A large-scale construction site is shown at sunset. The sky is a deep orange and yellow. In the foreground, a complex network of steel scaffolding surrounds a building under construction. Several workers, silhouetted against the bright sky, are visible on different levels of the scaffolding. A tall construction crane is visible in the background on the left. The overall scene conveys a sense of industrial activity and the passage of time.

Connecting the dots: Employee banking, corporate banking and forced labour

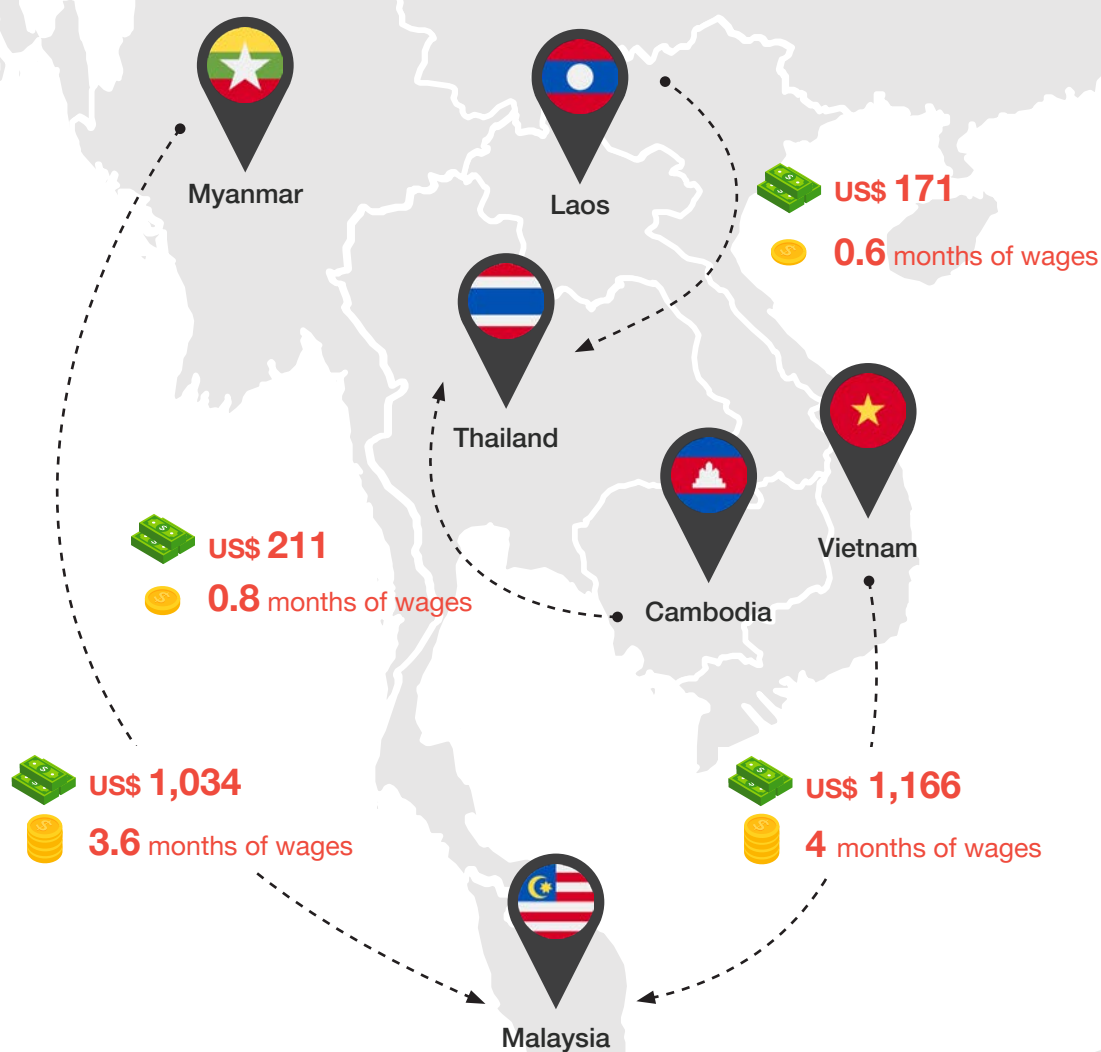
Migrant workers in South East Asia experience challenging economic circumstances and have few legal and social protections in their host countries. The banking industry has a unique opportunity to be a force for progress in this situation.[#]

1 in 5 migrant workers has the terms of their employment contract amended upon their arrival in the host country



Many migrant workers accrue significant debts in migrating from their home country for work. In particular, the average debt of migrants to Malaysia is significantly higher than the rest of the region and we note it is not uncommon to find workers with debt equivalent to 12 months of salary or more despite the average being lower.

