



FINAL REPORT

**REGULATORY REVIEW
REPORT**

**Expatriate for Short-Term and
Long-Term Assignment in
Engineering Works**

NOVEMBER 2019

Foreword

Government can leverage on its policy interest on businesses through the development and implementation of good regulation. Good regulation and regulatory practices will then contribute to a wide range of social, environmental and economic goals. However, many regulations did not achieve its objective due to implementation issues relating to efficiency or cost-effectiveness.

In the 10th Malaysia Plan, the Malaysia Productivity Corporation (MPC) was mandated to review regulations affecting the conduct of business in Malaysia with the aim of modernizing business regulations. This is important for the country to move towards to becoming a high-income nation. MPC since then has embarked on the review of existing business regulations focusing on the 12 National Key Economic Areas (NKEA). The Malaysia Productivity Blueprint of the 11th Malaysia Plan further accelerate the process of modernizing business regulations in the country.

This study identifies the unnecessary regulatory burdens in the expatriate services of the Department of Immigration Malaysia and recommends options for reducing them. The study is focused on the expatriate services value chain to assess the issues faced by the E&E industries.

The study uses the consultative approach by engaging with representative samples of stakeholders from the E&E industries. The team selected representatives of key players who use the Immigration expatriate services and carried out interviews and group discussions to identify the industry's concerns with respect to the current Immigration practices.

Using the principles of good regulatory practices, the team has formulated feasible options which will then be tabled to relevant stakeholders in order to develop concrete recommendations that will reduce the unnecessary regulatory burdens. It should be noted that the Immigration Department has been able to resolve many of the issues raised during the stakeholders' engagements.

The stakeholder contributions have been crucial to the outcome of this study for which MPC is grateful to all who have contributed and assisted in this study.

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Abbreviations

AGPC	Australian Government Productivity Commission
BEM	Board of Engineers Malaysia
CEO	Chief Executive Officer
DMO	Delivery Management Office
DOSH	Department of Occupational Safety and Health
E&E	Electric and Electronic
EEPN	Electric and Electronic Productivity Nexus
EP	Employment Pass
ESD	Expatriate Service Division
GDP	Gross Domestic Product
GRP	Good Regulatory Practice
MBP	Malaysia Blueprint
MPC	Malaysia Productivity Corporation
MYXpats	The Malaysia Expatriate Talent Service
NKEA	National Key Economic Areas
NPC	National Productivity Council
PEMUDAH	Special Taskforce to Facilitate Business
PVP	Professional Visit Pass
RURB	Reduce Unnecessary Regulatory Burdens
SME	Small and Medium Enterprise
SVP-ST	Social Visit Pass – Short Term
TalentCorp	Talent Corporation Malaysia Berhad

Glossary

Competent Person	A person who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. By way of training and/or experience, a competent person is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation, and has the authority to correct them. Some standards add additional specific requirements which must be met by the competent person.
Emergency breakdown	Unforeseen or unexpectedly physical damage or technical collapse to machinery from any cause that requires immediate action such as restoration or repair to enable normal working to continue.
Engineering work	A scientific field and job that involves design, manufacturing, inspection and maintenance of machinery, equipment and components as well as control systems and instruments for monitoring their status and performance. A person who performs an engineering work must possessed specialized knowledge and skill in the mathematical, physiological and social sciences together with the principles and methods of engineering analysis and design to specify, predict and evaluate the results to be obtained from such systems and measure achievement.
Expatriate	An individual is a foreigner working in Malaysia, often temporarily and for employment reasons. An expatriate is also a migrant worker who is a professional or skilled worker in his or her profession. The foreign worker takes a position outside of the country, either independently or as

	a work assignment scheduled by the employer which can be a company, university, government, or non-governmental organization
Industrial	Anything having to do with the business of manufacturing products excludes utility, transportation, and financial companies.
Intern	An advanced student or graduate usually in a professional field gaining supervised practical experience in working environment.
Pass	An approval document issued by the Immigration Department of Malaysia under the Immigration regulations made under the Immigration Act 1959/63 entitling the holder thereof to enter and remain temporarily in Malaysia.

Overview

In the implementation of the Malaysia Productivity Blueprint of the 11th Malaysia Plan (2016-2020), one of the strategic thrusts is to make industry accountable for productivity. On this, productivity nexuses were established for nine priority sectors of the industry including the Electric and Electronic Productivity Nexus.

The Electric and Electronic Productivity Nexus (EEPN) has identified that the regulatory regime for short-term and long-term engineering work for expatriate needs to be reviewed. The review is important in order to cater for the increasing demand of foreign specialists.

Production machines are important assets to manufacturing company that further contribute to determining the productivity of the organization. Specialists who have expertise knowledge and skills are frequently required to commission and to maintain and upgrade these machines so as to increase the efficiency of machines. These specialists are crucial to the electrical & electronics and other high added-value manufacturing sectors. In many cases, these specialists are critically needed during unplanned machine downtime.

These specialists who maintain specialized proprietary machinery are usually located abroad at the source country and to bring in foreign specialists for urgent maintenance work requires special immigration clearances. The application for working permit and expatriate passes which are either Employment Pass (EP) or Professional Visit Pass (PVP) is needed. The types of pass required depends on the duration of the maintenance work rendered. Under existing regulation these passes are granted to foreign experts with recognized professional qualifications or skills.

This study has identified some key concerns from businesses and authorities. The responses and information gathered through group discussions, interviews and desktop studies contribute towards the development of a draft report. The options to address unnecessary regulatory burdens in the existing regulation are categorically divided under Short-Term and Long-Term Engineering Works.

Chapter 1 : About the study

Overall Purpose

Malaysia's economy expanded 4.9% after recording a growth of 4.5% during the first quarter of 2019. Manufacturing sector was the second biggest contributor to the Malaysian Gross Domestic Product (GDP) throughout the Malaysia Economic Performance Second Quarter 2019. Its contribution was 22.7% of the GDP, with estimated to grow at 4.3% per annum, given the resilient domestic demand from higher private investment and strong expansion in the manufacturing-related subsector.¹ The growth of the sector was contributed largely by the electrical and electronic (E&E) and chemicals subsectors. The value added of E&E increased from RM70.6 billion in 2015 to RM 81 billion in 2018, partly due to new applications for semi-conductors in digitalization, mobility, connectivity, energy efficiency, and miniaturization.²

Aligned with 11th Malaysia Plan which focuses on strengthening and raising industrial productivity in manufacturing sector, Malaysia launched the Malaysia Productivity Blueprint (MPB) as a national strategy to drive productivity growth over the next three years. The steering committee for the MPB is the National Productivity Council (NPC) which provides the leadership and direction at the national level. The MPB defines five (5) key strategic thrusts are: (1) building workforce of the future; (2) driving digitalization and innovation; (3) making industry accountable for productivity; (4) forging a robust ecosystem and (5) securing a strong implementation mechanism. These thrusts form the basis for raising productivity and address common challenges. The focus of this study is on Thrust 5 which involves ten (10) national level initiatives and 43 sectors–level initiatives. These initiatives outline explicit sector strategies to address sector-level productivity barriers. The initiatives are led by key industry associations and anchor enterprise for each sector that will improve productivity of both large enterprises and SMEs at sector level.

