y contextualizado a través de la perspectiva de la informalidad burocrática. Los hallazgos revelan desafíos significativos en las prácticas de contratación existentes, incluyendo elevados costos de contratación y dificultades burocráticas. Estas condiciones se ven exacerbadas por prácticas de subcontratación explotadoras y ambigüedades regulatorias, lo cual sustenta la dependencia de la industria de la construcción de la mano de obra migrante irregular. El estudio destaca la urgente necesidad de reformas políticas integrales dirigidas a abordar los derechos laborales y las prácticas explotadoras de la industria en el sector de la construcción en Malasia.*

Construction industry; exploitative industry practices; irregular foreign workers; labour dependency; recruitment practices



Key words

*Industria de la construcción; prácticas industriales explotadoras; trabajadores extranjeros irregulares; dependencia laboral; prácticas de reclutamiento*

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## 1. Introduction

The construction industry significantly impacts Malaysia's economic growth. This sector alone recorded an increase of 6.8% in the value of the construction work done, amounting to 34.1 billion Ringgits (RM) in the fourth quarter of 2023 in comparison to the previous year (Department of Statistics Malaysia [DOSM], 2024). Due to its labour-intensive operation, the construction segment is among the largest sectors that employ local or foreign workers (Institute of Labour Market Information and Analysis [ILMIA], 2018). As of August 2024, the Construction and Agriculture sectors made up 14.1 percent and 5.6 percent of total jobs, respectively (DOSM, 2024). The construction sector had the third biggest share of job vacancies (DOSM, 2024). UOB Kay Hian (UOBKH) Research (2024) estimates that the construction sector's near-term prediction remains resilient, anchored by the approaching ramp-up of progress billing, paired with a gradual margin recovery within a more stable domestic political situation and a likely increase in private employment flows (Optimistic Outlook for the Construction Sector, 2024).

However, economic growth alone does not necessarily lead to the creation of decent work (International Labour Organization [ILO], n.d.). The Technical Support Team of the Unit-

ed Nations Department of Economic and Social Affairs (2013) indicated that a significant number of workers in developing countries find themselves in informal and precarious jobs. These jobs typically offer inadequate incomes, uncertain prospects, and limited protection against social, economic, and environmental risks. In addition, the ILO (2017) estimates that globally, workers in the construction sector face the second highest risk of forced labour. Most migrant workers fill job vacancies in manufacturing, construction, and agriculture, which are naturally more prone to accidents and workplace injuries (Low, 2021b). This is illustrated in the National Occupational Accident and Disease Statistics 2022 under the Occupational Safety and Health Act (OSHA) 1994, in which the construction sector had the third highest number of occupational injuries, amounting to 4,324 incidents, with a total of 72 occurrences being fatal occupational injuries.

The article aims to highlight the recruitment and employment policies and practices that continue to induce dependency on and irregularity among foreign workers in the Malaysian construction industry. A critical study has shown that the construction sector is still highly dependent on foreign workers despite the language barriers, lack of experience, low skills, and high cost of employment employers need to bear (Jamalulil et al., 2022). The research findings by Jamalulil et al., 2022; Mohd Fateh et al., 2022; and Mohd Zaki et al., 2022 indicate that employers tend to hire foreign workers because they are willing to work extra hours, accept low wages, tolerate poor working conditions, are obedient, flexible, mobile, widely available, and have more discipline due to their bonded contracts.

Indeed, the demand for foreign workers for the country's economic development may contribute to discrimination and human rights abuse (Muhamad et al., 2021). Despite the absence of accurate or credible data on the actual number of "irregular" workers (Khalidi & Muhamad Noor, 2020), approximately 70-80 percent of the 650,000 small and medium-sized enterprises nationwide employ irregular workers due to the high costs of hiring documented foreign workers and the associated rigid procedures (Low, 2017). According to DOSM, by the end of July 2023, roughly 3 million migrants resided in Malaysia, representing 8.9% of the country's total population of 33.4 million (International Organization for Migration (IOM), 2023). In a report by Hunter (2019), the estimated number of undocumented workers in Malaysia was between 2.5 million and 3.3 million in 2019.

The ASEAN Consensus on The Protection and Promotion of the Rights of Migrant Workers (2018) defines "undocumented migrant worker" as persons who fails to adhere to the requirements to legally enter the Receiving State and legally stay for the period of employment in accordance with the applicable laws, regulations and policies of the receiving state. Many situations may lead to foreign workers being undocumented. The common instances include exploitative employment, such as lower salaries received due to deception or failure of the employer or recruiter to meet salary and working hours-related obligations, passport retention, non-payment of overtime wages, delayed payment of wages, unlawful salary deductions, unethical recruitment, and poor working conditions (IOM, 2023; Ibrahim & Mohamed Razali, 2023). Other situations include foreign workers absconding from their designated employers, which may consequently lead to forced labour or human trafficking issues (Franck, 2018; Ibrahim & Mohamed Razali, 2023). As noted by Sunam (2022), these vulnerabilities are rooted in broader infrastructural and socio-economic dynamics, encompassing policies and regulatory frameworks, and societal perceptions.

Currently, work permits for foreign workers are fixed to one employer. However, foreign workers in the construction industry registered with the Construction Labour Exchange

(CLAB), an agency under the Construction Industry Development Board (CIDB), can transfer from one employer to another. Foreign workers are selected from several source countries through rigorous and thorough procedures that involve interviews, online biodata selection, and filtered recruiter selection from the source country (CLAB, n.d.). The transfer, however, is limited to situations where both employers have registered with CLAB, the existing employer does not have any project and then is declared bankrupt, or when the employee is not satisfied with his current employer (CLAB, n.d.). Construction companies in Malaysia are categorised into seven (7) registration grades based on project tendering capacity; for instance, G3 is limited to projects below RM 1 million, while G7 has no maximum limit on the tendering costs (CIDB, 2021).