Average debt accrued by migrant workers by country of origin and host country



Source: Risks and rewards: Outcomes of labour migration in South-East Asia, ILO

[#]Migrant worker is defined as 'A person who is engaged in a remunerated activity in a State of which he or she is not a national'. The ILO study referenced above considers migrant workers from within South East Asia who migrate to Thailand and Malaysia for employment. These two countries were selected among the ASEAN nations because they are the two largest destination countries in the region.

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Liberty Shared aims to prevent human trafficking through legal advocacy, technological interventions, and strategic collaborations with NGOs, corporations, and financial institutions globally.

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LIBERTY SHARED
CREATING AN ENVIRONMENT
SAFE FROM TRAFFICKING

Introduction

Covid-19 has put a spotlight on the living and working conditions of low-income migrant workers in South-East Asia. The pandemic has exposed the vulnerability of many migrant workers and demonstrated the need for an increased focus on protecting the legal rights and economic interests of this population. A subject where there is an immediate opportunity for action is the provision of 'employee banking' services for migrant workers in some low-wage sectors by the employer's corporate bank. This gives the migrant worker employees of a company a valuable banking relationship that they may not have otherwise been able to access. However, it also exposes the bank providing this service to challenging questions about its responsibility to identify and report examples of improper conduct of the company towards its employees - this is particularly important given the high incidence rate of labour rights abuse experienced by migrant workers. Furthermore, it raises questions as to the information a bank has access to from these employee banking services and how this is captured and used as part of the periodic customer due diligence performed on the corporate entity employing the migrant workers.

In South East Asia, banks provide employee banking services to migrant workers in low-wage labour intensive industries such as agriculture, construction, manufacturing and fishing. These industries have long been plagued by accusations of improper or even illegal treatment of workers including forced labour, wage theft, poor safety conditions, and use of undocumented workers. A common feature of all these industries is the use of overseas migrant workers, whose right to be in the country is tied to the company they work for and their employment status. The employer is also responsible for the provision of accommodation for these workers, usually in dormitories-potentially on the worksite, for example within a plantation or construction site. The impact of some of the companies in these sectors on the environment is a persistent concern - issues such as deforestation, overfishing, air pollution, water pollution, soil degradation, destruction of animal habitats, disruption of ecosystems and the use of toxic chemicals are commonly associated with some companies in these industries. In general, banks consider companies in these sectors in South East Asia to be 'high-risk' clients.

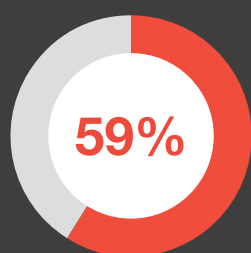
Banks provide banking services to the companies in these sectors such as cash management, credit facilities, trade finance, treasury services as well as payroll. Given the size and complexity of some of the companies, these relationships can be significant for the banks in question and may require a dedicated relationship manager. As they are high-risk clients, they should be subject to frequent periodic customer due diligence.

Banks can also provide basic banking services to the employees of their clients as part of an employee banking service. Workers may encounter bank sales staff at their worksites or may be recommended to visit a branch upon the start of their employment contract. This is an important route to financial inclusion for migrant workers. Branch staff are likely to have continued interaction with these workers beyond the onboarding process, both on worksites and in branch. However, the information the bank has access to through its frequent interaction directly with migrant workers is not currently systematically considered from an anti-money laundering perspective, including through periodic customer due diligence.

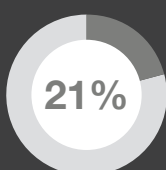
The close ties between companies in these sectors and their primary banker, viewed alongside the relationship the same bank has with the employees of the company, provide the banks in question a unique position to be able to identify and report red flags relating to the treatment of employees at worksites. At its most basic level, banks are privy to both sides of the transactions between employer and employee i.e. payroll and salary crediting, but they also have regular access to employees through the employee's visits to branches and bank staff site visits to the employees' place of work and lodging.

