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The Role of Corporate Social Responsibility and Soft Law Options in the Protection of Migrant Workers' Interests in Host Countries — The Case of Malaysia

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Abstract
This article examines the potential for corporate social responsibility (CSR) and other soft law initiatives in generating change for blue-collar migrant workers in the Malaysian workplace. We explain the absence thus far of adequate protection for blue-collar migrant labour in formal law and corporate governance from a 'path-dependence' perspective and examine the potential of soft law options and government policies on labour migration as possible catalysts of change. The impact of the 1997 Asian financial crisis in creating new corporate governance rules and government support for the development of CSR is discussed along with international initiatives, such as the United Nations Global Compact, whereby Malaysian companies have committed to playing a positive role in creating favourable outcomes for labour and human rights. Avenues of development vis-à-vis CSR and other soft law mechanisms for blue-collar migrant workers are offered. We conclude with a comment on the trajectory for CSR, soft law options and blue-collar migrant employee relations in Malaysia by highlighting the potential for hybrid labour regulation, whereby soft law may be hardened through creative methods of interpretation by the courts.

Keywords
Malaysia, blue-collar migrant workers, corporate social responsibility (CSR), labour law, hybrid labour regulation

Introduction

The satisfactory recognition of the voice of labour rights in the Malaysian industrial relations landscape has thus far been a dismal failure (Syed Ahmad, 1997) due to the tripartite nature of the industrial relations system, emasculation of trade union power and the political economy of the country (Jomo and Todd, 1994). A study of the historical facts that silenced the labour movement in Malaysia (Sundra-Karean, 2012: Chapter 2) proves that there is strong rule-driven path dependence (Bebchuk and Roe, 1999) in the prevailing passive voice of labour generally. The legal origins of Malaysian labour law may be

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traced to the period of colonisation between 1786 and 1957 (Ibrahim and Joned, 1995) when English legal concepts were transplanted throughout the colony, which became Malaya. Malaysia, being a member of the common law legal tradition would therefore be categorised under the Anglo-American liberal market model, which is generally seen as adopting a shareholder-centred corporate governance system (La Porta *et al.*, 1998). There is a body of current literature, which argues that common law systems tend to produce a certain system of labour law and corporate relations, wherein labour relations are typically voluntarist, private contracting is high, legislation is minimal and the courts play a significant role in solving disputes (Botero *et al.*, 2004). While most of these features describe the Malaysian industrial relations system, we are of the opinion that the legal origin (that is, common law) *alone* cannot explain why Malaysian labour relations and its influence on corporate governance is the way it is.

We rely on the work of Ahlering and Deakin (2007) to demonstrate that 'path dependence' plays the more important role in understanding the nature of Malaysian labour relations and in designing suitable outcomes for labour and capital. The added normative value of using the path dependence methodology is that by investigating the path dependence we can expose the contemporary inadequacies that need to be addressed. In the Malaysian context, although the country inherited the English common law system and the Westminster parliamentary system, the constitutional arrangements that followed after Independence in 1957 reflects a strong authoritarian government founded upon a restriction of civil and political rights; mainly the curtailment of the freedoms of speech, association and assembly through legislation that was constitutionally immune from judicial review.[1] A path dependence analysis involving a study of Malaysia's legal and political arrangements reveals the legal origin of the nation, the historical impact factors, its evolving divergent institutional dynamics and the political economy that is so crucial in understanding the position labour occupies in a given society at a given time.

In a nutshell, while the colonial government controlled labour unions, which were made up of migrant workers from India, Sri Lanka and China, through restrictive laws passed in response to a fear of labour movements which pursued communist goals, the post-independence government had an economic agenda of rapid industrialisation, the attraction of foreign direct investment and growth based on a platform of affirmative action policies favouring the majority Malay Muslim community, commonly referred to as the

[1] By virtue of Article 4(2) Federal Constitution of Malaysia. See *PP v Ooi Kee Saik* [1971] 2 M.L.J. 108; *Fan Yew Teng v PP* [1975] 2 M.L.J. 235.

