

# **Framework Dispute resolution mechanism for the Myanmar Guideline on Freedom of Association (FOA)**

Agreed by the Industrial Workers' Federation of Myanmar (IWFM)  
and the Employer Working Group (EWG) of ACT brand suppliers

## **Purpose of the Dispute Resolution Mechanism (DRM)**

1. The Myanmar Guideline on Freedom of Association (hereinafter "Guideline") offers workers, trade unions and factories a basis for solution-oriented cooperation. Both sides shall engage and negotiate in good faith.
2. This mechanism supports the resolution of disputes in relation to the application of the Guideline. Rights disputes arising related to Freedom of Association (FOA), or to the content or interpretation of the Guideline shall be referred to this mechanism.

## **General Principles**

3. Every worker will have the right to submit a complaint pertaining to the application of the Guideline without suffering any prejudice whatsoever as a result.
4. Any complaints submitted will be examined via an effective procedure which is open to all workers.
5. Workers will have the right to be present and to participate directly in the procedure.
6. Workers will have the right to be assisted or represented by a trade union representative.<sup>1</sup>
7. The employer will have the right to be assisted or represented by a higher-level organization.
8. Workers should not suffer any loss of earnings as a result of the time taken to participate in the procedure, up to and including participation in any external conciliation or arbitration.<sup>2</sup>
9. Workers who file grievances will not suffer any prejudice whatsoever (discipline, transfer, demotion, etc.) for having, in good faith, brought forward a complaint.
10. Trade union representatives will be considered on duty and compensated as defined in paragraph 10 of the Guideline while participating in joint meetings with management.
11. The parties will engage in good faith towards resolution of any dispute.

## **Step 1: Addressing disputes at factory level**

12. In principle any case should be solved as close as possible to where it occurs. A worker or a group of workers who would like to raise an issue about the application of the Guideline should do so with their closest supervisor, leader, or manager with a view to find a mutually agreeable solution.

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<sup>1</sup> This includes trade union representatives of a pre-registered trade union as per Section 1, Paragraph 4 of the Guideline or a representative of a higher-level trade union.

<sup>2</sup> The term "workers" includes workers directly affected by the dispute, their representatives and any other worker from the enterprise whose participation is considered relevant to the resolution of the dispute. The term "earnings" includes the full provision of all rights to which the particular worker is normally entitled (base salary, bonuses, allowances etc) as defined under Paragraph 10 of the FOA Guideline.

13. If the worker or group of workers fear retaliation or feels that the dialogue at this level does not lead to a mutually agreeable solution, they can also bring the issue up directly to a higher level in the factory.
14. Representatives of factory management wishing to raise an issue about the application of the Guideline should do so through the process outlined under Section 2 of the Guideline.
15. Every effort should be made to reach mutual agreement on the issue through the dialogue process outlined under Section 2 of the Guideline within no more than 7 days from the day when the case is filed in writing to the attention of the other party. If the assistance of a higher-level organisation is sought, the total time should not exceed 14 days. The parties can agree on a longer period of time if they feel that this is required for finding a solution.
16. If the parties reach mutual agreement, the agreement will be documented in an agreement signed by the parties involved.
17. If a satisfactory agreement cannot be reached at factory level, either party can also have access to a representative of a higher-level organization including representatives from outside of the factory. If either party calls in a higher-level organization, they will notify the other side.
18. If a solution cannot be found through the procedure at factory level, the complainant(s) (employers, workers, or trade union representatives) can request a decision by the Guideline Monitoring committee, provided that they can prove with documentation (for example meeting minutes or request letter for a meeting at factory level) that they have tried to solve the issue at factory level.