This paper looks to address both the responsibility of the bank towards the employees it banks and how banks should look to use information from employee banking activities in their due diligence of corporate clients.

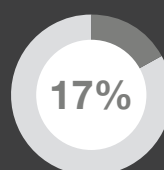
Labour rights abuse experienced by migrant workers



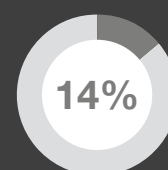
Experience at least one form of labour rights abuse



Confiscation of ID



Withholding of wages



Wages below minimum

Source: Risks and rewards: Outcomes of labour migration in South-East Asia, ILO

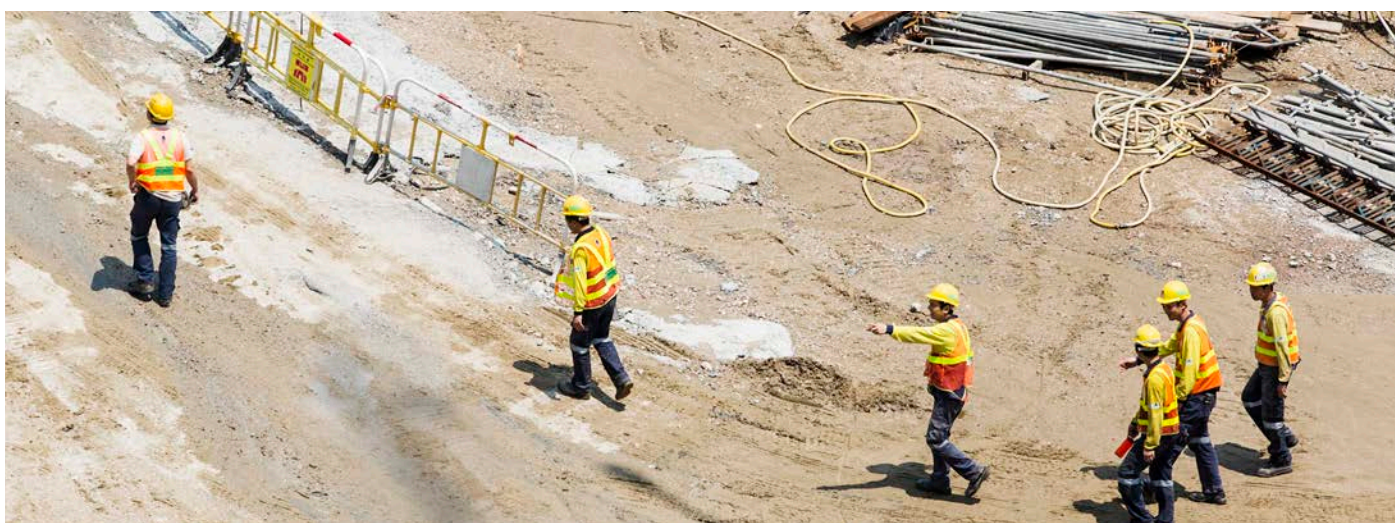
The need for action

Banks must examine the relationship between employee, employer and the bank, and consider their obligations to all parties.

Banks have similar legal and moral obligations to all customers, including migrant workers and large corporate clients. However, given the imbalance in economic benefit to the bank of serving a typical migrant worker compared to a large corporate client, banks may face a conflict of interest should they become aware of a corporate client mistreating a migrant worker employee banking client. Essentially, the bank faces a real or perceived risk of damaging commercial consequences from escalating an issue relating to the mistreatment of migrant workers by their corporate client. These risks must be captured and actively managed in order to realise the substantial benefits of increased financial inclusion for low-income workers and society at large.

Understanding and managing these relationships successfully is also key to reducing regulatory exposure. Providing banking services to corporations that are involved in forced labour or other illegal labour abuse, may constitute a form of money laundering and has associated regulatory consequences. This is especially true if a bank is processing both ends of transactions that may involve wage theft, particularly when migrant workers arrive in a position of vulnerability from their recruitment.

Public exposure of the involvement of banks in this behaviour is also likely to result in reputational harm. Even in circumstances where the legal basis for regulatory action is weak, the reputational harm is likely to be significant through the loss of trust in the bank by its customers, investors and employees.



Key areas of focus for banks moving forward

Given the need for action, there are three key considerations for banks moving forward.