**Table 1. Grades of Registration of Contractors by the CIDB**

CIDB GRADE AND ABILITY TO TENDER						
G1	G2	G3	G4	G5	G6	G7
<b>Tender limit does not exceed RM200,000.00*</b>	Tender limit does not exceed RM500,000.00	Tender limit does not exceed RM1,000,000.00	Tender limit does not exceed RM3,000,000.00	Tender limit does not exceed RM5,000,000.00	Tender limit does not exceed RM10,000,000.00	No Limit Tender

Source: CIDB Malaysia, 2021

\* RM refers to Malaysian Ringgit and RM1 = 0.20EUR (as of 1 June 2025)

Accordingly, this article will answer two research questions: (i) What are the major factors in the recruitment policies that contribute to the reliance on and irregularity of foreign workers in the construction industry? and (ii) What are the current practices in the recruitment of foreign workers in the construction sector by construction companies accredited with G3 and G7 that lead to similar impacts, i.e., dependency on and irregularity of foreign workers? It identifies four factors in the current recruitment policies in the construction sector that reinforce the continued dependency on and irregularity of foreign workers: (i) complex recruitment system; (ii) high recruitment costs; and (iii) lack of proper redress mechanisms for foreign workers. The behaviour of the employers in the construction industry underpinning these factors include circumventing the prohibition of outsourcing through informal recruitment via manpower supply companies to overcome issues related to high costs and limited quotas approved for foreign workers.

## 2. Theoretical and Conceptual Framework

This research employs the migration industry theory, which emphasizes the importance of intermediaries, private actors, and state-related agencies in the construction of migration trajectories (Gammeltoft-Hansen & Sørensen, 2013). This theory corresponds to the reality in Malaysia, where recruitment occurs through a dense web of agents and informal practices. To deepen this perspective, the idea of bureaucratic informality (Roy, 2005; Bhan et al., 2017) shows how informality is not external to the state but is often embedded within state practices and bureaucratic routines (Khazanah Research Institute, 2020; Lindquist, 2017; Low, 2024). This framework allows our case studies to explore how formal and informal mechanisms interact and at times intersect to form irregular outcomes, challenging the assumptions of technocratic policy design, such as centralized databases and digital monitoring through

formal mechanisms like My EG Services Berhad (MyEG) and Foreign Workers Centralized Management System (FWCMS).

As explicated by Gammeltoft-Hansen and Sørensen (2013), migration is not a frictionless market exchange but a commodified and intermediated process. This theory proposes a constellation of players; recruitment agencies, brokers, outsourcing firms, even states and quasi-states platforms, profiting from arranging, operating, or controlling flows of migration. They operate within the sector flexibly in precarious regulatory environments, and actively leverage both complex and ambiguous legal arrangements for their benefit (Lindquist et al., 2012; Andersson & Hayes, 2015). In Malaysia, for example, privatised and digitalised migration mechanisms (e.g., FWCMS and MyEG) have created a rent-seeking industry whilst simultaneously facilitating irregular labour arrangements (Low, 2020a, 2021; Wahab, 2020).

In addition to migration industry theory, this research employs the bureaucratic informality concept. As pointed out by Roy (2009), it corroborates the challenges that the formality/informality binary opposition manufactures. It argues that informality should not be interpreted either as a market failure or as a spin-off phenomenon but rather as the outcome of actively produced and managed informality through bureaucratic processes of delegation, outsourcing, and dispersal of administrative power. This is especially the case within the Malaysian construction industry, whereby the intertwining of formal digitised systems and informal outsourcing, such as that organised through manpower agents, illustrates how informality is ingrained within recruitment and governance systems (Bhan et al., 2017; Satterthwaite, 2011).

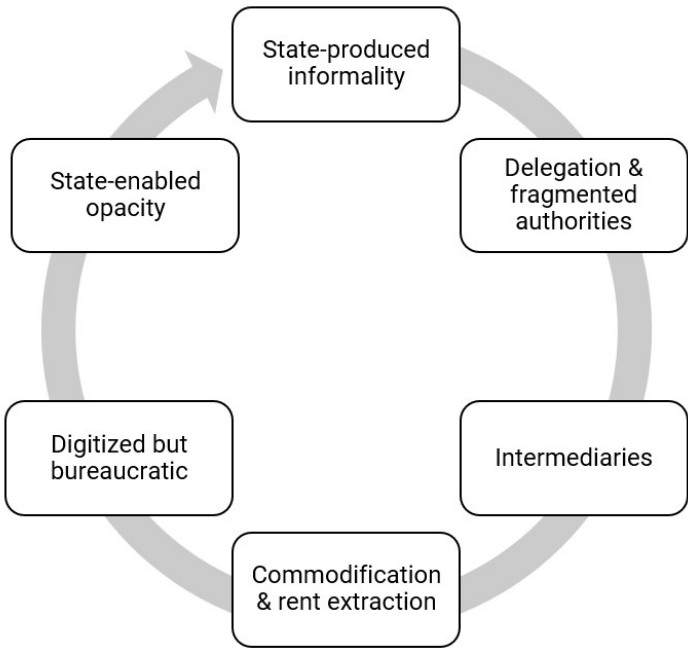
The interactions between the migration industry theory, supported by the concept of bureaucratic informality, reveal the institutional deformations and structural conditions that produce dependency on informality in the presence of attempts at formalisation. This theoretical framework, as drawn below, underpins a critical examination of how Malaysia's migrant recruitment system, despite being increasingly digitised and regulated, continues to perpetuate opacity, irregularity, and informal labour practice, as will be illustrated within the construction industry.

The following segment explores fair recruitment frameworks for foreign workers, with a focus on the interrelated dynamics of labour-sending countries, migration processes, and receiving countries. The framework underlines the significance of effective regulatory mechanisms in creating an efficient and fair process of recruitment based on provisions within the ILO, the Eleventh Economic Malaysia Plan (RMK-11), and other relevant policy frameworks within Malaysia's migration system. This discussion sheds light on how persistent challenges such as high recruitment costs, bureaucratic hurdles, and irregular migration are dealt with. By addressing these challenges, the root causes and policy responses related to the vulnerabilities of foreign workers, particularly in sectors heavily reliant on migrant workers, can be better understood.

