

Myanmar Guideline on Freedom of Association (FOA)

Yangon, 13 November 2019

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Preamble

Having convened for regular negotiation meetings, and having met on 25-27 October 2019 in Yangon;

Recognizing that the Myanmar garment, textile, footwear and leather industry (hereinafter industry) can play an important role in creating employment and contributing to further economic development;

Acknowledging that freedom of association – the freedom of workers and employers to form and join organisations of their own choosing – is a fundamental human right;

Aiming to achieve constructive social dialogue between employers and trade unions to ensure a sustainable industry with continued international investment;

Understanding that social dialogue built on mutual respect and trust is the surest mechanism for preventing and resolving disputes which may arise occasionally as a result of diverging interests;

Committing to the effective implementation of freedom of association as defined by the relevant core labour standards¹ of the International Labour Organization (ILO) and taking an open and collaborative attitude towards the activities of trade unions as outlined in the code of conduct of the Myanmar Garment Manufacturers Association (MGMA);

Seeking effective, good faith cooperation between employers and trade unions as a way to contribute to enhanced stability, higher productivity and improved working conditions;

Affirming the commitment to develop a dispute resolution procedure in order to ensure the effective implementation of the provisions outlined in this document;

Underlining the need for responsible purchasing practices of global brands to support this cooperation between employers and trade unions;

Acknowledging that the application of the FoA Guideline will become a part of the ACT² member brands' FoA requirements for suppliers;

Expecting the full support of the International Labour Organization (ILO) and ACT members for the implementation of this Guideline;

The delegates of the Employer Working Group consisting of factories in the industry – both Myanmar and foreign-owned - producing in Myanmar for ACT member brands and the Industrial Workers' Federation of Myanmar (IWFM) affiliated to the Confederation of Trade Unions of Myanmar (CTUM) and IndustriALL Global Union agree on the following Guideline on Freedom of Association.

¹ The parties agree that any reference to Myanmar law reflected in this agreement is understood to mean to the extent that the law is in compliance with International Labour Standards (ILS). When Myanmar law is not in compliance with ILS, the parties shall be guided by ILS and the interpretation given to them by the ILO Supervisory Mechanism.

² Action, Collaboration, Transformation (ACT): more information on www.actonlivingwages.com

Section 1. Right to Freedom of Association

1. The employer shall respect the right of workers to form and join trade unions within the company premises.
 - a. This includes that no worker should be intimidated, harassed, discriminated against or dismissed by reason of participating in the formation of a trade union, trade union membership or legitimate trade union activities, while in the process of forming a trade union, during its existence and after its dissolution.
 - b. This does not preclude the right of management to issue a warning or take legal action against any worker who has violated applicable rules and regulations with evidence.
2. The employer shall acknowledge the existence of the various unions in the company without discrimination. No employer shall initiate or influence the establishment of a union or in any way act to interfere with the union's independence and seek to bring it under his or her control.
3. The employer shall not interfere in any way with workers forming a trade union or trade unions carrying out their legitimate³ trade union activities and do not contravene the CBA or other applicable laws and regulations.
4. Engagement with trade unions that are in the process of registration (pre-registered trade unions):
 - a. Management should engage with a Basic Labour Organization (BLO) that is in the process of registration if the BLO provides management with a statement signed by the BLO executive committee members that includes:
 - (1) the names of the elected executive committee members;
 - (2) and the estimated number of trade union members employed in the factory.
 - b. When a. is fulfilled, management should engage with the executive committee members of the pre-registered BLO in social dialogue. This includes, for example, offering place and time within the factory premises to hold internal discussions, receive trainings, or discuss the concerns of the workers. A dispute settlement agreement can be reached and signed to solve the dispute.
 - c. When a. is fulfilled, and where both the BLO executive committee and factory management agree, a request may be made to a higher-level labour organization to intervene in support of a social dialogue process. In such a case, management will facilitate access to the factory.

Section 2. Process for joint meetings between management and trade unions

5. With a view to facilitate constructive social dialogue, Regular joint meetings will take place between a minimum of 3 trade union representatives and management representatives.
 - a. All efforts should be made to ensure continuity of participation of representatives in the joint meetings. Representatives will have the mandate to take decisions and reach

³ "Legitimate trade union activities" are understood by the parties in line with the interpretation of the Committee on Freedom of Association (CFA).

agreement. Other representatives of management or the trade union may be invited on an ad hoc basis.