- 1 Spot the red flags
- 2 Define your responsibility towards workers
- 3 Perform a holistic customer due diligence



Spot the red flags

What red flags should banks be actively looking for in their dealings with migrant workers who are part of an employee banking program?

Banks should empower branch staff to be active participants in the fight against financial crime. Proper training on forced labour in supply chains and the relevant local and international laws is necessary for bank Financial Intelligence Units and front-office staff. For branch staff in relevant locations, where there is ongoing interaction with workers as part of their onboarding and routine ongoing service provision, there needs to be training on actively spotting and flagging the signs of forced labour.

Some of the key red flags that branch staff should be trained to observe include:

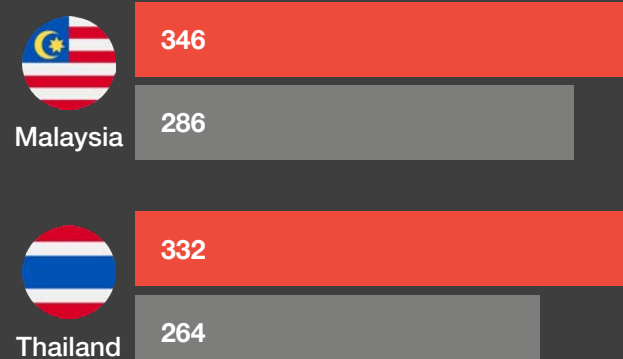
- Do workers have all the paperwork required to open an account and are the documents genuine?
- Are they working in an industry or circumstances that have a high risk of forced labour?
- Do workers have a pre-existing vulnerability based on the mode of their recruitment?
- Do workers claim to not be in possession of their own identification documents for onboarding or approval of transactions?
- If not, do workers have a signed written consent form allowing their employer to retain their passport?
- Have legal rights and obligations been explained to the migrant workers in a language they understand?
- Do they appear to be making decisions independently or is another person/ entity making decisions on their behalf?
- Are workers accompanied during the account opening process?
- Do workers appear frightened during account opening or while making transactions?
- Do workers show signs of physical harm or emotional distress?

- If visiting the worksite for customer recruitment or account management, are there signs of abuse?
- Are salary payments into workers accounts irregular over time and do workers understand why the amounts change cycle by cycle?
- Do workers ask questions of bank staff in relation to salary amounts received and raise concerns about any perceived shortfalls?
- Do workers consistently receive below lawful minimum wage?
- Are workers withdrawing large amounts in cash (to repay creditors/loan sharks)?

Alongside this training and the definition of red flags, there should also be clear lines of escalation for issues related to forced labour, both within the branch and to head-office and through both business and compliance.

Average migrant worker salaries are **less than the stipulated minimum wage** in the host countries.

Monthly (US\$)



Legend: ■ Legal minimum wage*
■ Average wage paid to migrant workers

Source: Risks and rewards: Outcomes of labour migration in South-East Asia, ILO

*Legal minimum wage includes regular and overtime pay



Define your responsibility towards workers

What is the bank's responsibility towards its employee banking customers?

Banks have a responsibility towards all their customers in-line with their code of conduct and internal policies, including any customer charter they may have in place. They may also subscribe to industry standards around ethical business practices, integrity and fair treatment of customers set by regulators or other industry bodies.

Frontline and customer-facing staff can act as an effective first line of defence in relation to customers making transactions that may be fraudulent in nature, for example questioning the rationale for large or unusual cash withdrawals. Observant well trained tellers can be an effective control to prevent such transactions and protect their customers' interests.

by the corporate's bank is the only route open to the migrant worker to establish a banking relationship in the country they are working in. Whilst banks may generate revenue from such accounts (transaction fees, account maintenance fees, foreign exchange remittance fees/commissions, overdraft fees, travel loans, etc.), the service provided to workers is unlikely to be a significant revenue generating activity for the bank and it is therefore important that the burden on banks in relation to these accounts is not so excessive such that the employee accounts are no longer commercially viable and the bank withdraws the service.

To manage this balancing act, banks need to clearly define their risk appetite with respect to employee banking of migrant workers, including defining their responsibilities to the workers and fully considering the legal and reputational damage they could be exposed to. Having defined the risk appetite they should then develop the accompanying policies, procedures and governance to support this.