Among these, the fair recruitment policy promoted by the ILO is essential in confronting systemic weaknesses and vulnerabilities through a focus on ethical recruitment standards, elimination of worker-paid fees, and the regulation of intermediaries (ILO, 2016a, 2020). It aims to thwart structural challenges like rent extraction, fragmented governance, and state-enabled opacity, the key elements highlighted in the migration industry and bureaucratic informality nexus (Xiang & Lindquist, 2014; Surak, 2021). Furthermore, the Twelfth Malaysia Plan (RMK-12, 2021-2025) outlines policies to promote fair recruitment practices for foreign workers. This national action plan sought to lessen the reliance on low-skilled foreign

labour while raising the wages of local workers to enhance the standard of living for Malaysians (RMK-12, 2021-2025). By encouraging transparency, centralised coordination, and effective grievance mechanisms, and fair recruitment policy complements national efforts, thereby building a stronger foundation for sustainable labour governance.

**Figure 1. Interaction between migration industry theory and bureaucratic informality concept**



Source: Derived from Gammeltoft-Hansen & Sørensen (2013), Roy (2009) and Xiang & Lindquist (2014)

### 2.1. Recruitment System

Three components are involved in the recruitment process: labour-sending countries, the migration process itself, and labour-receiving countries. Based on the ILO’s Migration Agenda (2014), one of the leading recruitment pillars is fair recruitment of labour migrants, carried out according to the law, in line with international labour standards, and with respect for human rights. Fair recruitment entails non-discriminatory recruitment processes that protect migrant workers from abusive situations. Measures to ensure fair recruitment can be taken at each recruitment process, including regulating private employment agencies through statutory legislation, bilateral agreements (Memorandum of Understanding, MoU), or reducing recruitment costs and corrupt practices.

The MoU plays a significant role in governing labour migration. It formalises the idea of shared responsibility between countries of origin and destination and establishes clear obligations for both parties and other stakeholders such as employers, employees, and recruitment agencies. Additionally, bilateral MoUs aim to enhance transparency and tackle issues like high migration costs, recruitment misconduct, corruption, and bureaucratic hurdles experienced by both sending and receiving countries (ILO, 2015). In recent years, numerous countries have ceased accepting workers to work in Malaysia due to exploitative work environments,



poor labour conditions, and weak enforcement of foreign worker protections (U.S. Department of State, 2021; Ibrahim & Mohamed Razali, 2023)

In 2017, Nepal suspended the deployment of workers to Malaysia due to exorbitant recruitment fees and the associated risks of debt traps. Investigative reports indicated that several redundant services had been privatised by firms with political affiliations (Sapkota & Alhadjri, 2018). Labour migration was reinitiated sixteen months later, in October 2018, when both nations formalised an MoU incorporating specific safeguards addressing these concerns (ILO, 2021). In 2024, the Nepalese government agreed to sign an MoU with Malaysia to review the bilateral labour agreement and resolve issues such as ensuring Nepali workers' welfare and security, increasing the minimum wage, strengthening commitment to implement the free visa and ticket system strictly, and establishing a labour sector that is characterized by openness, transparency, accountability, effectiveness, and systematic organization for the benefit of Nepali workers (Republica, 2024).

In the case of Bangladeshi workers, the recruitment method based on a business-to-business (B2B) model between Malaysia and Bangladesh was problematic, resulting in an overflow of Bangladeshi workers, including those sent by non-existing private companies. Third-party agents such as recruiters and outsourcers (Low, 2020a, 2020b) charged unregulated referral fees and migration expenses ranging from RM9,000 to RM14,000, which included the foreign worker levy, recruitment costs, medical examinations, immigration processing fees, visa expenses, and travel costs. Despite the MoUs with lower specified prices, actual costs tend to exceed these amounts due to such arrangements (World Bank, 2015). A revision of the MoU on recruiting workers between Dhaka and Kuala Lumpur was required to make the procedures more accessible for workers to enter Malaysia and to cut the high costs, which could reach RM20,000 per person. The initial migration cost had risen from around RM16,000 to RM20,000 because the entities "had to share the money at different levels" (FMT Reporters, 2023).

## 2.2. Bureaucratic, Commodified and Brokered Recruitment System

Undocumented migration in the Malaysian context is primarily attributed to several interrelated factors, including the over-recruitment practices of private agencies, the lucrative nature of the labour migration trade, and the prevalence of trafficking and smuggling activities. Victims of this lucrative market, migrant workers, are particularly susceptible to the loss of their documented status, rendering them vulnerable to government raids, detention, and subsequent deportation. Additionally, the outsourcing of labour recruitment has worsened the issue, as it often results in inadequate oversight, exploitation, and a lack of accountability. Non-governmental organisations (NGOs) have called upon the government to address the fundamental drivers contributing to the proliferation of undocumented workers (Low, 2021a).

Abdul Rahim et al. (2015) define outsourcing as contracting out a business process to a third party, for example, by transferring employees and assets from one firm to another. Under the so-called "labour contract system," the responsibility for managing and overseeing foreign workers is transferred from the employer to the outsourcing company. This arrangement often leads to labour abuses by recruiting agents. As a result, employers are not held accountable for their employees' legal status, working conditions, or any workplace violations that may arise.