- b. Meetings will take place at least every two weeks. Senior management (for example general manager or factory manager) will participate in meetings on a quarterly basis (once every three months).
 - c. Proposals for agenda items should be submitted at least 2 days in advance. The agenda will be circulated at least one working day prior to the meeting.
6. Either party may also request an ad hoc meeting to address an urgent concern. The request will include the subject and purpose of the meeting. Not more than 3 trade union representatives will participate unless otherwise agreed.
 7. The minutes of joint meetings between the trade union and management should be circulated to the participants of the meeting within 3 days.
 8. Trade union representatives will be considered on duty and compensated as defined in paragraph 10 while participating in joint meetings with management.

Section 3. Release and facilities for trade union activities

9. The employer shall release trade union representatives from their work duties for the purpose of undertaking trade union activities. A trade union representative will be considered on duty anytime she or he is called to carry out representative functions during regular working hours, and outside of regular working hours upon agreement between the employer and the trade union representative at factory level.
10. Compensation for trade union representatives who are on duty includes the full provision of all rights to which the particular worker is normally entitled (base salary, bonuses, allowances etc). A worker earning bonuses (group or individual) will while on duty as trade union representative receive an allowance equivalent to the average production bonuses he or she has earned when doing regular production work. Alternatively, an allowance reflecting the average bonus payments per working hour at the factory can be paid. It is subject to agreement between the parties at factory level to choose one of the options.
11. For all internal trade union activities⁴ 8 days (64 hours) per month will be allocated for all members of the trade union executive committee during which time the trade union representatives will be considered on duty as defined in Paragraph 10.⁵ This includes that the trade union executive committee decides how to allocate the 8 days among the executive committee members.
12. The employer shall release the trade union executive committee member or trade union members assigned by the BLO for training activities organized by the Industrial Workers' Federation of Myanmar (IWFM) or the Confederation of Trade Unions of Myanmar (CTUM) when provided with an invitation letter. Permission will not be unreasonably withheld.⁶

⁴ In addition to joint activities between trade union and management as defined in section 2.

⁵ This provision applies unless a more favourable policy exists in a factory. In case of a more favourable legal provision, the legal entitlement automatically replaces these terms of release.

⁶ Paid leave for these training purposes falls under the time budget for release as defined in Paragraph 11.

13. To the extent possible, the employer should be notified about meetings inside the workplace prior to the meeting taking place. Requests for external activities should take place with as much advance notice as possible, normally two days in advance.
14. The employer will release the trade union representatives or members for participation in social dialogue activities prescribed by the law such as participation in the Township Conciliation Body, Arbitration Body, and Arbitration Council and national tripartite committees. This will be considered as on duty.
15. Any additional time beyond the time allocated above will be negotiated at factory level between the employer and the labour organization.
16. Employers will support the implementation of union activities within the company in such ways as:
 - a. Trade unions may request with three-day prior written notice access to meeting space within factory premises as designated by management. The request should indicate the purpose and duration of the meeting. In circumstances where the 3-day prior written notice cannot be provided, the company should accommodate the request should a meeting room be available.
 - b. In case a factory does not allow workers to bring phones to the workplace, the trade union may request management to use the factories telephone, or to have access to their own phones.
 - c. Registered trade unions can use a sign reflecting the name and logo of the trade union within the company premises in an appropriate and visible location agreed with management. If an employer provides a space or room to be used as a trade union secretariat, the trade union may put the sign around the location of this space.
 - d. Trade union representatives not employed in the workplace but with members employed therein should be provided access to the workplace. This access is subject to prior request stating the purpose, time and intended duration of the visit and is subject to approval from management. Approval should not be unreasonably withheld.
 - e. The employer may upon request provide a space or room that is appropriate and hygienic within the company premises to be used as a trade union secretariat.
 - f. The employer shall allow the trade union to hold meetings with its members within the factory premises. In general, meetings will be organized outside of working hours. Any meetings to be held during working hours will be discussed at the factory level.
 - g. The employer should provide a notice board to the trade union in a visible location in the factory where the trade union will have the right to freely display information.

Section 4. Dismissal procedure

17. With regard to dismissals, all workers shall be treated equally irrespective of their involvement in trade union activities. Workers can only be dismissed or be subject to disciplinary action

with evidence, on the basis of applicable laws and regulations⁷. A worker will not be subject to dismissal on the basis of trade union membership, holding office or having participated in trade union activities.