The MPB identifies nine (9) priority subsectors: retail and food & beverages (F&B); electrical and electronics (E&E); chemicals and chemical products; agro food; professional services; tourism; information, communication and technology (ICT);

¹ Malaysia Economic Performance Second Quarter 2019, Department of Statistics Malaysia DOSM

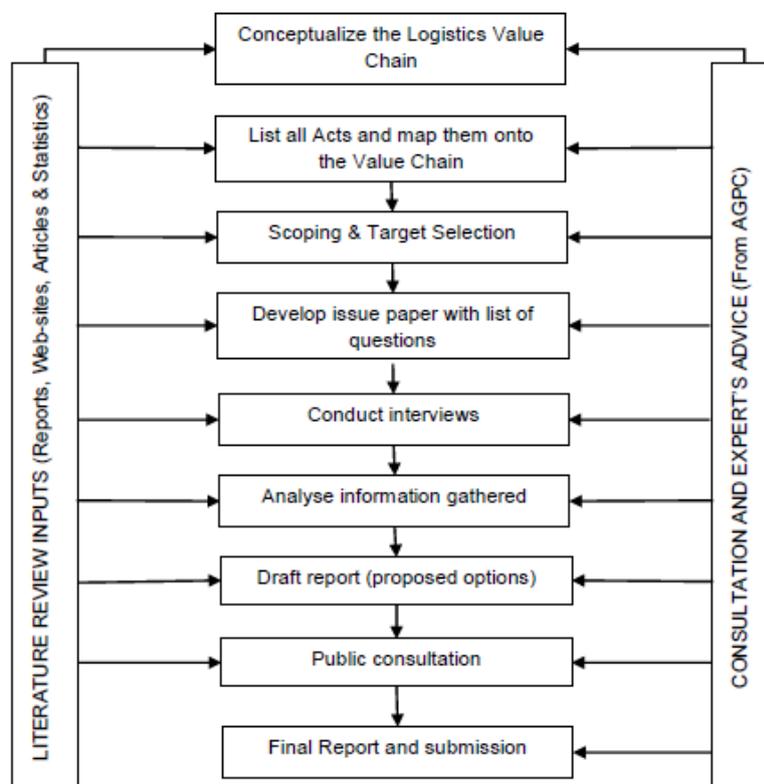
² National Accounts, Gross Domestic Product 2015-2018 Publication, DOSM

machinery and equipment; and private healthcare. For the E&E sub-sector the key productivity challenges are the business environment, inadequate utility service in certain areas, and the need for streamlined existing regulatory processes

Conduct of Study

The study was carried out by MPC based on the structured methodology adapted from the Australian Government Productivity Commission (AGPC). The team interviewed regulators from lead agencies, regulatory agencies, businesses and associations to the manufacturing industry across the country, in order to identify their areas of concerns. Based on the principles of good regulatory practice, the team has formulated feasible options for further deliberation. These issues and options have been subjected to further consultations with relevant stakeholders in order to develop concrete recommendations that will reduce unnecessary regulatory burdens. The Figure 1.1 below summarises the methodology carried out for the study

Figure 1.1: Summary of Study Process



Source: MPC

The analysis of unnecessary regulatory burdens on expatriate services leads to various options that are formulated based on the principles of good regulatory practice (Box 1.1) and on the principles of process improvement. The principles of process improvement use the process approach and apply the principles of GRP to improve regulatory processes.

Box 1.1: Malaysia Good Regulatory Practice Principles³

The Objective of GRP is to spearhead a comprehensive review of business regulations and improve processes and procedures to increase productivity and competitiveness of major economic sectors. GRP ensures that quality regulations through these principles:

- Serve clearly identified policy goals
- Are effective in achieving those goals
- Have a sound legal basis
- Produce benefits that justify costs
- Promote innovation, are fair and equitable
- Are clear, simple, and practical for users
- Are consistent with other regulations and policies; and
- Are compatible with trade and international trade agreements.

Over the years, analysts have identified the more important characteristics which regulation must satisfy to pass this test. Some important characteristics of well written regulation are as shown in Box 1.2.

Box 1.2: Characteristics of well-written regulation⁴

1. The requirements placed on business are proportionate to the risk being regulated, in particular low risks are not addressed by imposing onerous requirements
2. the regulations make appropriate use of prescriptive, performance, in-principle and process-based requirements
3. the regulatory requirements are the minimum necessary to effectively

³ MPC (2017), Good Regulatory Practice (GRP); <http://www.mpc.gov.my/good-regulatory-practice-grp/>

⁴ MPC (2014), *Reducing Unnecessary Regulatory Burdens – A Guide to Reducing Unnecessary Regulatory Burdens: A core Concept*, Malaysia Productivity Corporation

achieve the objective(s) being targeted by the regulation

4. in line with responsive regulation (discussed in chapter 5), the regulations provide an adequate range of enforcement instruments to allow regulators some flexibility in addressing non-compliance
5. the regulations are consistent with other regulation and do not create conflict, inconsistency or duplication
6. the regulations are transparent, communicated effectively and readily accessible by everyone
7. the regulations place accountability requirements on the regulator such as reporting, appeal and review provisions including some that address probity

These important characteristics are achieved when regulations are made according to good practice principles. There are these six core principles (Box 1.3) that would provide guidance to regulators to assess their practices.

Box 1.3: Six Core Principles for Assessing Regulation and its Administration

Principle 1: have a proportionate and targeted response to the risk being addressed

Principle 2: minimise adverse side-effects to only those necessary to achieve regulatory objectives at least cost

Principle 3: have a responsive approach to incentivize compliance with regulation

Principle 4: ensure consistency across regulation and consistency in the application of regulations across businesses and industries

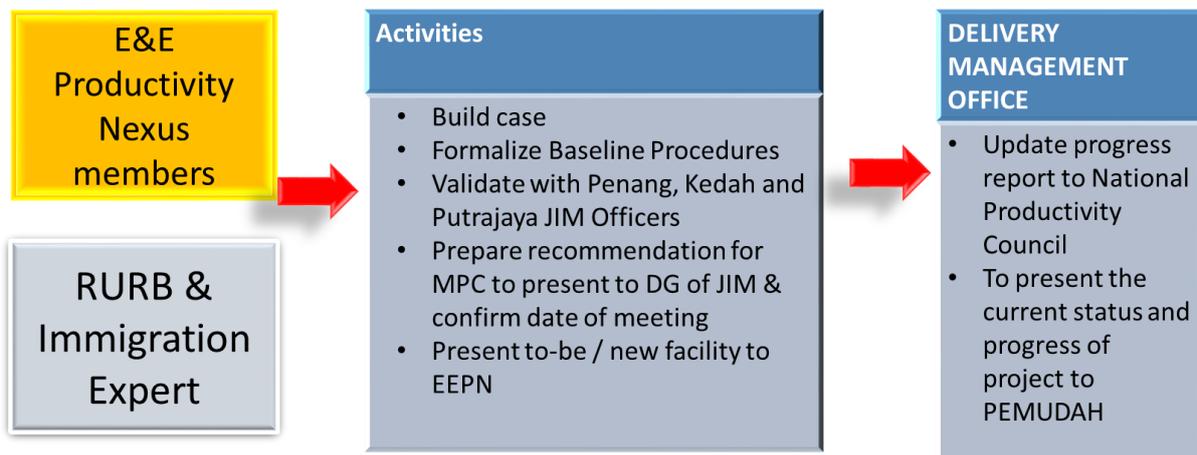
Principle 5: adopt transparency criteria, so interested parties are regularly consulted, it is clear to businesses what are their legal obligations and that all regulations are easily accessed by anyone

Principle 6: accountability so that businesses can seek explanations of decisions made by regulators, as well as appeals them and there are probity provisions in order to reduce corruption (National Integrity Plan, 2004).