The privatisation and commercialisation of the labour migration industry through digitalisation is another factor that has led to rising costs of legal migration, consequently inducing migrant dependence on private agencies, burdening migrants through debt bondage, diminishing employer responsibility for their employees, and encouraging irregular migration. The emergence of Fourth Industrial Revolution (4IR) has further complicated these work dynamics, as Wayan et al. (2020) highlighted. High recruitment costs deter migrant workers from using available legal channels for employment or drive them to abscond from their employers when excessive recruitment fees are deducted from their wages (Low, 2021a, 2021b). The use of intermediaries in immigration processes has historically resulted in problems like fraud and labour exploitation, which may persist despite efforts to digitise these processes. Similarly, the evolving role of immigration service providers as “paper shifters” has sparked concerns about their efficiency and the extra expenses they bring. It has been argued that these providers are replacing public servants and introducing more bureaucracy without necessarily enhancing service delivery (Low, 2021a).

The government’s foremost challenge in addressing migrant worker issues lies in the complex and fragmented processes involving multiple stakeholders (Shaari, 2020). These complexities lead to significant delays for migrant workers awaiting application processing. The lengthy and intricate steps in the application process often deter migrant workers from pursuing legal migration channels. In 2015, to eliminate intermediaries, remove hidden fees, and enhance the efficiency of foreign worker visa applications, health screenings, electronic work permits, and insurance, the FWCMS collaborated with Bestinet Sdn. Bhd. (Bestinet) (Zolkepli & Aruna, 2015) to streamline recruitment processes and safeguard against the exploitation of migrants coming to Malaysia.

### 2.3. Policy Responses: Towards a Sustainable Recruitment Framework

In the latest development, Malaysia earned an upgrade to Tier 2 Watch List in the US Government’s 2024 *Trafficking in Persons Report* (TIP) as a result of more deliberate and coordinated efforts to address and resolve the issue of forced labour in recent years (The Star, 2024b; Malaymail, 2024). This acknowledges that the government of Malaysia has achieved significant milestones during the reporting period, especially in the context of the challenges posed by the COVID-19 pandemic on its anti-trafficking initiatives (Mohamed Razali, 2022; Mohamed Razali et al., 2023). The government proceeded to lodge the instrument of ratification of the 2014 Protocol to the Forced Labour Convention 1930 on March 20, 2022, becoming the 58th country in the world and the 2nd ASEAN Member State to do so (United Nations, 2023). Such progress demonstrates Malaysia’s unwavering commitment to addressing and eradicating forced labour, which is a violation of human rights that should not be tolerated (ILO, 2022).

Action-oriented strategies by the Malaysian government such as the National Action Plan on Forced Labour (NAPFL) 2021-2025, the National Action Plan on Anti-Trafficking in Persons 3.0 (NAPTIP), and the National Action Plan on Business and Human Rights (NAPBHR) were all created to eliminate the use of forced labour in any form in Malaysia by 2030. Amendments to the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) were made via the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022 to include a more comprehensive definition of “traffick-



ing in persons,” the removal of the “coercion” element in determining cases of trafficking in persons, additional protection for a physically or mentally disabled person, heavier imprisonment, as well as monetary fine, among many others (Selvamalar & Vimal, 2022).

## 2.4. High Recruitment Costs

The evolution of fair recruitment policy has become progressively pertinent in addressing foreign workers vulnerabilities. As advocated by the ILO, fair recruitment is founded upon the values of transparency, accountability, and respect for workers’ rights within the recruitment process. Such values stipulate that recruitment must be free from discrimination, coercion, and recruitment fees, thereby empowering the “Employer Pays Principle” and guaranteeing decent work from the commencement (ILO, 2016a). Incorporation of fair recruitment practices within national legislation and institutional frameworks fortifies their enforcement and makes ethical hiring practices not merely a vision but also enforceable. Additionally, remedial actions, especially complaint mechanisms, are integral components of enforcement of ethical recruitment practices and the resolution of systemic problems encountered by foreign workers. These actions are not to be viewed as standalone human resources instruments but are integrated within overall due diligence mechanisms in line with recruitment and employment practices.

*The United Nations Guiding Principles on Business and Human Rights* underline that effective grievance mechanisms form a component of a corporation’s duty to “identify, prevent, mitigate and account for” the human rights effects that are components of their supply chains, including those occurring through the recruitment process (United Nations Human Rights Council, 2011). Fair recruitment is the cornerstone of ethical recruitment models that promotes transparency, worker protection, and accountability in recruitment. Fair Recruitment principles promote the guarantee of recruitment free from discrimination, coercion, and fees—supplementing the “Employer Pays Principle” effectively. Fair recruitment, if included in national policy and corporate practice, strengthens more structured and effective grievance redress mechanisms as it establishes normative expectations and groundwork for recruiters and employers (ILO, 2016a).

Transparent grievance mechanisms become especially crucial when recruiting practices include third-party agencies or cross-border labour supply chains, since foreign workers may face deception, contract substitution, recruitment fees, or passport retention (LeBaron & Rühmkorf, 2017). Moreover, grievance systems must be consistent and in-line with recruitment policies that adhere to fair hiring standards, such as the “Employer Pays Principle” (Verité, 2014a), and proactive monitoring of recruitment intermediaries. The policy will be rendered useless in practice when there is no mechanism that exist or when there is opacity in the reporting process following the charging of recruitment fees (ILO, 2016b).

## 3. Methodology

The construction industry in Malaysia presents unique vulnerabilities for foreign workers relative to other labour-intensive sectors. Fragmented employment relationships due to multi-layered subcontracting complicate accountability and enable informal hiring (Wells, 2006; Amnesty International, 2010). Studies in Malaysia demonstrated extensive issues such as passport retention, wage withholding, unsafe working environment, and limited access to

grievance mechanisms (Verité, 2014b; Asis & Dacuycuy, 2020; Ibrahim & Mohamed Razali, 2023). The project-oriented and temporary nature of the construction sector warrants another level of regulatory oversight (Migration for Development and Equality, 2023).