Financial System as a control: The perils of mistaking de-risking for effective risk management

The formal financial system is one of the strongest defences against the risk of human trafficking as there are basic identification and verification requirements that must be met as well as proper regulation of the products and services provided. The informal or semi-formal financial system often imposes high interest rates for borrowing, aggressive collection methods, high transaction costs for remittances and provides no oversight. When not part of the formal financial system, workers usually make and receive payments in cash which increases the likelihood of theft and makes financial planning, and in particular debt repayments, more challenging.

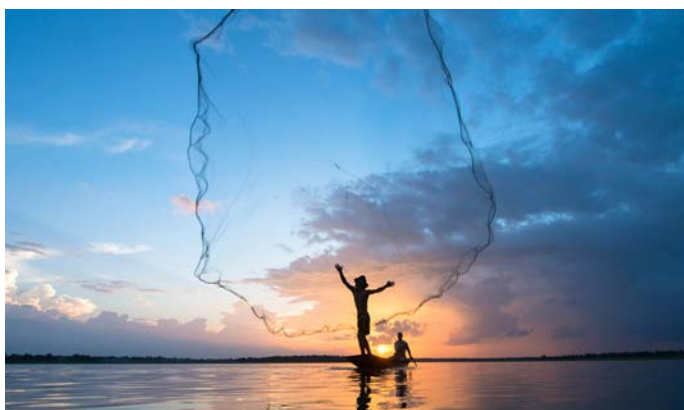
Therefore, enabling increased financial inclusion is one of the best ways for banks to be good corporate citizens. While it may be tempting to offboard accounts of low-income workers, especially when the cost of maintenance exceeds revenue, this would leave these workers in a more vulnerable position. Banks who are looking to strengthen support for the vulnerable migrant workers populations could offer services such as basic financial health checks and debt consolidation plans.

How are on the ground insights obtained through employee banking relationships used in the related corporate customer due diligence?

Through its role working with both migrant workers and senior executives in management or governance roles, banks have a unique vantage point to observe and influence the decisions and operations of the companies they work with. To leverage this effectively, the identified red flags from branch staff must be escalated from branch level to both head office risk and business representatives, in addition to law enforcement where appropriate. When findings are proven to be valid, these should be then fed into proactive client conversations about the ongoing governance and controls that need to be implemented.

Where information is available to banks about forced labour and other illegal activities, this information must be systematically considered as part of client due diligence, especially when that information is residing already within the bank's people and systems – specifically including information and insight from the business as the first line of defence. Putting in place the right controls and governance to evaluate this intelligence from branch staff is likely to be low cost and highly effective.

Where applicable, a mandatory part of customer due diligence should be an assessment of any migrant worker employee banking program, with any issues arising from the program being formally documented and the impact assessed by both business and risk representatives. If examples of forced labour or other illegal practices are identified, they would likely materially impact the outcome of the bank's customer due diligence of its client and threaten its ability to continue to service the client.



Conclusion

There are frequent and disturbing examples of migrant workers being mistreated by their employers. While banks are not responsible for the actions of the company they are banking, they do have some responsibility to all their customers, especially when they already have access to information that could potentially be used to report illegal labour abuse or educate senior client stakeholders of issues within their organisations.

To clarify the responsibility of banks towards migrant worker clients, banks need to clearly define their risk appetite with respect to employee banking of migrant workers, taking into consideration the relationship they have with both the worker and employer. The risk appetite should consider the legal and reputational damage they could be exposed to through their employee banking of migrant workers. As part of this, banks should bring together information from their employee banking programmes into their customer due diligence processes so that they can make an informed determination of how the risk profile of each customer compares to their risk appetite.

Banks must also look for ways to formally prevent their own financial interest in the corporate relationship from overriding the interests of their banking relationship with workers, for example through adequate segregation of duties between the corporate and employee banking teams as well as developing and engaging a strong independent risk management function.

Given the social impact of the abuse of migrant workers, where banks identify examples of mistreatment relating to one of their clients, these findings should be used to educate other banks about red flags to be aware of. This kind of actionable intelligence sharing will help drive change on an industry level. For example, findings from one fishing client could drive conversations at the boardroom level around what controls and governance other companies in the same industry need to prevent a repeat of the situation at multiple financial institutions.

Finally, we encourage banks to consider their approach to providing employee banking services and with the goal of financial inclusion, offer these services to all corporate clients in sectors where there are known issues with financial inclusion and labour abuse.

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