'Bumiputeras'.[2] This development policy is largely still in force due to the fact that the same political party has been in power since independence and Malaysia has not experienced an alternative government. The constitutional and legislative framework supporting these economic policies not only restrict the traditional civil liberties of speech, assembly and movement, but also restrict the freedom of religion. The authoritarian style of government has translated into authoritarian management of workplaces, where similar path dependent characteristics are seen in relation to restricting unionisation[3] and enhancing managerial prerogatives, thus producing 'rules' that are management-centred (Syed Ahmad, 1997). In pursuit of the country's economic policies and in capitalising upon the forces and consequences of globalisation and the free market, a convenient large pool of docile labour from Indonesia, Myanmar, Nepal, Vietnam, Cambodia, the Philippines, Bangladesh, India, Pakistan, Sri Lanka and China became available in the form of unskilled migrant workers who were vulnerable, dependent, hardworking and compliant.

Given the weak institutional framework operating for the local labour force, it is hardly surprising that blue-collar (unskilled or semi-skilled) migrant workers, who are the most vulnerable of workers, are marginalised even further and that the State is the lead actor in this marginalisation process as it is the main regulator. Out of 183 countries surveyed by Transparency International, Malaysia sits at an uncomfortable 60 with a score of 4.3[4] on the 2011 Corruption Perceptions Index, which measures perceptions of corruption in the public sector. Results over the last ten years show that Malaysia has been progressively recording lower scores on the Corruption Perceptions Index, thus revealing a path dependent pattern of governance. This article provides an evaluation of whether, regardless of this path dependence, there are nonetheless, avenues for the betterment of the blue-collar migrant worker's welfare and work experience, given that Malaysia has made numerous international commitments in this regard and therefore has a responsibility to deliver the required outcomes. In the absence of more significant legislative reform, it is important to frame responses and solutions within the country's path dependent framework as one cannot ignore the political reality.

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[2] Article 153 of the Federal Constitution of Malaysia confers a discretionary power on the Head of State to safeguard the special position of the Malays and natives of Sabah and Sarawak, whilst also safeguarding the legitimate interests of other communities.

[3] See *Assoc of Bank Officers Peninsula Malaysia v Mins of Labour & Ors* [1989] 1 M.L.J. 30; *Non-Metallic Mineral Products Manufacturing Employees Union v Director General of Trade Union & Ors* [1990] 2 I.L.R. 97.

[4] With a score of 0 being most corrupt and a score of 10 being least corrupt.

Migrant Labour Welfare — Whose Responsibility and What Are the Rules?

As discussed above, due to the path dependent institutional setting for labour in Malaysia, solutions need to be framed within the prevailing institutional setting and dynamics both nationally and in the region. It is interesting to note that all the sending countries of migrant workers consistently scored lower on the Corruption Perceptions Index when compared to Malaysia. As such, genuine self-regulatory multi-lateral standards-setting agreements and Memoranda of Understanding (MOUs) between the sending countries and Malaysia become illusory. Who then is responsible for migrant labour welfare? The answer must be one of joint responsibility among all the actors involved and these not only involve the sending and receiving states, but also, more importantly, include the various business entities, agents and end-users of the service provided by migrant workers. Therefore, certain ground rules in the form of principles relating to procedural and substantive fairness must apply to issues impacting upon migrant workers' welfare as these issues qualify for protection as human rights.

A survey of the present system of apportionment of responsibility reveals a highly decentralised system involving official work permits issued at the discretion of states and flimsy contracts drafted by untrained 'agents', both formal and informal based on market whims and social networks. There is little evidence of credible state or corporate commitment to migrant labour welfare. Therefore, a fresh approach is needed to provide a fresh trajectory for migrant workers' interests given that hitherto, rule-driven path dependence has resulted in a weakening of labour's interests, the most vulnerable being migrant labour.

Although 'external shocks' (Schmidt and Spindler, 2002) like the 1997 Asian financial crisis and the recent global economic slowdown arising from various corporate collapses have the potential to generate new evolutionary paths within a legal system and have provided the impetus for corporate governance initiatives in order to make corporate boards more accountable, formal corporate governance initiatives in Malaysia have been shareholder-centred, rather than stakeholder-friendly (Liew, 2007). In the eyes of a corporation that employs migrant labour in the manufacturing or construction industry, for example, the worker is not recognised as a viable stakeholder because the relationship between them is one of economic imperialism and subjugated dependence. This subjugation takes place through a concerted effort in the form of MOUs, a myriad of contracts and immigration licences negotiated and harnessed among states and business entities.