This study involves the Electric and Electronics Productivity Nexus (EENP), an appointed RURB Consultant as well as an Immigration Consultant. This study commenced with several meetings with the Immigration Department of Malaysia and Ministry of Home Affairs. The finding of the study will be reported to the EENP and MPC Delivery Management Office (DMO) which then will be tabled it to the National

Productivity Council (NPC) and PEMUDAH. This Report will be published as an Industry reference to accommodate and facilitate policy formulation on expatriate services to Malaysia’s manufacturing industry. Figure 1.2 illustrates the Governance Structure for the project.

Figure 1.2 : Project Governance Structure



Structure of report

The report on the Review on Existing Regulations for Expatriate Services has been organized into five chapters, starting with this introductory **Chapter One**. Here, the overall purpose, the approach to the study and the report structure were highlighted.

Chapter Two elaborates on the role and relationship between lead agencies and expatriate services industry. The statistics on expatriates in Malaysia is charted and is used as a guide on the type of businesses that need the expatriate services. This led to the decision to focus on expatriates with Employment Pass (EP) or Professional Visit Pass (PVP) in the manufacturing sector, in particular the electric and electronics, oil and gas, automotive and aviation.

Chapter Three provides the overview of the expatriate services analyzed via the value-chain concept. The value chain for the expatriate services is mapped against the laws and regulations that are being imposed in every related process. Reference is made to the *ESD Online Guidebook V3.1 2017* on current procedures. There are four regulatory stages; pre-entry, arrival, work and exit, which would affect the expatriate employment. Different regulatory costs are also impacted to key stakeholders at these four stages.

Lastly, **Chapter Four** presents the analysis and findings of the study. Options are proposed to address regulatory concerns. The study identified twelve (12) regulatory concerns which are grouped under three (3) main categories. The main concern is on the regulatory procedure imposed to expatriate for industrial emergency cases. Specifically twelve interrelated issues that pose regulatory burdens are analysed and the potential options to address them are proposed. This chapter also explains on the other issues raised in the study which are not treated as key concerns.

The important findings of the four chapters are summarized in the key points section at the beginning of this report. The chapters are organized in the manner that the relevant references and appendices are incorporated at the end of the chapter for easy reference of the reader. In other words, each chapter stands on its own.

Chapter 2 : Expatriate Services to Industry

The Malaysia's population by citizenship estimated that there are 3.35 million of non-citizens for the first quarter 2019 which has increased by 1.2 per cent as compared to first quarter 2018 (3.31 million)⁵. Expatriate is one of the type groups that falls under non-citizen categorization and it is proven that Malaysia is still one the countries that being considered by expatriate to work in. In order to have peace and harmony within the citizenry of Malaysia, there are government regulatory agencies entrusted to strengthen the national policy related to immigration matters.

Lead Agency: Expatriate Service Division (ESD)

This study focuses on the overall processes of expatriate services which includes expatriate pass application, expatriate employment and expatriation.

The Expatriate Services Division (ESD) under the Immigration Department of Malaysia was launched in June 2014 by. ESD is one of the main functions of Immigration Department which enforces *Immigration Act 1959/63 (Act 155)*, *Immigration Regulations 1963* and the *Passport Act 1966 (Act 150)*.

The ESD catered for all type of businesses. The establishment of ESD is to provide efficient, effective and innovative services for expatriates and companies to deal with expatriate immigration matters. This One-Stop Centre is created by using customer-centric approach that allows applicants to obtain different permits or pass without having to go to different divisions. ESD also aims to improve the process of obtaining approval for work permits of expatriates, within five (5) working days.

The ESD collaborates with numerous government agencies to expedite the delivery process. The division works with Talent Corporation Malaysia Berhad (TalentCorp), Ministry of Home Affairs, Ministry of Foreign Affairs, Public Service Department, Securities Commission of Malaysia, Royal Malaysian Police Department, and Ministry of International Trade and Industry.

⁵ Demographic Statistics Malaysia First Quarter 2019, Department of Statistics, Malaysia (DOSM)

Types of Passes for Expatriate

ESD offers several types of passes for expatriate to work in Malaysia. The type of pass will depend on the duration of work in this country. Under existing regulation these passes are granted to foreign experts with recognized professional qualifications or skills. They can enter the country and provide services or undergo internship with a Malaysian company on behalf of an overseas company on a temporary basis for up to 12 months. Table 1 shows the types of passes for expatriate issued by ESD

Table 2.1 : Type of Passes for Expatriate

Employment Pass (Category I) Expatriate	Employment Pass (Category II) Expatriate	Employment Pass (Category III) Knowledge/Skilled Worker	Professional Visit Pass (PVP) Expertise transfer/Internship
Min salary RM10,000 per month	Salary between RM5,000 to RM9,999 per month	Salary between RM3,000 to RM4,999 per month	Home based remuneration
Employment Contract up to 5 years	Employment Contract up to 2 years	Employment Contract up to 1 year with 2 times renewal	Maximum contract is for a year, and is restricted to one contract/ project at a time
Dependants allowed	Dependants allowed	Dependants NOT allowed	Dependants NOT allowed

Source: ESD

Online Overall Process of Expatriate Pass Application

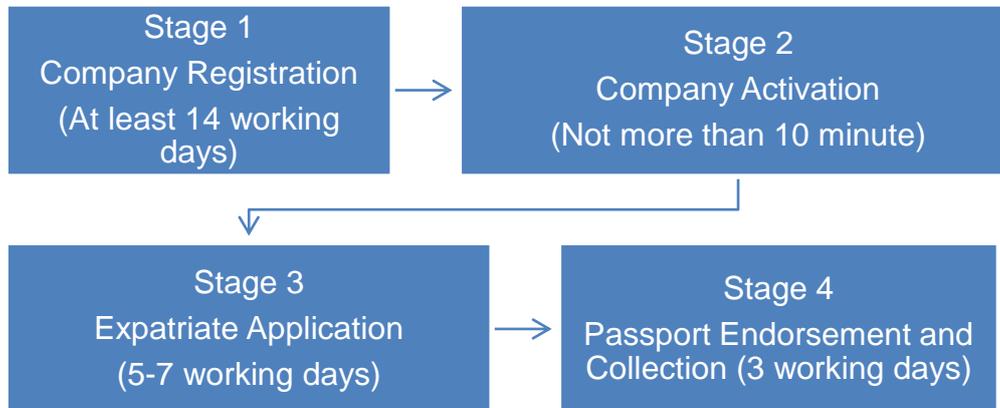
The Malaysia Expatriate Talent Service Centre (MYXpats Centre) has been operating since 1 July 2015 which facilitates the issuances all employment passes and related documents for expatriates wanting to work in Malaysia.

Companies that wish to hire expatriates need to submit expatriate-related immigration information online via the ESD system.

MYXpats Centre facilitates the issuances of expatriate-related passes for Embassies or High Commissions and any temporary manual applications. All companies will need to register with the ESD first. The ESD-approved companies can apply for a range of expatriate passes which includes: Employment Pass, Residence Pass-Talent, Professional Visit Pass and related passes such as Dependent Pass and

Social Visit Pass (Long Term). Flowchart (Figure 1) below indicated four (4) stages on overall expatriate application process through the ESD website.

Figure 2.1 : Four Stage Expatriate Application Process



Once the application for an Expatriate Pass has been submitted, MYXpats Centre will evaluate expatriates on their suitability for the jobs. The approval process will take five working days, as per the client charter of the ESD.