This study utilises a comparative qualitative case study design, focusing on two construction firms in Malaysia, one G3 and another G7, selected through purposive sampling for differing tendering capabilities and formal and informal exposure to foreign recruitment structures. G3 and G7 companies represent contrasting recruitment approaches; one engages formal, digitised systems while the other relies on informal agent networks. The differences in approaches between G3 and G7 will allow meaningful comparisons in terms of policies, practices, and regulatory approaches of institutions that can suggest how different organisational scales and recruitment structures shape the experiences of foreign workers.

Purposive sampling was employed to identify seven companies from a list of registered corporations with CIDB based on our specified inclusion criteria, namely; their size and tendering capacities, geographic location of the Klang Valley (the central part of the west coast of the Peninsular, Malaysia which comprises the area surrounding the capital city of Kuala Lumpur, Putrajaya, including cities and town in nearby state of Selangor) and the nature, policies and practices of recruitment of foreign workers. Among the shortlisted companies, only G3 and G7 companies met the inclusion criteria and agreed to participate in the research to share their differing recruitment strategies, compliance challenges and engagement with formal versus informal hiring mechanisms. The sample size is methodologically justified under Yin's (2018) case study logic, which holds that even a single case can generate robust insights when it reveals significant dynamics and nuances to provide theoretically rich insights into the complexities of foreign labour recruitment.

The goal of purposive sampling is not to achieve statistical generalisability but rather to allow for the selection of information-rich cases that can yield deep understanding (Creswell, 2013). In this study, G3 and G7 groups of tendering capabilities illuminate institutional and legal ambiguities, gaps and subtleties underlying recruitment governance and policy narratives in Malaysia's construction industry. The interviewees requested were from the Human Resources Departments of G3 and G7 as the interview themes concentrated on recruitment policies, governance and practices, including grievance procedures in enforcing ethical recruitment standards and addressing systemic vulnerabilities faced by foreign workers.

Initially, the research team defined discourse parameters and developed an interview guide to address the foregoing interview key themes. This guide was reviewed, validated by experts in the field, and piloted to ensure clarity and relevance. Necessary adjustments were made based on the experts' feedback, and the final version of the questionnaire was submitted to the Research Ethics Committee of Universiti Sains Islam Malaysia (USIM) or the Islamic Science University of Malaysia to obtain ethical approval. The semi-structured interviews offered opportunities for focused and flexible discussions whilst allowing the flexibility to explore the chosen topic in depth based on the specified themes. The research team used deductive approach for data analysis, reviewing and analysing the data using a set of anticipated themes based on the prior desk review and knowledge, in order to provide a systematic and guided triangulation and examination of the research themes. It then presents a case study to illustrate the prevailing practices and perceptions of two categories of construction companies in recruiting and employing foreign workers that potentially contribute to dependency on and irregularities among foreign workers. For the purpose of this article, the terms "foreign workers" and "migrant workers" will be used interchangeably.

## 4. Case Study Results and Discussions

### 4.1. Recruitment Methods

In Malaysia, five fundamental laws address fair recruitment and forced labour i.e. the Employment Act 1955; the Child and Young Person (Employment) Act 1960; the Private Employment Agencies Act 1980; the Employees Minimum Standard Housing, Accommodation, and Amenities Act 1990; and the Anti-Trafficking in Person Smuggling of Migrants Act 2007. The Private Employment Agencies Act 1980 regulates all recruitment agencies. However, the recruitment of foreign workers is subject to the terms of the bilateral MoUs between source and destination countries. Loopholes in the provisions of certain MoUs may create undesirable impacts, such as non-standardized recruitment processes between countries and unregulated migration costs, causing foreign workers to be charged hidden fees by intermediaries (Low, 2020b).

Implementing zero migration costs in Malaysia has been a significant focus in recent years (Low, 2020b; Low, 2017). Malaysia has reformed its labour migration mechanism by renegotiating MoUs with countries of origin, shifting towards a government recruitment model, and adopting the employer-pays model to eliminate worker migration costs (Wickramasekara, 2016). The government's efforts have drastically reduced migration charges for labourers from thousands of dollars under private recruitment to about \$400 per worker under the government-to-government system. However, challenges remain in expanding migration opportunities and ensuring ethical recruitment practices by employers. For instance, the absence of legislation to enforce the “zero recruitment cost” policy (Ibrahim & Mohamed Razali, 2023) creates a loophole that could potentially lead to Malaysia being classified as Tier 3 in the forthcoming TIP report (Vinothaa, 2022).

Table 2. Levy Rates, VP(TE), and Process Fees by Sector

SECTOR	LEVY (Peninsular)	LEVY (Sabah/Sarawak)	VP(TE)	PROCESS	VISA
Manufacturing	RM 1,850.00*	RM 1,010.00	RM 60.00	RM 125.00	Based on nationality
Construction	RM 1,850.00	RM 1,010.00	RM 60.00	RM 125.00	
Plantation	RM 640.00	RM 590.00	RM 60.00	RM 125.00	
Agriculture	RM 640.00	RM 410.00	RM 60.00	RM 125.00	
Services	RM 1,850.00	RM 1,490.00	RM 60.00	RM 125.00	
Services (Island resort)	RM 1,850.00	RM 1,850.00	RM 60.00	RM 125.00	

Source: Immigration Department of Malaysia, as of 2024

Table 3. Rates of Visas and Security Bond Based on Nationality

NATIONALITY	VISA (RM)	SECURITY BOND (RM)
Indonesia	RM15.00*	250.00
Bangladesh	RM20.00	500.00
Pakistan	RM20.00	750.00

NATIONALITY	VISA (RM)	SECURITY BOND (RM)
Myanmar	RM19.50	750.00
India	RM50.00	750.00
Philippines	RM36.00	1,000.00
Thailand	Gratis	250.00
Cambodia	RM20.00	250.00
Nepal	RM20.00	250.00
Vietnam	RM13.00	1,500.00
Sri Lanka	15.00	750.00

Source: Foreign Workers Agency@wellplan.com.my

\* RM refers to Malaysian Ringgit and RM1 = 0.20EUR (as of 1 June 2025)

The case study reveals two recruitment methods used by G3 (contractors with tendering capabilities not exceeding RM1,000,000.00, which amounts to 205,569.00EUR), namely hiring using unofficial agents in the source country and hiring foreign workers already registered with a company in Malaysia. According to a representative of G3, the company recruits its foreign workers through the paid services of unofficial agents in Pakistan. The agents will facilitate passport processing, health checks, and the purchase of plane tickets for the workers heading to Malaysia. Upon arrival in Malaysia, another agent operating as a registered employer, whose real business involves manpower supplies, will manage and administer the foreign workers. G3 informally enters into a subcontract arrangement with the manpower company to hire its foreign workers, who technically remain registered employees.