### **Guideline Monitoring Committee**

#### *Composition*

19. The Guideline Monitoring Committee (the "GMC") consists of five representatives from IWFM, and five representatives of the Employer Working Group.
20. Disputes will be heard by a Panel consisting of two representatives of each side who will jointly represent their respective GMC group (the "Panel"). Representatives from the GMC will serve on the Panel. Representatives from the concerned brands and IndustriALL can participate as observers.
21. The members of the Panel will act in good faith and work together to seek solutions to the dispute at hand.
22. If a member of the GMC has been involved in assisting the case at factory level, that member will not be part of the Panel handling that case. Any other conflicts of interest should be brought to the attention of the GMC and the individual GMC member should recuse him/herself from hearing the case.
23. The Panel meetings will be moderated by the Secretariat to the GMC. If one of the employer or trade union representatives on the panel feels that an external facilitator with technical knowledge is needed, an agreed external facilitator can be brought in on an ad-hoc basis at the request of either side of the Panel.

#### *Guideline Monitoring Committee Secretariat*

24. The GMC will be supported by a Guideline Monitoring Secretariat (the "GMC secretariat") fulfilling the necessary technical and administrative functions. Upon the instruction of the Panel, the GMC

secretariat will conduct fact-finding and investigation and support case handling as appropriate. The administrative responsibilities of the secretariat include liaising with the GMC's members, organizing meetings, producing agendas and minutes, compiling, and maintaining the decisions of the GMC, and logistical arrangements for meetings or other processes.

## **Step 2: Addressing Disputes through the Guideline Monitoring Committee**

25. Disputes that have not been resolved under Step 1 at a factory level should be submitted to the GMC via the GMC secretariat in writing via email using an agreed DRM form.
26. The Secretariat shall notify the members of the GMC within 24 hours of receiving the case. Notification shall include all relevant documentation.
27. The Panel will make efforts to support the disputing parties to find solutions. Upon being notified of the case, all Panel members shall review the relevant documentation and decide within five working days whether to:
  - a. ask for more documentation including documentation of attempts to resolve the case at factory level, such as an invitation letter for a factory level meeting that has been ignored or engage in fact finding / investigation;
  - b. convene the relevant parties to a meeting within 10 days of the notification;
  - c. dismiss the case if it is outside of the scope of the FOA Guideline as defined under Paragraph 2 above.
28. If the parties to the dispute reach agreement, then it is binding on the parties.
29. If the parties to the dispute have not reached agreement, a decision will be made by the Panel by consensus within 20 days from the time of notification of the GMC. The decision will be documented by minutes that are signed by all parties involved.
30. Any consensus decision of the Panel is binding on the parties.
31. All communication and minutes related to a case shall be documented in writing (including email, text message, letter, fax) and kept confidential to parties external to the process.

### **Step 2.1 Mediation**

32. The ACT Secretariat will support the establishment of a group of qualified, neutral mediators that can be engaged in the case where a consensus decision cannot be reached by the GMC. The GMC will review and agree upon the individuals that are included in the group of independent, qualified mediators.
33. If the Panel cannot come to a consensus solution, employer or trade union representatives on the panel can request a facilitated mediation for finding consensus with the help of a qualified, independent mediator from the group of neutral mediators jointly agreed by the GMC.
34. Any consensus decision of the GMC Panel reached through mediation is binding on the parties.
35. The timeline for mediation is 10 days for the GMC panel to come to a mediated agreement on the case. The GMC panel can agree on a longer period of time if they feel that this is required for finding a solution. All the parties including observers may request an extension of the timeline of the DRM process. The decision on an extension of the timeline will be taken by the GMC panel.

36. For the pilot phase, in case of not reaching a mediated agreement, the mediator will issue an expert opinion in writing that will be acted upon in good faith as appropriate.

### **Step 2.2 Arbitration**

37. For cases in which the mediation step of the Framework DRM has been exhausted, and a consensus by the GMC panel has not been reached as to whether a violation of FOA has taken place, the parties to the FOA Guideline will seek to establish an appropriate mechanism for arbitration after the pilot phase.

### **Non-compliance**

38. In case an employer does not engage with the trade union on the basis of the Guideline, does not engage in the Framework DRM or ignores a decision of the Guideline Monitoring Committee, the trade union can turn to IndustriALL. IndustriALL will require on the basis of its Memorandum of Understanding with ACT member brands that the brands enforce compliance with the outcomes<sup>3</sup> of the dispute resolution mechanism. Non-compliance by an employer will ultimately<sup>4</sup> result in termination of the business relationship between the employer and the ACT member brands.