Statistics on Expatriate in Malaysia

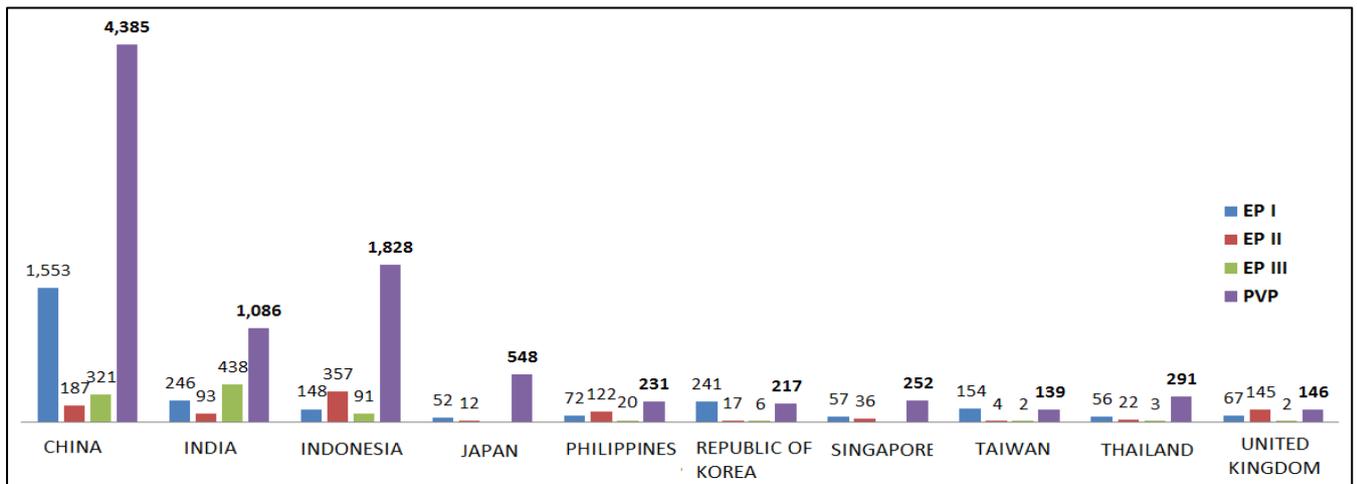
Department of Statistics Malaysia indicates that, there are 3.35 million non- citizens in Malaysia for the first quarter of 2019. The collected data involved numbers of active expatriate pass holders.

According to Statistics Report in the Immigration website, the number of expatriate issuance has increased each year. There were 142,662 expatriate issuances at Immigration Department in 2017 and 146,571 in 2018. The latest data shows from January 2019 until July 2019, there are already 68,006 expatriate issuances by the Immigration Department.⁶

ESD and TalentCorp have shared data that shows the nationality of expatriates and sectors related to the expatriates.

⁶ Statistic of Online Services, <https://www.imi.gov.my/index.php/en/>

Chart 2.1 : Expatriate Pass by Nationality



From 182 countries, this study has narrowed down the numbers to top 10 countries with expatriates in PVP. Chart 2.1 shows industries in Malaysia hired expatriates because of the need to have global expertise that could transfer knowledge especially on the advance technology and share value added activities. Based on data of June 2019, expatriates from China, India and Indonesia dominate the list especially for PVP. China recorded 4,385 with PVP whereas expatriates from Indonesia and India are in second and third position at 1,828 and 1,086 respectively.

Chart 2.2 : Expatriate pass by Sector

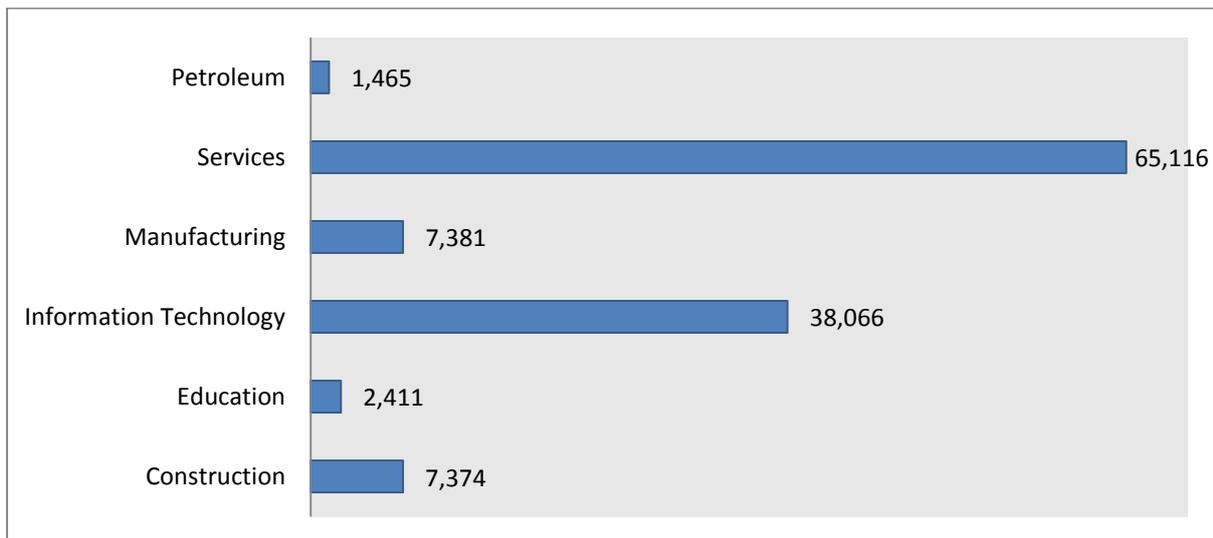
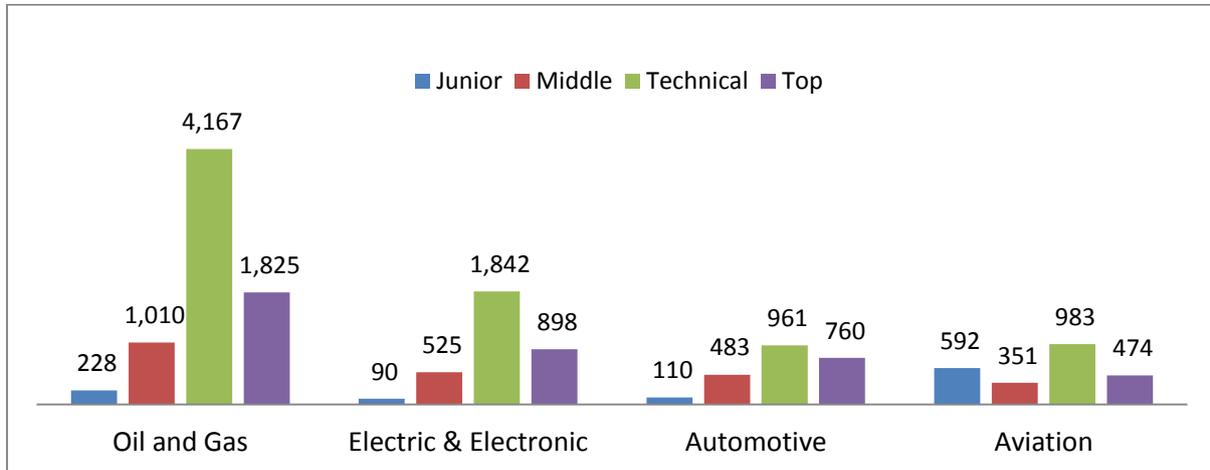


Chart 2.2, data shows active expatriate pass holder by sectors as June 2019. The data captured all active expatriate passes such EP, PVP and others. Services sector registered 65,116 expatriates which is the highest number followed by information

technology sector with 38,066 expatriates and manufacturing sector with 7,381 expatriates.