Therefore, by and large, migrant workers in Malaysia are left alone to fend for themselves. They hardly have a voice in the negotiation process for the

initial terms and conditions within the employment contract, let alone during ongoing employment. Individual employment protection for all eligible[5] employees is found in the Employment Act 1955 (EA), which creates a minimum floor of rights[6] for the very narrow category of employees covered by the Act, of which migrant workers are certainly a part. Apart from the EA, certain provisions of the Industrial Relations Act 1967 (IRA)[7] also impact upon the migrant worker. In excluding certain matters from union negotiation and collective bargaining, Section 13(3) of the IRA implicitly legitimises certain managerial prerogatives. This position conforms to the legal origin theory of common law markets being more employer-oriented, thus endorsing managerial prerogatives (Botero *et al.*, 2004). For migrant workers, these include issues concerning promotions, transfers, employment duties or tasks, termination, dismissal and reinstatement. Since union bargaining, where available, is not forthcoming on these matters, the unskilled migrant worker with language difficulties is left to bargain individually.

However, in the next parts of this article, we demonstrate that there are signs that external global shocks like the 1997 Asian financial crisis and some internal shocks like changes in the political landscape, which have created an unprecedented stronger opposition in Parliament and greater electoral awareness have impacted upon the government and corporations, predominantly multi-national corporations (MNCs) and government-linked companies (GLCs), to produce outcomes that are geared towards socially responsible corporate behaviour. Where such initiatives involve employee welfare, the focus appears to be on keeping the Malaysian and expatriate white-collar workforce happy and engaged, rather than the blue-collar migrant workers. Nonetheless, the potential for change in migrant workers' welfare from the CSR agenda cannot be discounted and must be pursued and actively encouraged.

Therefore, we are of the view that, for Malaysia, initiatives for improved work experience and benefits for migrant workers are, in the short-term, more likely to come from the market, rather than the state. Given the tripartite nature of labour policy in the country, the state, however, plays a crucial role in driving a CSR agenda and may be more amenable to doing so given the soft law nature of corporate codes. This is because the tripartite nature of labour relations in Malaysia encourages 'partnerships' between employers and the government, thus allowing the government to 'cajole' corporate behaviour patterns and outcomes, which are seen to be voluntary and legally unenforceable.

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[5] Generally local and migrant workers earning below RM 1,500.

[6] Comprising wage payments, hours of work, holidays, leave periods, redundancy payments, etc.

[7] The statute that regulates collective bargaining in Malaysia.

We embark next on investigating the role of national labour policies that may facilitate a CSR agenda for migrant workers.

National Labour Policy as Catalyst of Change

As labour relations in Malaysia operate within a tripartite arrangement, involving the State, the Malaysian Trades Union Congress (MTUC), which is the umbrella body representing all private sector unions and the Malaysian Employers' Federation, which represents employers, the government plays an important role in modelling the quality of migrant workers' welfare and engagement in society. Thus far, the mode of migrant labour regulation has largely been through soft law initiatives involving MOUs between sending and receiving states, which create obligations towards migrant workers that are not enforceable. The close partnership between government and business under the country's industrialisation and foreign investment policies, as well as the country's affirmative action policy, which *inter alia* imposes business licence, company directorship and employment quotas in favour of the majority Muslim 'Bumiputera' provide reasons for the government's resistance to formal change that will alter power bases. Bebchuk and Roe (1999) identify interest group politics as a reason for producing systems that are governed by rule-driven path dependence. This is apparent in the Malaysian case.

As such, we are of the opinion that Malaysia, in the short term at least, will continue experimenting with soft law options. The Code of Conduct for Industrial Harmony (the Code) initiated by the government and endorsed by the MTUC and the Malayan Council of Employer Organisations (which was the precursor organisation to the current Malaysian Employers' Federation), was passed in 1975 to guide employers and employees on good industrial relations practices at a time when the workforce was predominantly comprised of Malaysian workers. These provisions on consultation, welfare, reorganisation and dismissals, which are still relevant, are applicable to migrant workers.

The Ministry of Human Resources introduced another major governmental initiative in the form of the National Action Plan for Employment (NAPE) 2008–2010, which sought to implement the ILO's Decent Work Agenda.[8] One of NAPE's key principles which is relevant to the present discussion is 'partnership and development with social partners and stakeholders' wherein:

[8] Available at: http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm, accessed on 5 March 2012.