18. Factories should develop, in partnership with trade unions where possible, consistent procedures for the implementation of dismissal and disciplinary action that should be communicated to the workers and management.
19. The employer should consult with representatives of the trade union, or in the absence of a trade union, with the WCC on proposals to take disciplinary action or dismiss workers. The consultation should be a joint consideration of the cases with a view to arriving to the fullest possible extent at agreed solutions. In the event that the worker subject to disciplinary action or dismissal is a member of the executive committee of the BLO, management shall consult with the federation.
20. The right to make final decisions and the responsibility to implement them rests with the employer, notwithstanding the right of a worker to avail him or herself of a grievance procedure or dispute settlement mechanism. Priority should be given to resolve the problem with the worker through alternative options than dismissal and dismissal shall be the last resort.

Section 5. Collective bargaining mechanism and negotiation process

21. A section addressing the collective bargaining mechanism and negotiation process will be jointly developed by the parties starting June 2020 and with the goal of having a final version no later than December 2020 as part of the annual review of the implementation of this Guideline. Once established, the procedure will become an integral part of this Guideline.
22. Where there are trade unions in a factory, negotiations over wages and conditions of employment and work should take place in good faith with a view to reaching a collective agreement, balancing workers stated needs and those of the employer.
23. There should be compliance with any agreement reached.

Section 6. Strikes, lock-out and picketing

24. Myanmar law⁸ strictly regulates the requirements and conditions under which strikes or lock-outs are permitted.
25. Strike and lock-out should be the last resort if all other efforts at negotiation have failed.
26. Strikes and lock-outs are a means for workers or employers to exert pressure on the other party in the context of a labour dispute.
27. Trade unions and employers should engage in good faith towards resolution of any dispute.

⁷ To the extent that the law is in line with International Labour Standards.

⁸ To the extent that the law is in line with International Labour Standards.

28. Trade unions and employers going on strike or conducting a lock-out should follow the applicable laws and regulations.⁹
29. Nobody shall force workers who are not participating in the strike to go on strike or obstruct their regular work in any way using physical violence or threats against management and workers who choose to continue to work. This prohibition does not extend to firmly but peacefully inciting other workers to keep away from the workplace.
30. Nobody shall use physical violence or threats against workers peacefully exercising their right to strike.
31. The principles of freedom of association do not protect abuses consisting of criminal acts or other offenses under national law while exercising the right to strike, including damaging property.
32. During a legal strike, the employer shall not hire or use workers from outside the factory to replace the strikers.
33. The exercise of the right to strike should respect the right of the management and the non-strikers to enter or exit the premises of the factory. The parties agree to continue discussions on the movement of goods into and out of the factory during strikes. These discussions will be linked to the dispute resolution procedure which will be finalized by 31 March 2020.
34. The Employer should be notified prior to a planned political strike or political demonstrations during working time and a meeting should be held between the trade union and employer to discuss the matter. To the extent possible, the political strike could be held outside of working hours.
35. Management has the right to deduct salary for days of strike.

Section 7. Standards of conduct for management and trade unions

36. Both parties have an obligation of good faith and respect towards each other.
37. In order to ensure good faith and constructive engagement, the parties recognize the importance of having written policies outlining expected behaviour of managers and trade union representatives in workplace relations. Each party commits to review and update its respective policy periodically as needed.
38. All workers, including trade union members and their representatives, have to comply with the law¹⁰, the employment contract and the workplace rules (including providing prior notice to the employer in case of leaving or not coming to the workplace during working hours). While International Labour Standards, Myanmar law and these guidelines seek to ensure that trade union members and leaders are protected against discrimination, this protection does not extend to acts which violate the law, the employment contract or workplace rules.¹¹

⁹ To the extent that the law is in line with International Labour Standards.

¹⁰ To the extent that the law is in line with International Labour Standards.

¹¹ To the extent that they are in line with International Labour Standards.