Chart 2.3 : Expatriate pass by Position Category



TalentCorp has gathered data shows number of expatriates with position categories from year 2016 until 2018. The data also shows the expatriates with EP and PVP. Technical positions in all sub sectors have the highest number compared to other position categories. Second highest is the top management positions and follow by middle management positions.

The Need for Expatriates in the Industry

In order to achieve the high-income country, Malaysia's work-force development policies have to keep up with the skills demands of a dynamic economy. Findings from a World Bank reported that tapping into the skilled expatriates can help provide the talent needed to ensure that skill gaps do not widen.

As for manufacturing industry, rapid changes on new technology necessitate the industry to have global expertise that could transfer knowledge especially on the advance technology and to share knowledge on value added activities.

The industry may also be a self-selection dynamic, where it is said that it is the most talented, highly-educated and socially mobile will go abroad. This is especially relatable in filling senior positions. Most advertisements for the positions of CEO often include relevant overseas working experience as necessary requirement. Most expatriates who head top companies have significant experience managing overseas business operations.

In contrast, many locals do not meet this criterion and are almost immediately disqualified. The good news is, this trend is shifting as more young Malaysians are studying and working overseas.

Another factor is the principal-agent problem. Company shareholders or founders want to employ the best person for the job with the lowest unit labor cost and the government apparently wants companies to consider hiring locals first.

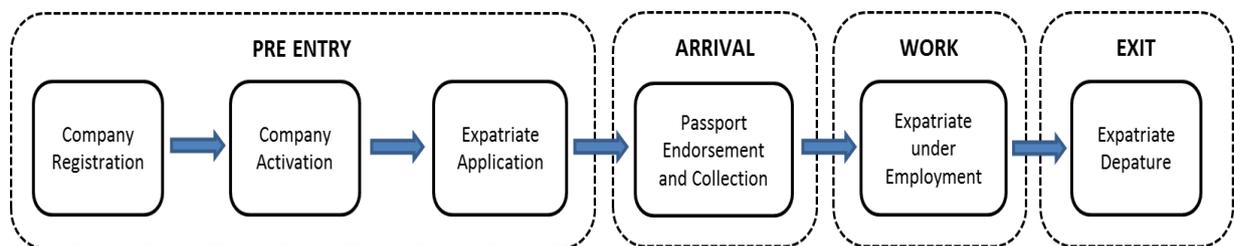
In many foreign multinational corporations, the hiring agents tendency are to employ expatriates from their own countries as they find it easier to work with someone of a similar background, or candidates within their professional circles.

Chapter 3 : Regulatory Overview

Expatriate value chains

The expatriate passes application process starts from the application of passes until the exit of the expatriates. Any kind of expatriate passes for foreign expert or intern is subjected to different domestic regulations. The value chain illustrates the various regulations that may be relevant to the case, depending on the concerns being dealt with. The figure below defines the stages of expatriate pass application.

Figure 3.1 : Expatriate Services Value Chain



The regulatory framework of expatriate pass application involves the following stages:-

- a. **Pre Entry:** The company that wishes to hire foreign expert is required to manage the expatriate application and the company must be a registered company in Malaysia
- b. **Arrival:** Upon arrival, the expatriate needs to endorse his passport
- c. **Work:** Expatriate must adhere with Malaysian law throughout the employment period
- d. **Exit:** Employer do the cancellation of the expatriate pass before leaving Malaysia within 30 days from expected departure date

For the industrial emergency work, the company needs to manage any potential regulatory risk when having such foreign expert working in its facility. This is important because emergency maintenance work is normally of higher risk and has regulatory concerns. Should any accidents occur during the emergency work many domestic regulations will be alerted. The company must be prepared to manage such consequences, particularly the impact on the professional expert.

In the case of employing foreign interns, this is illustrated in value chains below for converting PVP into EP for foreign intern to be employed.

Figure 3.2 : Value Chain for Foreign Intern



The company needs adhere to the expatriate pass process all over again to apply EP. Hence, company may incur losses in time, opportunity cost and labour productivity due to the requirement that the foreign intern must first return to country of origin in order to apply EP procedurally. This RURB study has assessed the potential impact and risk from the domestic regulations once the foreign intern has been engaged.

The objective of listing all laws, regulations or guidelines related to this review is to give a bird eye view on all applicable regulations may affect the process of temporary hiring of foreign professional expatriate.

Table 3.1 : List of Acts and Regulations Governing the Expatriate Services

Regulation	Regulators	Value Chain	Process	Procedure
<ul style="list-style-type: none"> ▪ Companies Act 2016 [Act 777] ▪ Companies commission of Malaysia Act 2001 [Act 614] ▪ Societies Act 1966 [Act 335] ▪ International Organizations (Privileges and Immunities) Act 1992 [Act 485] 	<ul style="list-style-type: none"> ✓ Expatriate Service Division (ESD), Immigration Department of Malaysia ✓ Companies Commission of Malaysia (SSM) /Registry of Societies Malaysia (ROS) /Government Agencies/ Ministry of Foreign Affairs (KLN) 	<p>PRE ENTRY</p>	<p>Company Registration</p>	<ul style="list-style-type: none"> • Company must be registered with SSM in order to proceed with expatriate application • After verification and validation, status notification will be sent via ESD system
			<p>Company Activation</p>	<ul style="list-style-type: none"> • Once received approval, one of company's directors stated in SSM is

Regulation	Regulators	Value Chain	Process	Procedure
				<p>required to be present at the scheduled appointment to sign the Letter of Undertaking (LoU), witnessed by Immigration Officer</p> <ul style="list-style-type: none"> Completed signing LoU, company will be given further access for expatriate application process
<ul style="list-style-type: none"> Immigration Act 1959/63 [Act 155] Passports Act 1966 [Act 150] Private Employment Agencies Act 1981 [Act 246] 	<ul style="list-style-type: none"> ✓ Expatriate Service Division (ESD), Immigration Department of Malaysia ✓ Approving Agencies / Regulatory Bodies / Expatriate Committee ✓ Ministry of Home Affairs (MOHA) ✓ Expatriates 		Expatriate Application	<ul style="list-style-type: none"> Submit completed application by fill in expatriate information and upload all required documents Status notification sent via ESD system, approved or rejected. Approved expatriate may proceed for passport endorsement within 30 days from entry date to Malaysia
<ul style="list-style-type: none"> Immigration Act 1959/63 [Act 155] Passport Act 1966 [Act 150] Customs Act 1967 [Act 235] 	<ul style="list-style-type: none"> ✓ Expatriate Service Division (ESD), Immigration Department of Malaysia ✓ Royal Customs of Malaysia 	ARRIVAL	Passport Endorsement and Collection	<ul style="list-style-type: none"> Upon arrival in Malaysia, expatriates must submit the relevant documents for endorsement of related pass sticker on the passport Payment for the Immigration fees can