> For employment, effective partnerships require the development of a favourable policy environment, as well as capacity building of the partners, particularly in the case of workers' and employers' organisations. This means strengthening employer and worker perspectives, *through policies and strategies that enable employers' and workers' organisations to participate more effectively in the governance structures, such as to provide services which help enterprises become "learning organisations"*. Above all, *greater dialogue* is required between the social partners and others concerned to create a greater awareness and commitment to the *development of employment strategies through collective effort* (emphasis added). (Malaysia, Ministry of Human Resources, 2008)

As NAPE is a fairly recent initiative, there has not been any evaluation on how these broad policy statements are being translated into best practices. Apart from ILO-inspired policy initiatives by the government, like the NAPE 2008–2010 above, 'external shocks', such as the 1997 Asian financial crisis and the recent international corporate collapses, have impacted upon Malaysian corporate governance. We move on in the next part of this article to analyse if and how the 1997 Asian financial crisis has created positive outcomes in CSR practices in Malaysian workplaces and how these may be extended to migrant workers.

The 1997 Asian Financial Crisis and Corporate Governance Initiatives

It has been written of transplant countries, such as Malaysia, which inherited and sought to apply the English common law and the Westminster parliamentary system, that legal change has been 'lethargic and erratic' in that there is a tendency for formal law to be irresponsive to the substantial socio-economic changes taking place in the country (Pistor *et al.*, 2002). In terms of corporate governance, the 'lethargy' in formal law change is also heavily influenced by the deeply-entrenched common law market-driven and path dependent cultural ethos of concentrated ownership corporate structure in Malaysia (Khoo, 2003), which impedes power sharing or the allocation of control rights to others, such as employees. Hence, while there may have been significant corporate law changes consequent upon the Asian financial crisis, the introduction of 'stakeholder-related reforms' is unlikely. Such reforms relate to the role of stakeholder-employees in corporate governance, especially the role to be played by employees or their representative organisations such as trade unions, in decision-making by companies.

The 1997 financial crisis revealed several severe weaknesses in the Malaysian corporate structure. Corporate abuse, capricious decision-making, absence of transparency, absence of minority shareholder protection, improper accounting and audit practices, lack of accountability and weak financial

management are only some of the contributing factors towards the crisis (Liew, 2007). Laws, regulations and rules were targeted with the principal aim of enhancing the regulatory framework of public listed companies. The statutory bodies responsible for corporate regulation and reform in Malaysia are the Companies Commission of Malaysia and the Securities Commission of Malaysia. The High Level Finance Committee on Corporate Governance (HLFC), established in 1998 under the auspices of the Securities Commission extensively reviewed the Companies Act 1965 on: (a) provisions involving the duties, obligations, rights and liabilities of directors, company officers and controlling shareholders; (b) provisions pertaining to the adequacy of disclosures and conflicts of interest in transactions resulting in the waste of corporate assets; (c) measures taken to strengthen the quality of general meetings; (d) rights and remedies of shareholders; and (e) the development of effective governance and enforcement mechanisms.

The HLFC Report on Corporate Governance 1999 resulted in the creation of the Malaysian Code on Corporate Governance (MCCG) in March 2000. The MCCG adopted the following definition of 'corporate governance' recommended by the HLFC:

> Corporate governance is the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising *long-term shareholder value, whilst taking into account the interests of other stakeholders* (emphasis added) (Malaysia, Securities Commission, 1999).

The subsidiary position of 'other stakeholders' does not augur well for protection of labour rights, let alone those of migrant labour, as it has to compete with other agendas, such as environmentalists, consumers and others for its position on the CSR stage. Further, the MCCG draws upon the United Kingdom's 'comply or explain' approach set out in the Hampel Committee Report (Liew, 2007). This involves the use of best practice prescriptions together with a rule requiring disclosure of the extent to which listed companies have complied with the prescriptions and where they have not, the reasons. The MCCG was revised in 2007 and consists of three main parts being: Part 1, Principles of Corporate Governance; Part 2, Best Practices on Corporate Governance and Part 3, Principles and Best Practices for Other Corporate Participants. However, these corporate governance initiatives have been described as 'an adapted Anglo-American System' which is strongly shareholder-centred, with concentrated ownership structures (Liew, 2007); a description that fits the legal origin hypothesis for common law market governance. This is in spite of the fact that the definition of corporate governance in the HLFC Report aims to promote

"long term shareholder value *whilst taking into account the interests of other stakeholders.*" None of the statements under the MCCG "Best Practices" mention the interests of other stakeholders or allude to the fact that they will have any direct or indirect voice in the new corporate governance structures and processes. For example, although the MCCG contains a provision on 'shareholders', whilst it is provided that boards should maintain effective communications policies that enable both the board and management to communicate effectively with its shareholders, *stakeholders* and the public, the *duty* to communicate on *operations* of the company and *accommodate feedback*, which is *required* to be factored into the company's business decisions, is only applicable to *shareholders*.