39. The parties recognize the authority of managers - including different levels of management - to manage the operation of the business and for workers including trade union representatives to fulfil their responsibilities. For example:
- a. Complying to requests to participate in employer-sponsored in-factory training and skills development during regular working hours. Other trainings will happen on a voluntary basis and with overtime pay.
 - b. Complying with reasonable requests relating to a temporary change in production activities.
 - c. Complying with health and safety measures, including wearing personal protective equipment.
 - d. Respecting the procedures specified in the workplace relating to resolving grievances.
40. In recognition of their good faith obligations, the parties will not behave in a manner that is bullying, intimidating, obstructive or undermines the confidence and trust of each other and other people in the workplace, including but not limited to:
- a. Threatening to strike or lockout outside of the process provided for in the law¹², this Guideline and collective agreements.
 - b. Knowingly sharing false information for the purpose of influencing outcomes in the workplace.
 - c. Engaging in vandalism or violence that causes damage to, or removal of, property belonging to the enterprise or the trade union.
41. Trade union representatives should not force workers using threats or physical violence to join the trade union or participate in trade union activities. This prohibition does not extend to firmly but peacefully encouraging or attempting to convince workers to join the trade union or participate in its activities.
42. Managers will remain neutral regarding the choice of the workers to freely decide whether or not to establish or to associate with a trade union of their choice.
43. While recognizing that regular trade union activities may take place during working time, as outlined in these guidelines, they should – to the extent possible – be carried out in a manner that minimizes or avoids disruption to production.

Section 8. Support to factory business activities

44. Where trade union(s) exist in the workplace, management and trade union representatives should hold regular consultations on how to jointly achieve successful business development and a mutually respectful working relationship between workers and management on the shop floor. This may include regular updates by management to the trade union representatives on the economic situation of the company and the requirements for business performance and regular updates by the trade union representatives on how the workplace

¹² To the extent that the law is in line with International Labour Standards.

management and relations at the shop floor can be optimized to achieve the best possible cooperation and motivation of workers. This could include, but is not limited to, issues such as:

- a. cooperating in establishing a good relationship with business partners.
- b. meeting the KPIs of the factory's customers
- c. improving the efficiency including in implementing the job re-allocation for workers where efficiency targets are in question.
- d. improving the product quality
- e. ensuring the on-time delivery
- f. lowering the rework rate
- g. maintaining a good, clean and safe workplace environment
- h. improving the energy efficiency
- i. protecting the environment
- j. increasing factory profitability aiming at increasing workers income.

Section 9. Dispute resolution procedure

45. All conflicts that may arise in the implementation of this Guideline will be subject to a dispute resolution procedure. The parties agree to develop this dispute resolution procedure by 31 March 2020. Once established, the dispute resolution procedure will automatically become an integral part of this Guideline.

Section 10. Implementation and Monitoring

46. Responsibilities of the federation

- a. The federation shall post clear guidance on the trade union notice board at the factory regarding the procedures, regulations, by-laws and any directives prescribed by the labour federation. The federation will bring to the attention of all affiliated trade unions the content of the FOA Guideline.
- b. The federation shall regularly review that trade union activities are carried out in accordance with the federations' own procedures and regulations.

47. Responsibilities of the employers

- a. The employer shall post all relevant information on related rules, regulations, and the FOA Guideline on the factory notice board in local language. The employer will bring to the attention of all management personnel the content of the FOA Guideline.

48. Joint responsibilities

- a. The parties agree to produce a short summary (i.e. 2 pages) or a poster on the content and key principles of the FOA Guideline which will be posted on a notice board for the attention of all workers.
- b. The representatives of the parties will engage in periodic monitoring of the functioning of the Guideline engaging in a dialogue every 12 months, or as requested by either of the parties.

Glossary

Worker and employer representation

Basic Labour Organization	'Basic Labour Organization' (BLO) is the term used in Myanmar law to refer to the first level of trade union organization at enterprise level.
Basic Labour Organization (pre-registered)	A pre-registered BLO is an independent workers' organization that fulfils the criteria for registration under Myanmar law and that has applied for registration but whose certificate of registration has not yet been granted, meaning that the BLO has not yet received Form 6 or 7.
Committee on Freedom of Association (CFA)	The CFA is a committee of the International Labour Organization (ILO) Governing Body established to address complaints from employers' or workers' organizations against their governments. The CFA considers alleged violations of the principles of freedom of association and the right to collective bargaining as laid down in the relevant ILO conventions. A country does not need to have ratified the relevant Conventions for a case to be considered by the CFA.
Freedom of association	Freedom of association is the right of workers and employers to form and join organizations of their own choosing without interference from the state or each other and with a view to using those organizations to pursue their collective interests (ILO Convention 87).
Labour federation	A labour federation is a group of trade unions that organize workers in the same industrial sector and that have formed an association to protect the rights and advance the collective interests of their members.
On-duty trade union official	An on-duty trade union official is any trade union office-holder who is actively engaged in duties connected to their trade union role.
Trade union	Also called a "labour organization" under Myanmar law, a trade union is an independent workers' organization formed to pursue the economic and other interests of its members.
Affiliated trade union	With reference to a labour federation or confederation, an affiliated trade union is a labour organization (basic, township or region/state) that is a member of that federation or confederation.