Regulation	Regulators	Value Chain	Process	Procedure
				be made at MyXpats Centre and endorsed passport can be collected within 3 working days
<ul style="list-style-type: none"> ▪ Employment Act 1955 [Act 265] ▪ Sabah Labour Ordinance (Cap. 67) ▪ Sarawak Labour Ordinance (Cap. 76) ▪ Income Tax Act 1967 [Act 53] ▪ Anti-Trafficking And Anti-Smuggling Of Migrant Act 2007 [Act 670] ▪ Workers Minimum Standards Of Housing And Amenities Act 1990 [Act 446] ▪ Industrial Relations Act 1967 [Act 177] ▪ Employment Insurance System Act 2017 [Act 800] ▪ Trade Union Act 1959 [Act 262] ▪ Trade Union Act 1959 [Act 262] ▪ Occupational Safety And Health Act 1994 [Act 514] ▪ Workmen's 	<ul style="list-style-type: none"> ✓ Ministry of Human Resource ✓ Inland Revenue Board Of Malaysia (LHDN) ✓ Department of Occupational Safety and Health (DOSH) ✓ Department of Labour Peninsula of Malaysia (JTK) ✓ Ministry of Energy, Science, Technology, Environment and Climate Change (MESTECC) ✓ Ministry of Science, Technology and Innovation (MoSTI) (AELB) ✓ Board of Engineers, Malaysia ✓ Department of Public Health, MoH ✓ Department of Industrial Relations ✓ Inland Revenue Board Of Malaysia 	WORK	Expatriate under Employment	<ul style="list-style-type: none"> • Expatriates must report to the company as stated in contract • Expatriates must adhere with Malaysian law throughout the employment period in Malaysia

Regulation	Regulators	Value Chain	Process	Procedure
<p>Compensation Act 1952 [Act 273]</p> <ul style="list-style-type: none"> ▪ Factories And Machinery Act 1967 [Act 139] ▪ Electricity Supply Act 1990 [Act 447] ▪ Petroleum (Safety Measures) Act 1984 [Act 302] ▪ Atomic Energy Licensing Act 1984 [Act 304] ▪ Relevant guidelines under DOSH ▪ A Guide to Good Engineering Practice For M&E Engineers, 2018 ▪ Guidelines for Prevention of Accidents at Workplace, 2008 (MoH) 				
<ul style="list-style-type: none"> ▪ Employment Act 1955 [Act 265] ▪ Sabah Labour Ordinance (Cap. 67) ▪ Sarawak Labour Ordinance (Cap. 76) ▪ Immigration Act 1959/63 [Act 155] ▪ Passports Act 1966 [Act 150] ▪ Customs Act 1967 	<ul style="list-style-type: none"> ✓ Expatriate Service Division (ESD), Immigration Department of Malaysia ✓ Royal Customs of Malaysia 	<h1>EXIT</h1>	<p>Expatriate Departure</p>	<ul style="list-style-type: none"> • Notification by the company of expatriates' departure from Malaysia • Expatriates should cancel the employment pass and any dependant passes which are linked to the pass before leaving Malaysia within 30

Regulation	Regulators	Value Chain	Process	Procedure
[Act 235]				days from expected departure date

The regulations outlined in Table 3.1 needs to be complied by businesses or industry in hiring expatriate of any types. While all of the regulations are made with certain objectives, often times the activities carried out at the implementation level such as the officer's interpretation of the regulatory requirements or the introduction of redundant activities across the value chain or failure of the system creates the unnecessary regulatory burdens to the business.

Responsibilities of Regulators

The regulatory regimes for expatriate services in Malaysia are very extensive and complex as they involve many different ministries, departments and agencies. The principal regulator is the Immigration Department of Malaysia. Table 3.2 below provides the brief overview of the responsibilities of the regulators that are covered in this review

Table 3.2 : Responsibilities of the Regulators

Regulators	Roles and Responsibility
Board of Engineers Malaysia	<ul style="list-style-type: none"> To facilitate the registration of Engineers, Engineering Technologists, Inspectors of Works, Sole Proprietorships, Partnerships and Bodies Corporate providing professional engineering services; and To regulate the professional conduct and practice of registered person in order to safeguard the safety and interest of the public.
Department of Occupational, Safety and Health	<ul style="list-style-type: none"> To ensure the safety, health and welfare of people at work; and To protect other people from the safety and health hazards arising from the activities sectors which include: Manufacturing, Mining, Quarrying and Construction
Immigration Department of Malaysia	<ul style="list-style-type: none"> To issue passports or travel documents to nationals and permanent residents; To issue visas, passes and permits to foreigners entering Malaysia; To supervise exit or entry of nationals at gazetted points of entry; and To enforce the Immigration Act 1959/63 (Act 155), Immigration Regulations 1963, the Passport Act 1966 (Act

Regulators	Roles and Responsibility
	150) and Anti Trafficking in Person and Smuggling of Migrants Act 2007
Ministry of Home Affairs	<ul style="list-style-type: none"> • To maintain safety and public order; • To manage immigration and foreign workers affairs; • Rehabilitation and implementation of punishment; • To manage Registry Affairs; • Border Control; and • Management of Societies
Ministry of Human Resource	<ul style="list-style-type: none"> • To update and implement labour policies and laws to create efficient, productive and discipline workforce with positive values and good work ethics; • To update and implement occupational safety and health policies and laws to ensure a healthy and safe work environment; • To plan and develop human resource through control and labour market analysis to formulate policies relating to employment, development of skilled workforce and productivity linked wage system; and • To create job opportunities and job placement.

Issues faced by the industries

Through consultation process with the key stakeholders, 26 companies and associations of the manufacturing industry in Klang Valley and Penang have raised concerns (a total of 45 participants including that from Immigration Department of Malaysia, Ministry of Home Affairs, Ministry of Human Resource, Department of Occupational, Safety and Health, Board of Engineers Malaysia and TalentCorp). The issues or concerns are discussed further in Chapter 4. Listed below is the summary of issues or concerns raised by the stakeholders according to stages of the expatriate services value chain:-

a. Pre entry stage

1. Industrial Emergency cases
2. Varied interpretation on how PVP is applied
3. Indefinite explanation on rejection of PVP or EP
4. Qualification certificate from country origin not recognised by ESD
5. Restriction on the Issuance of Social Visit Pass

b. During employment stage

1. Non-transferable of PVP
2. Resubmitting of same documents for renewal of EP
3. Cooling off period for PVP re-application
4. Centralized Issuance of i-Kad
5. Income tax declaration for foreign intern

c. Other concerns

1. Abolishment of Employment Pass (EP II and EP III)
2. Classification of Salary Structure

Chapter 4 : Regulatory Issues

This chapter explains and analyses the issues raised by the key businesses in expatriate services value chain. With the feedbacks from these businesses and other background information and evidences, various options to mitigate them are formulated for consideration. A total of twelve issues are analysed and various options are formulated. The focus will be on causes arising from immigration regulations that result in unnecessary regulatory burdens.

Pre entry stage

Issue no. 1: Industrial Emergency cases

To acquire foreign specialists for urgent maintenance work requires special immigration clearance. Currently either EP or PVP is being offered but is not suitable for emergency cases because EP or PVP takes several days to process. There is uncertainty whether the foreign expert can reach the production site or machine immediately. The roles and functions of Immigration Department, Board of Engineers Malaysia and Department of Occupational Safety and Health are critical in addressing this issue.

- **Option no. 1: Clearance using Short Term Social Visit Pass (SVP-ST)**

One of the fourteen (14) purposes given to SVP-ST pass holder is Factory Inspection. It is suggested that the Immigration Department provides special clearance under the purpose of Factory Inspection, for foreign experts who is appointed by the company to do emergency maintenance works. Company is obliged to provide strong justification to authority and details information such professional certification, scope of work, work plan, etc. Company also must report to the nearest Immigration Department office to get endorsement for starting work.

Engineering works affect the public safety especially during unplanned machine breakdown for which extra precaution must be taken. BEM requires that all Engineers including foreign Engineers who perform engineering works must be registered with the body. BEM has identified two types of engineering for emergencies cases which are mass production (tested in factories and by respective manufacturer) and prototype engineering (one off). BEM could facilitate by expediting the application for registration with the body.