This policy statement, by the Securities Commission of Malaysia, emphasizes a communications policy that centres primarily on shareholders and it is shareholder feedback that is factored into the company's business decisions. The MCCG does not envisage a corporate governance structure for Malaysia that includes stakeholders, such as employees within that communications process contributing towards governance in a meaningful way; not even where employee interests and welfare are in issue or at stake.

Further, on the recommendation of the HLFC, Section 132(1) of the Companies Act was amended in 2007. Previously, Section 132(1) required a director to act honestly and use reasonable diligence in the discharge of his duties. It is now provided that a director must act "*bona fide* in the best interests of the company." The HLFC did not agree that the term 'best interests of the company' should be statutorily clarified, as it believed that there should be flexibility in the system. There is a view that the legal notion that directors must act in good faith in the interests of the *company*, rather than the shareholders, means that boards are able to initiate stakeholder-centred partnerships with employees focusing on productivity and quality as a strategy towards longer-term shareholder value. (Deakin *et al.*, 2002).

However, in the Malaysian context, the absence of statutory clarification in this regard under Section 132(1) empowers the judiciary to exert significant control over what would amount to 'best interests of the company'. Malaysian judges have a choice to either follow the orthodox approach, which takes a shareholder-centred view[9] of 'best interests of the company', or adopt a more 'pluralistic' approach (Wedderburn, 1985, 1993), which seeks to define the 'best interests of the company' in a more holistic manner, taking into account the

[9] *Parke v Daily News Ltd* [1962] 2 All. E.R. 929; *Heron International Ltd & Ors v Lord Grade, Associated Communications Corp plc* [1983] B.C.L.C 244.

interests of all stakeholders, including employees, both local and migrant.[10] The problem for a labour rights approach, however, is that the Malaysian Corporate Law Reform Committee in its report made it clear that Malaysian company law was *not* going to be reformed along pluralistic lines and that the social obligations of a company should not be codified in legislation, but should be dealt with under non-statutory guidelines (Companies Commission of Malaysia, 2008).

It is obvious therefore, that any reform of corporate governance practices in Malaysia requiring stakeholder-centred initiatives consequent upon the 1997 Asian financial crisis will not be detectable through formal law. Although there was extensive legislative and regulatory reform of corporate governance in Malaysia, these did not develop any new corporate governance structures that involved stakeholder-employees. Formal law saw to it that corporate structure remained true to the Anglo-American model with its strong emphasis on maximising shareholder value. As far as Malaysian labour-capital and labour-government relations are concerned, Bebchuk and Roe's (1999) view on rent-seekers[11] rings true in that "as long as those who can block structural transformation do not bear the full costs of persistence, or do not capture the full benefits of an efficient move, inefficient structures that are already in place might persist".

Further, Liew's (2007) finding that the Malaysian corporate governance scenario fits the Shleifer and Vishny model where "concentrated ownership brings potential advantages; for instance the controlling/large shareholder has large monitoring incentives where a controlling shareholder can provide focused strategic direction and long term commitment," supports rent seekers. This is because the national and business strategic agenda does not include the betterment of employee issues, let alone migrant employee issues as a formal corporate strategy. Liew (2007), in her investigative interview on the perspectives of key leading figures in Malaysian corporate governance post-Asian financial crisis, found that the reasons for the 1997 Asian financial crisis included manipulation of funds by controlling directors, lack of ethics, dishonesty, political nepotism, political patronage, cronyism and ineffective governance structures. It is therefore of no surprise that she concluded her study on a pessimistic note that:

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[10] *Fulham Football Club v Cabra Estates* [1994] 1 B.C.L.C. 363; *Re Saul D Harrison & Sons plc* [1995] 1 B.C.L.C. 14.

[11] In the Malaysian context, these 'rent-seekers' include those corporate players who are in comfortable positions either as a result of the affirmative action policy discussed above or those who support it.