Research by Lee and Pereira (2023) sheds light on subcontracting as part of the underlying structural features in the labour market that contributes to the recurring cycles of undocumented labour and impedes effective monitoring and enforcement of worker protections. Despite legal prohibitions, outsourcing remains prevalent. This convoluted system often leads to abusive employment relationships, with a significant prevalence of forced labour. Restrictive formal employment pushes many foreign workers into undocumented status, as evidenced by high rates of workers absconding to escape exploitative conditions. Such dynamics underscore systemic inefficiencies in Malaysia’s migration governance framework, as noted by Franck (2018) and Franck & Anderson (2019).

Even though the Private Employment Agencies Act 1980 prohibits such outsourcing practice, threatening to blacklist companies found breaching the rule, its deterrent capacity is questionable due to such practice as depicted by G3 that circumvents the said legal prohibition. The Human Rights Commission of Malaysia (SUHAKAM, 2021) views that such a method will exploit foreign workers in Malaysia, contributing to the root cause of potential forced labour in the supply chain. The long and multi-tiered supply chains within the construction sector lead to less visibility and control over workers’ recruitment, suppliers, and subcontractors. Hence, workers are easily exploited by being deprived of the minimum wage and employment (Low, 2021b).

In a similar vein, according to the European Agency for Safety and Health at Work (2014), construction workers face doubles the risk of accidents. They are three times more likely to suffer fatal injuries compared to workers in other sectors. The Department of Occupational

Safety and Health Malaysia (DOSH) has categorised the outcomes of construction accidents into four distinct categories: immediate death, permanent disability, non-permanent disability, and, in certain instances, death occurring in a hospital. DOSH has emphasised that immediate death is the most prevalent outcome of accidents within the construction industry (Uddin et al., 2022).

Since 2019, migrant workers must be provided employment injury coverage under the Employees' Social Security Act, 1969, excluding the invalidity scheme available to Malaysian workers. The employment injury scheme does not cover injuries sustained at migrant workers' accommodations, although providing accommodations is part of the work-related agreement between workers and employers (FMT Reporters, 2021). Through the informal sub-contract arrangement, G3 can evade its liability for workplace harm and exploitation by excluding the workers from grievance procedures as they are not officially the employees of G3. The workers instead face the risk of breaching their work permits and becoming irregular for working under a different employer or at a different place of employment (ILO, 2018; Ergon Associates, 2019). They also risk falling victim to forced labour through the exploitation of wages and other forms of deception (ILO, 2016a, 2016b). Despite the phasing out of outsourcing businesses to recruit foreign workers, the informal outsourcing adopted by G3, as demonstrated in this case study, reflects the *modus operandi* of the previous outsourcing activities with adverse impacts.

On the other hand, G7 (contractor with no tendering limitations) applies a direct recruitment system for its foreign workers. The company manages applications through the online system under the Ministry of Human Resources (MOHR) and Ministry of Home Affairs (MOHA), which involves the FWCMS. Officers from the company's Human Resources Division will liaise with recruitment agents responsible for managing and advertising the recruitment of workers in the identified districts in the relevant source countries. Meanwhile, permit renewals are made through the MyEG system, a concessionaire for the Malaysia Electronic-Government (E-Government) MSC Flagship Application.

However, G7 highlighted a lack of integration and harmony in the recruitment systems and processes, particularly between FWCMS and the MyEG digitalised systems. For instance, the company needed to upload the same documents to both systems twice. The company representative also shared his concern that the non-integration between both systems might make it impossible to track foreign workers who fled and worked elsewhere, returned to the source countries, and re-entered Malaysia with passports using different identities (Low & Mokhtar, 2017). Moreover, as the FWCMS and the MyEG system are not integrated, even an absconded employee can renew his/her permit. In addition, a separate system between the two ministries and the privatised parties seems less effective in ensuring that the authorities monitor entry and exit records and renew foreign workers' permits systematically without leakage or exploitation.

In fact, there were calls on the government to dismantle Bestinet and eliminate labour brokers to increase transparency in hiring foreign workers (New Straits Times, 2024). The calls were made due to an investigation made by the Parliamentary Audit Committee in 2024 that discovered that MOHR and MOHA were using two overlapping systems for the recruitment of foreign workers, namely the FWCMS and Malaysia's Integrated Foreign Worker Management System (ePPAx). The two systems were developed based on the single window concept as approved by the Cabinet in 2015; and this led to overlapping functions between the related agencies and less efficient use of public resources. There were also issues of transparency and

governance due to the government's failure to properly finalise contracts with Bestinet prior to proceeding with its implementation (Parliamentary Audit Committee's Report, 2025).

## 4.2. High Recruitment Costs

For G3, the cost of employing each worker through the first route consists of the fees for agents (in Pakistan in this case), which are between RM5000 and RM6000 (roughly 1,033.55EUR and 1,232.55EUR), and the annual permit renewal between RM3600 and RM4100 (842.83EUR), which includes RM2300 (472.81EUR), for renewal through the MyEG platform. An additional cost of RM 500 (102.78EUR), will be paid for a special pass to resolve potential problems, such as the expiration of the employee's passport or permit, by a local agent, who will charge an administrative fee of RM1300 (267.24EUR) to handle the processes at the relevant embassy. According to G3, irregularities in the status of foreign workers can materialise from the recruitment practice. G3 highlighted that appealing against inadequate quota approvals is time-consuming and will not be in the interest of meeting their strict project timelines.