39. IWFM will dissociate itself from any action taken by workers, including IWFM affiliated Basic Labour Organisation (BLOs) which are contrary to GMC consensus decisions. As these consensus decisions of the GMC will be put in writing, IWFM will make sure that its members are aware of the GMC consensus decisions.

### **Compiling agreed decisions of the Guideline Monitoring Committee**

40. Consensus decisions of the Guideline Monitoring Committee will be compiled and published as a point of reference.

### **Review of the framework dispute resolution mechanism**

41. The parties agree to assess this Framework Dispute Resolution Mechanism in terms of serving the objectives of the Guideline after 3 months from the launch and consider any necessary adjustment to ensure improvements if regarded necessary.

### **Procedural Guidance**

42. Procedural details are specified in the Procedural Guidance to the Framework DRM.

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<sup>3</sup> In the context of the Framework DRM, the term outcomes refers to agreements between the disputing parties or decisions of the Guideline Monitoring Committee.

<sup>4</sup> The definition of “ultimately” including the timeline and escalation steps will be agreed between ACT member brands and IndustriALL. Language will be included in the definition of “ultimately” that clarifies that disengagement is intended as a last resort drawing from language included in OECD Due Diligence Guidance.

## **Annex 1: Procedural Guidance to the Framework DRM**

### **Hearing of the disputing parties**

1. The disputing parties have the right to be heard by the GMC panel in the process.
2. The GMC panel will determine whether an agreement can be reached by the parties, or whether the GMC panel needs to take a decision on the case.

### **Meetings of the GMC**

3. Where the panel cannot agree on a case, each side (e.g. 2 representatives) will go back to the other members of the GMC (e.g. the remaining 3) to consult.
4. If the parties decide to consult their respective sides because the GMC panel cannot come to consensus, then this could be the point where they could ask for an external facilitator.

### **Admissibility of cases to the pilot DRM**

5. Cases can only be brought to the GMC latest 2 months after the start of the pilot DRM

### **Worker compensation**

6. According to Paragraph 8 of the Framework DRM “Workers should not suffer any loss of earnings as a result of the time taken to participate in the procedure, up to and including participation in any external conciliation or arbitration”. This is defined as follows:
  - a. The term “workers” includes workers directly affected by the dispute, their representatives and any other worker from the enterprise whose participation is considered relevant to the resolution of the dispute.
  - b. The term “earnings” includes the full provision of all rights to which the particular worker is normally entitled (base salary, bonuses, allowances etc) as defined under Paragraph 10 of the FOA Guideline.

### **Remedy**

7. When a violation of the FOA Guideline has been identified, the complainant shall be made whole again. Ideally, workers shall be reinstated to their previous position, with the same wage and benefits and years of service with payment of the compensation from the date of dismissal to the date of reinstatement.
8. Salaries should be calculated with the amount of money which individual workers usually earn on average over the period of three months without overtime pay that include any kinds of bonuses and cash benefits.

## **Annex 2: Agreement on piloting the Framework DRM**

- a. The Framework DRM will be piloted up from 24 August 2020 (with some flexibility) for a period of three months.
- b. After three months, the Framework DRM will be reviewed. If needed, either party can request an earlier review to address issues that may occur.
- c. The deadline for bringing a case to the GMC during the pilot period is two months from the launch date of the Framework DRM pilot.
- d. Both sides will appoint 5 members of the GMC in line with the provisions outlined in the Framework DRM.
- e. The ACT secretariat will support the pilot DRM on three different levels:
  - a. Support the pilot GMC secretariat by contracting and funding a person who would do the coordination and admin for the GMC.

- b. Support the pilot GMC by contracting and funding a person who can be called in as neutral facilitator for the GMC if requested by either party. The ACT Secretariat will also support the establishment of a group of qualified, neutral mediators.
- c. Support the continuation of an advisor to the employers and trade union respectively.
- f. The pilot is understood as a learning opportunity for the ACT secretariat to make sure to support with the right architecture.

### Annex 3: Flowchart of the Framework DRM