> [T]he success of the new corporate governance rules and regulations with the aim of improving corporate governance practices in the country is ultimately dependent on the prospect of limiting the powers of Malaysian controlling owner-managers and bureaucrats' influence on businesses. Although the recent promotion of corporate governance did serve a purpose in increasing the awareness of corporate governance in the country, evidence gathered so far suggests that the recent corporate governance reforms do not seem to have adequate capacity to effectively capture and resolve many of the underlying (political) issues in Malaysia (Liew, 2007).

Whilst it is not within the scope of this article to analyse these issues, it may be said the 'underlying political issues' that currently have an impact on the inadequate voice of labour rights in corporate governance flow from the rule-driven path dependence discussed above, which was instrumental in silencing the labour rights movement over the last century and continues to silence discussion of the rights of migrant workers.

Where then do we go from here? Are there signs that despite this bleak state of affairs, there is hope and scope for labour-related CSR initiatives to emerge and evolve in a way that may benefit migrant blue-collar workers in Malaysia?

Malaysia's Spontaneous Corporate Social Responsibility Model and Hybrid Labour Regulation

Revolutionising formal corporate governance in accordance with the objectives discussed above requires strong political will that, in the Malaysian context, is obviously lacking at the present moment as there are no signs of legislative reform in this area. However, this does not necessarily mean that a Malaysian model of corporate governance may not be developed based on extra-legal initiatives, such as CSR.

Liew's (2007) study revealed that there are cries for a Malaysia's 'own' corporate governance model, as opposed to the current Anglo-American model of corporate governance, which is too strongly shareholder-centred. Liew reported calls for pluralism, a more caring society, transparent government and a business environment with social responsibility. This augurs well for a CSR-based labour agenda that includes issues impacting upon blue-collar migrant workers.

The idea of CSR in Malaysia is not entirely new, as Malaysian companies have long been involved in philanthropy. However, what is new about CSR in Malaysia is the systematic and structured approach towards its 'revitalisation', supported and packaged by the state and its agencies. The starting point can perhaps be traced to the HLFC Report of 1999, which provided an expansive definition of corporate governance which emphasized, not only business

prosperity and corporate accountability in the short-term, but the importance of "realising long-term shareholder value whilst taking into account the interests of other stakeholders" (Malaysia Securities Commission, 1999). In 2006, Bursa Malaysia (the Malaysian Bourse) released its Corporate Social Responsibility Framework (the Framework) as a guide for all public-listed companies, whereby public-listed companies are required to disclose in their annual reports, initiatives on CSR, which includes workplace corporate social responsibility.

Bursa Malaysia's Corporate Social Responsibility Framework defines CSR as "open and transparent business practices that are based on ethical values and respect for the community, employees, the environment, shareholders and other stakeholders." The Framework reiterates the voluntary nature of CSR: "companies are free to adopt what suits them." The Framework focuses on four main areas for CSR practice: the environment, the community, the marketplace and the workplace. Under 'workplace', the Framework specifically addresses a 'quality work environment' and health and safety.

Additionally, in July 2005, the Putrajaya[12] Committee on Government-Linked Companies High Performance was launched. One of its initiatives was the Silver-Book, which contains a set of guidelines on how government-linked companies can contribute to society in a responsible manner and create positive impact for their businesses and for society. The Silver Book defines a 'contribution to society' as an activity undertaken by a business where the primary objective is to benefit the society in which it operates or to benefit groups of individuals or communities within that society. The Silver Book reaffirms that 'social contributions are generally voluntary' and adds that contributions 'can be in the form of cash or kind'. The Silver Book lists seven core areas of contributions to society,[13] which are modelled along the 10 Principles of the United Nations Global Compact.[14] At present, there are 72 Malaysian participants who have signed on to the Global Compact Local Network, of which 66 are companies.[15]

Apart from the government initiatives above, CSR in Malaysia is also promoted by the relevant non-governmental organisations, consultants and 'CSR Malaysia', an organisation formed in 2006. However, in spite of all the hype

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[12] Putrajaya is the administrative capital of Malaysia.

[13] Being (1) human rights; (2) employee welfare; (3) customer service; (4) supplier partnership; (5) environmental protection; (6) community involvement; and (7) ethical business behaviour.