In view of this, G3 resorted to hiring foreign workers through an informal outsourcing method to enable the uninterrupted progress of their construction projects. The recruitment process for foreign workers is described as both lengthy and complex. Foreign workers seeking employment often incur substantial financial costs for having to pay various intermediaries, including sub-agents in their home countries, international recruitment agents in Malaysia, and other local employment agents. This financial burden is the outcome of the multifaceted nature of the recruitment processes, placing them at risk of forced labour via debt bondage as demonstrated by an ILO (2018) report entitled "Situation and Gap Analysis on Malaysian Legislation, Policies, and Programmes." The report identified significant vulnerabilities faced by foreign workers in Malaysia via the imposition of excessive recruitment fees, reductions or non-payment of wages, passport retention by employers and excessively prolonged working hours.

Additionally, these costs often compel workers to abscond from their employers when excessive recruitment fees are deducted from their wages (FWCMS, 2019), dissuading migrant workers from engaging with legal channels due to their irregular nature. Another study by Ibrahim and Mohamed Razali (2023) revealed that over half of Malaysia's surveyed workers (57.6%) acknowledged being in debt due to their employment. This finding is troubling because indebtedness, which often originates in their home countries, may drive foreign workers to seek additional income through overtime, which employers can exploit to capitalize on their extra labour (ILO, 2018b).

On the other hand, unlike G3's more economical recruitment facilitated by the manpower supply company, G7's direct recruitment cost for each worker reaches RM10,000 (2055.69EUR) (levy, insurance, and other costs such as plane tickets, accommodation, and food, Foreign Workers Medical Examination Monitoring Agency (FOMEMA), visas, and work permits). Foreign workers will bear an estimated amount of RM300 (61.67EUR) for their passports and health screening in the source country (Indonesia) and around RM100 (20.56EUR) for the travel costs from the foreign worker's home district to the city before departing for Malaysia. Usually, foreign workers borrow around RM300 (61.67EUR) to RM500 (102.78EUR) from their local agents for their families left behind. Meanwhile, the



cost for permit renewal through the MyEG system is around RM1850 (380.30EUR) to RM2000 (411.14EUR), including the processing fee.

#### 4.3. Lack of Complaint and Redress Mechanisms

Recommendations for establishing a standardized recruitment process through a governmental framework, a redress mechanism, and a transparent regularization system have been proposed to enhance the selection and placement of workers in the country. These measures aim to ensure the integrity of governance in recruitment practices (Low, 2020a, 2020b). Redress mechanisms must be accessible, predictable, fair, and able to remedy harm faced by foreign workers (United Nations Human Rights Council, 2011). Both G3 and G7 admitted that they had no official and dedicated redress mechanisms for workers to address complaints against them. The case study found that G3 and G7 do not provide a formal channel for foreign workers to lodge complaints other than informing human resources or their agents about any grievances. Similarly, employers have no course or programme to educate employees about their responsibilities and rights.

A study by Ibrahim and Mohamed Razali (2023) revealed that 18.4% of foreign workers surveyed either did not know where to file a formal complaint or were uncertain about the process if their employer violated their rights. Breaches of employees' rights which have surfaced through the interview data include overtime, low wages, and the possibility of wage deductions to reimburse the expenses paid for agents and accommodations (Ibrahim & Mohamed Razali, 2023). Although foreign workers can pursue labour and industrial claims, several factors deter them from taking action, including fears of job loss and concerns about their legal status especially if they are registered through outsourcing agents that retain their passports.

Although Section 69(1) of the Employment Act 1955 or Section 20 of the Industrial Relations Act 1967 provide a mechanism for foreign workers to make a complaint with the Labour Department on violations of labour laws, most of them are often unable to provide sufficient documentation to substantiate their claims as employers withhold essential information (SUHAKAM, 2021). Their access to a grievance mechanism is further hampered by a lack of understanding of the local system's operation, their inability to speak the local language, and a fear of retaliation or repatriation for raising concerns (MEF, 2014). These barriers collectively emphasize the shortcomings and opacity within the framework concerning foreign workers' protection in Malaysia.

#### 4.4. Implications of Findings

The outcomes of this study reveal repetitive and complex official recruitment processes, the need to save expenses related to costly hiring, unmet quota demands due to limited approved quotas of foreign workers, and the time-consuming processes of appealing for additional quotas. For G3, these cumulative factors incentivize the resort to the "shortcut" method of getting workers from a local employer acting as an agent of "manpower supply" to other companies. This accelerated process, in return, leaves foreign workers vulnerable to irregularity and various exploitations and abuses before, during, and after the recruitment processes and in the workplace.

Due to the construction industry's continuously entrenched dependence on manual labour supplies, regardless of their size and capital, foreign workers have dominated this sector. Labour recruitment that is cheaper and faster at the expense of various forms of labour exploitation has been enabled and supported by such engagement with informal outsourcing practices. Regulations that aim to lower migration costs and increase transparency and efforts to digitize and streamline the recruitment process are commendable but, unfortunately, have since been compromised by unscrupulous practices and violations of rules and regulations. Meanwhile, lack of bargaining power and transparent and effective grievance mechanisms further disenfranchise foreign workers while fomenting an environment conducive to dependency on recruiting the ever "vulnerable" foreign labourers.