Social dialogue

Collective Bargaining	Collective bargaining is a form of voluntary social dialogue involving negotiation between an employer (or group of employers) and an independent workers' organization (or group of independent workers' organizations) with a view to concluding a collective bargaining agreement .
Collective Bargaining Agreement (CBA)	A collective bargaining agreement is an enforceable agreement that determines working conditions and terms of employment, regulates relations between employers and workers, or regulates relations

between employers or their organisations and a workers' organisation or workers' organisations (ILO Convention 154).

In most legal systems, the terms of any applicable CBA are considered to be part of a worker's contract of employment. As a rule, whenever the legislation or other regulatory instrument sets minimum standards for terms and conditions of employment, collective agreements may provide terms that are more favourable to workers. In no circumstances should they be *less* favourable.

Consultation	Consultation is a form of social dialogue in which an employer informs and consults with workers' organizations on business issues such as commercial, technical and financial strategy, the (re)design of operational processes and production systems, restructuring, mergers and so forth. The ILO defines consultation as "joint consideration by employers' and workers' organisations of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions" (ILO Recommendation 113). Consultation (sometimes also known as 'workplace co-operation') is not intended to lead to enforceable agreements. The right to make decisions and the responsibility for implementing them rests with the employer.
Good faith	The notion of good faith refers to the attitude of participants in negotiation . Good faith negotiators <i>sincerely</i> adopt behaviours which promote, and do not undermine, the seeking of agreement to the extent that this is possible within the limits of the basic interests of those they represent.
Negotiation	Negotiation is a process of discussion intended to reach an agreement that resolves a conflict of interest between two or more parties. A negotiated agreement is one that is acceptable to each party for their own reasons.
Social dialogue	Social dialogue is any form of information, consultation or negotiation between workers' organizations and employers or employers' organizations. Collective bargaining is not only a form of social dialogue but is one of the fundamental principles and rights at work.

Industrial action

Industrial action	Industrial action is action taken by either workers or employers with a view to putting pressure on the other party to resolve a dispute or defend their economic interests. The most common form of worker industrial action is the strike . Employer industrial action is limited to the lockout .
Lockout	A lock-out is an action taken by the employer. It means a temporary closing of the workplace, or suspension of work or refusal by the employer to allow the workers at the workplace to continue working as a consequence of a dispute between the employer and workers. ¹³

¹³ Section 2(f), Labour Organization Law, (2011); Section 2(h), Settlement of Labour Dispute Law, (2012).

Picketing	Myanmar law does not provide for a definition of the term picketing. In general, picketing means a form of protest in which people congregate outside a workplace or location where an event is taking place. This is often done to dissuade other persons from entering the premises.
Strike	A strike is an action taken by the workers. It refers to a collective action taken at the decision of some or all workers resulting in a suspension of work, a refusal to work or to continue to work, or a slow-down or other collective actions that are designed to limit production or services relating to social or occupational matters in any dispute. ¹⁴ It is distinct from workers exercising their rights to remove themselves from the workplace, having reason to believe that due to a sudden and serious situation their safety and health cannot be guaranteed.
Strike, political	A political strike is one undertaken not with a view to pursuing the resolution of a dispute with an employer, but with a view to pursuing some wider political goal(s).

Workplace management

Efficiency	In the manufacturing industry, the term 'efficiency' is usually used to refer to the ratio of actual productivity to some productivity target, whether this is defined internally to a business or with reference to an external standard. A production line with an efficiency of 100% is meeting its productivity target perfectly.
On-time delivery	On-time delivery is achieved when a customer's order is delivered exactly as specified in the purchasing order.
Rework rate	The rework rate is the proportion of work items rejected by quality control. If quality control is rejecting 8 items of every hundred produced, then the rework rate is 8%.
Key Performance Indicator (KPI)	A key performance indicator is any critical business performance target set by a business. KPIs may be financial or concerned with production. In many businesses efficiency , the rework rate , and on-time are KPIs.

¹⁴ Section 2(g), Labour Organization Law, (2011); ILO (1993): Resolution concerning statistics of strikes, lockouts and other action due to labour stoppages; Section 2(i), Settlement of Labour Dispute Law, (2012).