[14] The United Nations Global Compact is an international policy initiative which bridges the gap between various United Nations treaties and declarations on human rights, labour standards etc. and business.

[15] Available at: http://www.unglobalcompact.org/participants, accessed on 15 February 2012.

surrounding CSR in Malaysia, the results of a 2007 survey conducted by Bursa Malaysia on awareness and understanding of CSR among the listed companies on the Kuala Lumpur Bourse were extremely disappointing. The survey revealed that listed companies showed poor understanding and lack of awareness in incorporating CSR policies and disclosures in their daily business operations. A breakdown of the results showed that 11.5% of the companies were in the 'poor' category, while 28.5% were 'below average' and 27.5% in the 'above average' categories. Among companies in the leading category, 67% consisted of multinational corporations.[16]

However, one should be careful in consigning CSR as a transformatory agent for migrant workers to the rubbish heap. The success or failure of a concept such as CSR must be judged against the legal, cultural and political backdrop of the country concerned. In the context of the Malaysian labour and industrial relations system, the Introduction of this article illustrates the existence of a strongly employer-centred system in Malaysia. Against this backdrop, it is not possible, and indeed it is impractical to expect a quick shift in corporate attitudes towards and treatment of migrant workers.

The introduction of CSR in Malaysia and the measure of its success or failure must be, in the short term at least, viewed from a different perspective. Labour-related CSR initiatives in Malaysia thus far can be said to be successful in taking small steps in the right direction because where they have been embraced by companies, their annual reports reveal that this has led to the development of more cooperative approaches to management, as opposed to a pure top-down, command and control type of management, with little or no regard to employee voice. Other benefits include provision of health insurance, training, work-life balance programmes, etc. Although these initiatives may currently relate mainly to the local workforce, there is no reason why the government should not coax corporations to include migrant worker benefits, considering that the state confers annual CSR awards on companies.

Concluding Thoughts

We are hopeful that with greater awareness programmes and training initiated by CSR Asia and CSR Malaysia, CSR will figure significantly in the corporate governance structure of Malaysian companies in the future. A development which may have significant impact upon business is the ISO 26000 'Guidance on Social Responsibility', which was finalised in October 2010.[17] These focus

[16] Available at: http://www.csr-malaysia.org, accessed on 20 January 2009.
[17] Available at: www.iso.org/sr, accessed on 15 May 2011.

upon seven core principles, namely, organisational governance; human rights; labour practices; the environment; fair operating practices; consumer issues and community involvement and development. Although ISO 26000 appears as 'guidance' and compliance is voluntary, Malaysian companies fear that this "will not stop multinational companies and others to compel their branch operations in Malaysia to be in full compliance or risk the stoppage of operations."[18] This will be an important driver of change which could lead to stronger institutionalisation of CSR, including perhaps through formal law if, for example, as will be discussed below, courts recognise and give effect to soft law 'promises'. Employers, of course, heavily resist these winds of change initially with the argument that this will effectively destroy Malaysia's competitive advantage in the global economy.[19]

Initiatives post-Asian financial crisis however, have already begun the process of change in corporate governance thinking towards greater transparency, accountability and integrity in corporate management and governance and it is not a long haul from this to reforming corporate governance through a more inclusive type of governance, one which emphasizes the welfare of migrant workers. Where these initiatives have been translated into workplace policies, courts may treat them as implied terms within the contract of employment, thus making such policies indirectly enforceable where possible. Sundra-Karean (2011) argues that a new avenue of construction of employment contracts may be created through hybrid labour regulation whereby soft law measures, such as policies and codes, may be hardened where there is evidence of incorporation into the contract of employment. This is especially so for Malaysia, where the right to livelihood has been recognised as a fundamental human right,[20] allowing principles of procedural and substantive fairness to be infused into the contract of employment (Sundra-Karean, 2011). As such, the category of implied terms may be widened where implications of fact are made based on corporate codes.

The ground is certainly ripe for more research to be done to measure and evaluate whether the various initiatives discussed here have the potential of creating a new evolutionary path for the experience of the migrant worker in Malaysia.

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[18] *The New Straits Times* (Kuala Lumpur), 22 September 2007.

[19] Ibid.

[20] By virtue of the cases of *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan* [1996] 1 M.L.J. 261; *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 M.L.J. 481; *Rama Chandran R v The Industrial Court of Malaysia* [1997] 1 AMR 433.

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