## 5. Conclusions

To conclude, in response to the first research question, namely, to identify the major factors in Malaysia's recruitment policies and practices that contribute to the reliance on and irregularity of foreign workers in Malaysia's construction industry, this study reveals that the persistent dependence on foreign labour is rooted in complex institutional and structural bureaucratic dynamics rather than temporary shortages or policy errors. The recruitment process involves multiple actors, including labour-sending countries, migrant workers, and labour-receiving agencies, governed by a framework of laws, bilateral MoUs, and regulatory mechanisms aimed at ensuring fair and transparent recruitment. However, persistent loopholes, inconsistent enforcement, and the involvement of unregulated intermediaries have led to exploitative practices, including hidden fees and excessive recruitment costs. These issues have prompted some source countries to suspend labour deployment, highlighting weaknesses in recruitment governance despite ongoing efforts to renegotiate MoUs and implement biometric registration systems linking worker skills to formal registration as a means to improve oversight and legitimacy.

Furthermore, the structural and widespread use of outsourcing and subcontracting in managing foreign labour create systemic vulnerabilities, fostering unethical practices that create debt bondage and other forced labour issues. Although the goal of digitising migration management through platforms such as the FWCMS was to improve efficiency and transparency, the involvement of private contractors and overlapping systems has resulted in a reduction in policy and regulatory clarity and an increase in administrative complexity. Legal blind spots are maintained by this dual-track system of formal digital platforms running alongside informal outsourcing networks, where worker identity and rights are masked by ambiguity and irregularity. The government's understanding of these long-standing issues is shown in its efforts to lessen reliance on foreign workers through policy changes, such as automation and digitisation, skill development, and levy adjustments.

This study addresses the dominant recruitment practices of construction companies, that is, G3 and G7 and concludes that while recruitment practices differ by the company's classification and tendering capacity, they have systemic inefficiencies and flaws which still allow irregular employment and reliance on foreign workers. G3 companies also frequently utilise unregistered manpower firms and informal subcontracting to meet labour needs, circumventing legal controls and boosting the risk of workers' exploitation and lax responsibility. In addition to avoiding labour standards, these informal networks expose workers to hazardous working conditions and wage abuses. G7 companies, instead, leverage formal digital recruit-

ment platforms connected with government ministries. The continuous application of intermediaries is sustained through procedural irregularities and bureaucratic delays as a result of system integration shortfalls and other unethical behaviour. When computerised systems like FWCMS and MyEG fail to coordinate, they produce bureaucratic spaces which facilitate actors' exploitation of regulatory spaces. This makes outsourcing a form of compliance with the system, rather than an exemption from it.

The migration industry theory used in this study, demonstrates how a chain of intermediaries, such as brokers, outsourcing companies, recruitment agencies, and state-connected digital platforms, have become central to the operation of Malaysia's labour migration system. These agents of migration gain from migration and take advantage of regulatory gaps. The high administrative costs and bureaucratic inefficiencies of digital systems encourage reliance on intermediaries who are able to speed up the processes at the expense of accountability and transparency, even in cases where companies like G7 are establishing more formal channels of recruitment. For G3, informal outsourcing and subcontracting are central strategies inherent in the operational logic of the industry, fuelled by quota limits, cost pressures, and project deadlines and not aberrant departures.

This is supported by bureaucratic informality, which suggests that administrative practices such as outsourcing and decentralised rule are designed to incorporate informality, rather than doing so incidentally. The state unintentionally added layers of administrative complexity and inefficiencies in trying to bring about modernisation and streamlining recruitment by using digital platforms. As demonstrated in the case study, workers' legality, identification, and status are unclear in regulatory grey areas generated by MyEG and FWCMS's isolated work and partial reliance on off-site providers. Companies continue to take advantage of informal channels sanctioned or at least tolerated by the formal governance's vulnerabilities in order to adjust to such inefficiencies.

Furthermore, the absence of formal mechanism of complaint and process barriers caused by language, threat of retaliation, and ignorance discourage workers from seeking redress, tolerating exploitation. Real reform thus entails the simplification of bureaucratic procedures, increasing legal protection, improving mechanisms of grievance, and fostering transparent cooperation among stakeholders to suppress exploitation and use of irregular foreign labour in the Malaysian construction sector. In addition, the lack of formal complaint mechanisms and entry barriers related to language, fear of retribution, and ignorance discourage workers from pursuing justice. To eliminate exploitation and reliance on irregular foreign workers in Malaysia's construction sector, effective reform should then reduce bureaucracy, improve grievance mechanisms and legal protection, and promote open cooperation among stakeholders.

Governance and recruitment procedures are shaped by systemic and structural complexities that warrant a comprehensive reform agenda. As of 2024, Malaysia has bilateral MoUs with fifteen source countries: seven countries from Southeast Asia namely: Thailand, Cambodia, Myanmar, Laos, Vietnam, the Philippines, Indonesia; five from South Asia which comprise of Pakistan, Sri Lanka, Bangladesh, India and Nepal and three from Central Asia which are Turkmenistan, Uzbekistan, Kazakhstan (Iskandar, 2024). On January 16, 2024, the government declared its intention to undertake a comprehensive review of all MoUs with these 15 source nations concerning the hiring and recruitment of foreign workers. The Home Minister, Datuk Seri Saifuddin Nasution Ismail, indicated that consultations with the relevant countries would commence following the Cabinet's approval of the requisite measures. He

underscored the necessity for these MoUs to be dynamic frameworks, adaptable to evolving circumstances rather than static agreements (Iskandar, 2024).

The zero-migration cost policy, renegotiated MoUs, and government-to-government recruitment model are some significant initial steps suggested by the Malaysian government to improve transparency and fairness in the recruitment process. Nonetheless, strict enforcement, penalties for non-compliance, and legal amendments must support these measures. Policies should also try to minimise procedural delays, combine and align hiring platforms, and remove any possibility of corrupt and unscrupulous intermediaries taking advantage of and misusing the hiring process. It is also necessary to enhance monitoring processes and introduce easily accessible grievance and complaint mechanisms for workers. In order to reduce dependency and rectify aberrations in the recruitment patterns of the construction sector, a paradigm shift in knowledge-based and rights-based labour governance—based on accountability, transparency, and protection of worker rights—is the ultimate need.

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