With respect to safety matters DOSH emphasizes that any relevant engineering company should have a local competent person (CP) or equivalent who is registered and licenced by Energy Commission. For example, CP for elevator is offered to local. The local CP for elevator must justify that the works require foreign expertise. The local CP elevator also must be present and the foreign specialist must be working under the supervision of the local CP. In order to enforce this, DOSH needs to monitor and inspect for compliance to its requirement only when the work is already in progress to take action against defaulters.

- **Option no. 2: International principal company set up a regional office in Malaysia**

Manufacturer whose machines are widely used in Malaysian factories is recommended to set up regional office in Malaysia. Such approach if materializes will benefit local companies in terms of the transfer of technology and will provide employment opportunities for the locals.

Feedback from regulators

Immigration Department has made decision to allow foreign experts come in with purpose of industrial emergency cases which fall under the factory inspection using SVP-ST. On entering the country the expert has to produce the invitation letter from the company, a return ticket, visa (if applicable), the schedule, other relevant company's document. This manual procedure i only cater the industrial emergency cases until the new system on ESD is ready in the near future.

In the future, the new system for industrial emergency cases will require company to upload related documents for the application and will obtain approval within 24 hours. The system also will be accessible in various entry points (KLIA, Johor Baharu and Penang) and any notification will send to applicant. Immigration Department plans to set the limit of visit for industrial emergency cases only for two weeks duration.

Immigration Department also will brief the immigration officers especially at entry point regarding using SVP for industrial emergency purpose to avoid

misinterpretation. The companies engaged were pleased and look forward to using this new facilities.

Issue no. 2: Varied interpretation on how PVP is applied

PVP is working pass for foreign talents with acceptable professional qualifications or skills. They enter Malaysia to provide services or undergo internship with Malaysian company on behalf of an overseas company on a temporary basis for up to 12 months. The engineering industry claimed that the varied interpretation of how PVP is applied has caused some uncertainty and has consumed unnecessarily additional time and cost.

From the authority explanation, PVP is meant for short term employment on specific job at specific time. Employer has the main responsibility on foreign expert during his/her work assignment in Malaysia. The same foreign expert could work for another company provided the previous PVP is expired or cancelled by former employer and new PVP applied for the foreign expert. The industries are advised to consult with the ESD on expatriate matters.

- **Option no. 1: Improved guidelines**

ESD has established an ESD Online Guidebook V3.1 2017. It is recommended that the guidebook revisited and reviewed. The review should involve consultations with the businesses of interest. Detailing out on the complete processes involved in PVP application will further enhance the guidebook.

- **Option no. 2: Awareness and refresher engagements on the improved guidebook**

The improved guidebook is aimed to provide for a comprehensive and better understanding on all the processes involved in PVP. It is recommended that pilot studies on the usage of PVP basing on the improved guidebook to be carried out. In this way choke points could be identified, streamlined and

further improved. Ongoing engagements on the application of such guidance need to be considered.

Feedback from regulators

ESD agrees the needs to update the Guidebook in accordance with the new circulars or improvements approved by Immigration Department. Meanwhile, the awareness initiatives will be planned and conducted by Immigration Department and MYXpats.

Issue no. 3: Indefinite explanation on rejection of PVP or EP

Industry faced several rejections without clear or definite reasons from ESD. There are cases where applications of China's experts in robotic automation in production were rejected even though several reapplications with justification on the needs to bring in foreign experts were made.

There are many such rejections made by the authority. The rejections are made by experience and knowledgeable officers in order to protect the national security from insincere and irresponsible parties. During briefing session on Foreign Labour Policy and Guidelines for the Manufacturing Sector on 27 August 2019, authority has enlightened several bases on why such rejection has been made:-

- a. Company's financial position
- b. Not relevant salary justification
- c. Number of application of expatriates
- d. Nature of business
- e. Negative sector and sensitive industry
- f. Position justification
- g. Bad immigration record of the expatriate
- h. Incomplete documents
- i. Baggage history of the expatriate
- j. Justification not convincing
- k. Not strong information on expatriate requirement
- l. Income and income tax are not synchronize

The authority also put emphasis on the application for EP III is prioritised to four sectors such as Global Business Support, Aviation, Medical and Education. As for other sectors, approval for EP III will be considered under very stringent criteria and conditions and upon case to case basis.

- **Option no. 1: Status Quo - The authority need to continue to ensure genuine applications**

In doing so, the authority also need to continuously advocate and educate businesses on the requirements for application for expatriate passes. Regular interactions with businesses can ensure the understanding of the national policy and also the continuing changing business environment.

- **Option no. 2: Must have clear and definite categorization of expert and number of expert per entry per project**

The authority also could enhance the requirement and eligibility criteria for employment of an expatriate and publicize the information through mass media and publication. The enhancement could start with the categorization of expatriate and number of expatriate per entry per size of project (monetary, duration, size of production and etc.).

Issue no. 4: Qualification certificate from country origin not recognised by ESD

Authentication of documents is verified upon entry into Malaysia. Therefore applicants with incomplete and non-authenticated documents were asked to revert to country origin to complete and authenticate those documents.

The authority, however, is very concern with the rising number of forgery discovered in the applications submitted by companies. It is vital for companies to be responsible and ensure on the authentication of the certificates before submitting for ESD application.

- **Option no. 1: Status Quo - Immigration continues its effort to screen out forgery in application**

The authority can improve the screening using risk-based approach to ensure effectiveness of the application process. Companies that continue to submit forged documents could be reprimand for not be careful in their application documents.

- **Option no. 2: Malaysia consulate in country origin determines the authentication of certificate.**

The authority could recognize the authentication of certificates that have been endorsed by the Malaysia consulate in the country of origin. However, applicants must ensure that documents and information submitted and true. Businesses that are suspected to flaunt the rules need to be reprimand instead of rejections without reason.

Feedback from regulators

Immigration Department agrees that academic certificate must be verified from Malaysian embassy in their home country, in situations where there are doubts in the education certificate.

Issue no. 5: Restriction on the Issuance of Social Visit Pass

Application for SVP was rejected for foreign expert who frequents Malaysia for short duration services and instead advised to apply for PVP which does not apply to short duration stay.

The authority is concerned with abuse of SVP where foreign experts who frequented their Malaysian facilities on social visit passes when they are actually on official duty. Both parties play crucial roles in handling this issue. Industry has to be responsible to know which pass is proper for foreign visitors who perform work in Malaysia. Companies should not entertain the foreign visitors who are unqualified to be issued with a proper pass by authority.

- **Option no. 1: Enhance the requirement to apply for PVP**

Foreign experts who are coming to Malaysia for the purpose of business matter frequently shall apply for PVP except for a genuine industrial emergency case shall be issued with special SVP. Meanwhile, companies

must establish a proper project visitation schedule to allow for the scheduled application of PVP. This can be built into the company registration with the ESD.

- **Option no. 2: Definite description or scope of each purpose for SVP**

The authority must be clear on the scope of each purpose for SVP application. By having clear and transparent scope of SVP, it could clarify the grey areas for company to apply SVP and not abuse the facilities of SVP.

During employment stage in Malaysia

Issue no. 6: Non-transferable of PVP

The PVP cannot be used for another work at another company even though the approved PVP is still valid. However, foreign expert was not able to use the remaining PVP validity period.

Authority concerns on PVP holder's safety that must be responsibility to a company. Authority also emphasised the application of any pass should be done by the company itself not a third party company. The former employer must cancel the PVP first and the new company must re-apply for new PVP for that same expert.

- **Option no. 1: Status Quo - Self regulate on proper termination of PVP**

An approved PVP is non-transferable and it is meant for a specific project. Industry must return and cancel the PVP once a task is completed. A new employer shall apply for a new PVP as provided by the ESD facility.

Businesses must be continuously reminded of their responsibility to cancel their PVP upon completion of the jobs. An extension of PVP is not applicable unless with the Director General of Immigration approval upon company justifications.

Feedback from regulators

Immigration Department decides that all PVP cases that are within the 12 months duration where applicant requires changing employer, applicant needs to shorten the existing PVP and re-apply for a new PVP under another employer without the need

to exit Malaysia. There are no more cooling off period applicable. Also the new PVP can be applied before the existing PVP expires within the established conditions. Immigration Department also mentioned that applicant must apply for Special Pass if shortened pass is about to expire before the new application submission.

Issue no. 7: Resubmitting of same documents for renewal of EP

Currently, the industry is required to submit similar supporting documents for renewal of EP. The documents are already in the ESD database.

- **Option no. 1: Status Quo - Resubmitting documents allow for speedier processing**

Although documents have been submitted in the first application, the authority may not have an adequate online system for verification of the applicants. Until such system is available, resubmission of documents actually speeded up the application as the processing officer need not have to spend time searching for the original documents.

- **Option no. 2: Develop a checklist for first application and renewal application**

ESD has developed an online system for EP application and approval notification. ESD is recommended to develop a checklist for first time application and another checklist for renewal application which lists down only additional documents required for renewal.

Feedback from regulators

In order to lessen the burdens of company on documentations, Immigration Department plans to simplify the renewal process of EP. By adopting RP-T module, the renewal system will focus on documents that need to be updated such as passport attachment, contract, and tax declaration. There is no need to provide document that has similar information as per previous approved application such as education certificate, resume and etc. Immigration Department aims to reduce the renewal process from five days to one day. The companies are happy to hear this and look forward to the implementation.

Issue no. 8: Cooling off period before a PVP re-application

The cooling off period imposed prior a re-application of PVP causes delay and costly to the industry. According to the authority, there is no cooling period for such. The authority explained during briefing session on Foreign Labour Policy and Guidelines for the Manufacturing Sector, that there is no cooling off period for PVP re-application. Authority urges the industry to have self-regulated on proper invalidation of PVP. Industry must return and cancel a PVP once a task of foreign expert is completed. A new employer will need to apply for a new PVP. This was emphasised again by the authority during the engagement with stakeholders.

Issue no. 9: Centralized Issuance of i-Kad

At present, i-kad is issued only at MyExpat HQ Immigration (Putrajaya) which is burdensome for companies in other states as their officers have to travel to Putrajaya and wait for few days to collect which is costly and time consuming. Another questionable matter is the recognition of i-kad by authorities in Malaysia. There was a case where i-kad was not accepted by immigration at the airport which requires the expatriate to go to police station to prove the validity of entry into Malaysia.

According to authority, all other authorities have already recognized the i-Kad since the issuance of i-Kad has been gazetted on 22 February 2018.⁷ However, as of 17 July 2019, i-Kad will no longer be issued. ESD has announced that the issuance of i-kad has ceased.⁸ Therefore, expatriates who are eligible to apply for an i-Kad can no longer do so until further notice from Immigration Department of Malaysia.

Issue no. 10: Income tax declaration for foreign intern

There is no clear requirement whether foreign interns are required to pay tax. Foreign interns receive only allowance by the company that employ them. However Malaysia adopts a territorial scope of taxation where all income accruing in or derived from Malaysia is subjected to Malaysian income tax. In the event that the foreign intern performs their internship in Malaysia, their allowances or any Benefits

⁷ [http://www.federalgazette.agc.gov.my/output/pub_20180222_P.U.\(A\)49.pdf](http://www.federalgazette.agc.gov.my/output/pub_20180222_P.U.(A)49.pdf)

⁸ <https://esd.imi.gov.my/portal/latest-news/announcement/myxpats-ikad-issuance-2019/>

in Kind (BIK) provided to them will be subjected to tax. Table 4.1 shows two conditions for foreign intern.

Table 4.1 : Taxation for Foreign Intern

Foreign Intern (Non- Resident)	Foreign Intern (If Qualify as Resident)
Will be tax on flat rate 28%	Will be tax at graduated tax rates
Employer need to perform obligation to register their SG (individual with non-business source) number for tax purposes. Submission on income tax before 30 April	If total income received more than RM34,000 – to register their SG number for tax purposes If total income less than RM34, 000 – no need to register because less than threshold / no need to pay taxes.

Generally an individual is a tax resident if he/she is physically present in Malaysia for at least 182 days in a calendar year.

As for PVP and EP, income tax treatment for both is the same. If the income received is above the threshold, they shall declare their income for tax purposes. If the PVP holder’s salary is borne by the host country, their income will need to be calculated based on exchange rate provided by the Accountant General’s Department of Malaysia.

Other matters on expatriate services

Issue no. 11: Abolishment of Employment Pass (EP II and EP III)

The industries claimed that there are speculations over the abolishment of EP II and EP III. This might apprehend Malaysia in losing opportunity of advance manufacturing technology transfer due to treatment towards the foreign experts deemed unwelcome to this country. The industries especially SMEs are heavily reliant on EP II and EP III positions for their operation. Whereas, the industries still require PVP for expert’s service on short duration or on project basis.

From the authority has given explanation that this perception is not correct because there is no official decision on any abolishment of employment pass. The authority

encouraged and welcomed the industry to reach the proper channel to know genuine information on expatriate matters rather than hearing such rumor.

The authority also aware on every impact that may cause any inconveniences to the industry in order to abolish any passes for expatriate. Nevertheless, the industry should have initiatives to train and use local talents rather than just focused on use of foreign experts. This national service would be beneficial to the industry and Malaysia.

Issue no. 12: Classification of Salary Structure

The current salary structure for EP II and EP III encumber industry to hire skilled foreigners who are fresh graduates with limited work experience. The minimum salary for EP III is RM3000. The salary of RM3000 will incur additional overhead cost to the employer. If a company applies EP III for the foreign fresh graduate, an approval from Immigration Department of Malaysia is required and the requirement is tedious to the industry due to salary issues which is the starting salary for fresh graduate is RM 2600- RM 2800.

Authority clarified that the salary classification was determined by National Economy Council (Majlis Ekonomi Negara). The intent of salary limitation is to ensure that only genuine unavailable skills are brought into the country. Businesses should only bring in high value adding expatriates who have specialist skills/knowledge into country not to abuse the facilities provided by the authority.

Conclusion

This report reviews the regulatory issues and burdens faced by the E&E industry on the facilities provided by the Expatriate Services Division of Immigration. The review of regulation follows the process from pre-entry of expatriate to the exit of expatriate.

This report concludes that while regulating expatriate services is necessary to protect the interest of the country, over-regulating the expatriate services can have a disadvantageous impact to the industries. This report identifies 12 issues based on feedbacks from the industrial community. For each of the issues, option(s) are suggested together based on appropriate practice best suited to the industry.

The way forward that could be considered for long term advantageous is to have special pass for foreign expert within inter-company. This is aligning with current business nature which promotes global knowledge transfer. The initiative may be good solution for genuine and serious industries that want to have global expertise lawfully.

Through these efforts, authorities and industries can learn from one another on improving the expatriate services for future developments.