

## **Freedom of Association Protocol**

### **Preamble**

The Parties recognise and affirm a joint commitment to uphold the right to freedom of association as part of the body of universal human rights.

The Parties recognise the existence of issues and problems in the implementation of freedom of association for workers in Indonesia which impact upon workers' other rights.

The Parties recognise and are aware that as a result of the violations and problems that arise in the implementation of freedom of association, it is not uncommon for union representatives and members to experience victimisation.

The Parties are aware that production processes have continually developed and have become part of global production chains involving workers and companies in numerous different nations.

The Parties recognise the need for fair rules of play in conducting business, especially regarding implementation of the right to freedom of association. For that reason, it is very important that there is joint understanding and commitment between workers and companies regarding the implementation of freedom of association within industrial relations.

The Parties acknowledge that a commitment to uphold the right to freedom of association requires transparency and accountability between workers, suppliers and brands, which will in the long run be beneficial to all parties.

The Parties agree to uphold the right to freedom of association in accordance with the operation of Indonesian laws in the region where the company operates, as well as international laws.

To this end, the Parties agree as follows:

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1 Definitions**

- a. The parties are those who sign this protocol. They comprise of Unions, Brands and Suppliers.
- b. Workers are all those who carry out waged work.
- c. Suppliers are companies that provide goods or services to the brands.
- d. Brands are legal persons or entities that are registered as owning trademark rights.
- e. Unions are organisations formed from, by and for workers, whether within or outside of companies, with the aim to promote, defend and protect workers' rights and interests as well as to increase the welfare of workers and their families.
- f. This protocol is an agreement entered into by the Parties concerning freedom of association.
- g. A collective bargaining agreement (CBA) is an agreement made between a union or several unions that are registered with the authority responsible for workplace relations, with the employer, or several employers or an employers' association and is legally binding for those who create it.
- h. Company regulations are regulations made in written form by industrialists in all companies that produce brand goods and/or services in the total chain of production in Indonesia, which cover work requirements and procedures.
- i. A code of conduct is a guideline for conduct which is made by brands to be implemented in suppliers.

### **Article 2 Scope**

- (1) This protocol binds the parties in the matter of upholding the right to freedom of association, in all companies which produce brand goods and/or services throughout supply chains in Indonesia. For the initial phase this protocol will apply to Suppliers that:
  - (i) Produce finished goods for the Brands, and
  - (ii) Have a direct legal manufacturing contract with the Brands, and
  - (iii) Have workplace auditing conducted by the Brand's compliance team, or
  - (iv) Have a system whereby all auditing of Codes of Conduct or supplier company workplace standards are conducted by a third party auditor.
- (2) Suppliers have an obligation to disseminate the contents of this protocol and encourage its implementation amongst sub-contractors in accordance with the strategy put in place by the National Level Supervision and Dispute

Resolution Committee.

### **Article 3 Protocol Application**

- (1) The application of this Protocol does not negate the rights and responsibilities of the parties as prescribed by legislation, codes of conduct, and other international standards.
- (2) Parties are obligated to implement this Protocol in suppliers covered by the scope set forth by Article 2 above, including both suppliers that have CBAs as well as those that do not.
- (3) In the event that the CBA conditions are inferior to those in the Protocol, the Protocol shall prevail.
- (4) In the event that the CBA conditions are superior to those in the Protocol, the CBA shall prevail.
- (5) Suppliers (see Article 2, “Scope”) are obliged to produce CBAs which encompass the provisions of this Protocol.
- (6) In the event that the company does not yet have a CBA but has a union or union members, the Protocol shall apply.
- (7) Brands must supervise and ensure the implementation of the provisions within this article.

## **CHAPTER II IMPLEMENTING FREEDOM OF ASSOCIATION**

### **Article 4**

Suppliers (in accordance with the scope as defined under Article 2, section 1, subsections (a) (b) (c) and (d) above) are obliged to implement freedom of association including, inter alia:

1. Give workers freedom to form unions within the company premises.
2. Acknowledge the existence of the various unions in the company without discrimination.
3. Not interfere in any way with unions carrying out their organisational activities provided that these activities do not contravene protocol determinations, the CBA or other applicable laws and regulations.
4. Release union representatives or members from their work duties for the purpose of undertaking union organisational activities, with continued provision of all rights to which the particular worker is normally entitled.
5. A release from duties for union representatives and/or members as referred to in section (4) above is to be given:
  - a. Throughout the period of organisational leadership, and
  - b. In accordance with a duty officers’ schedule, and/or
  - c. From time to time as appropriate to union activities.
6. Release from duties as intended in section 5 (a) and (b) above is to be

implemented as follows:

- a. For unions with 10 – 500 members, at least 1 worker is to be released from duties along with at least 1 additional duty officer;
  - b. For unions with 501 – 1,000 members, at least 1 worker is to be released from duties along with at least 2 additional duty officers;
  - c. For unions with 1,001 – 2,500 members, at least 1 worker is to be released from duties along with at least 3 additional duty officers;
  - d. For unions with 2,501 – 10,000 members, at least 2 worker is to be released from duties along with at least 3 additional duty officers;
  - e. For unions with more than 10,001 members, the number to be released from duty should be negotiated internally between the union and the company but should not be less than the number stated in 6 (d).
7. Release from duties as defined in Article 4 section 5 (c) is to be applied to union representatives and/or members who obtain a mandate to implement union activities with co-ordination and agreement from management, and taking into consideration that this does not interfere with production processes.
  8. If regulations concerning release from duties in suppliers surpass the provisions in this Protocol, then those previous regulations still apply.
  9. Union representatives who are released from duties as intended in section 5 (a) must be placed back with the position and job title that they originally held, or an equivalent work position, within seven days of the completion of their leadership period.
  10. There must be no intimidation in any form whatsoever, including demotions, transfers, wage reductions, criminalisation, provision of a work load outside of the worker's capabilities, suspension or sacking of members and/or union organisers, perpetrated against union members or representatives undertaking organisational activities throughout the period of their leadership.

## **Article 5**

- (1) Suppliers shall facilitate the implementation of union activities within the company in such ways as:
  - a. Unions may make use of company meeting space if requested at least 3 days in advance provided that such a meeting space is available. For urgent needs, companies are obliged to provide a meeting room as long as such a room is available (and not in current use).
  - b. Unions may make use of communication facilities such as telephones, fax and internet within the company as long as such facilities are available and in accordance with regulations and procedures as applies to other users within the company.
  - c. Unions may make use of company vehicles if requested 3 days in advance provided that such a vehicle is available. For urgent needs, the company can loan out a vehicle if such a vehicle is available on that day and not in current use.
  - d. Unions may display their organisation's flag at the same level with the national flag, the company flag and the workplace health and safety flag.

- e. Unions may display a union signboard around the location of the union secretariat or in another place provided for such purposes within the company's premises, such as beside the gates or an alternative strategic and appropriate position where it is easily visible to others.
- f. Unions shall be given freedom to receive visitors from union organisations outside the company who are guests of the union in accordance with the regulations in effect within the factory.
- g. The company must assist in deducting union fees from the wages of union members every month and within a period of time jointly agreed upon or at the latest within 10 work days the amount must be given to the relevant union leader depending on the administration processes within the company.
- h. Wage deductions as intended in subsection (g) are to be implemented upon receipt of a letter of authorisation from the union member. The letter of authorisation does not need to be officially stamped.

(2)

- a. Suppliers are obliged to provide a space or room that is appropriate, hygienic and strategic within the company premises to be used as a union secretariat together with furnishings to support the union's activities, including two sets of desks and desk chairs, filing cabinets or cupboards and a table and chairs for guests.
- b. In the case that the company is limited in its ability to provide for the above facilities and fittings, then the company is obligated to make a refurbishment plan with the union's agreement within a timeframe of 6 months.

(3) Suppliers have the obligation to support and facilitate union activities during working hours including:

- a. Routine scheduled meetings, such as meetings between union representatives, as well as between union representatives and members.
- b. Ad hoc meetings as may be required, both between union representatives and between union representatives and members, providing three days' prior notice to the company.
- c. Union educational activities, both scheduled and unscheduled, providing three days' prior notice to the company.

(4) Suppliers have the obligation to support and facilitate union activities outside the company premises, including:

- a. Attendance at both routine and occasional discussions and meetings, with organisational officials, both at company level or affiliates, with three days' prior notice.
- b. Attendance at seminars or education from union organisations, affiliates, other connected organisations, and/or government agencies.

## **Article 6**

- (1) Companies and unions have the obligation to produce a Collective Bargaining Agreement (CBA) within a time frame of not more than six months after the formation of a union in accordance with applicable legal requirements.
- (2) In negotiating a CBA, Unions and Companies shall adhere to the following:
  - a. Companies shall not reject an invitation from unions to negotiate to produce

or renew an agreement.

- b. Companies shall not undertake any form of intimidation against the union delegates in the CBA negotiating team.
- c. During CBA negotiations, union delegates in the negotiation team are to be relieved of their daily work load in accordance with a jointly agreed upon schedule.
- d. During CBA negotiations, union delegates in the negotiating team are to be given freedom to carry out surveys so as to gather data to support the negotiations.
- e. The negotiating team must be given access to information concerning company conditions so as to obtain supportive data, as far as that access does not breach confidentiality provisions as provided by law or by contract with a third party.

### **CHAPTER III FREEDOM OF INFORMATION**

#### **Article 7**

(1) Suppliers are forbidden to impede in any way the distribution of information by unions.

(2) The distribution of information mentioned in section (1) is to be carried out, inter alia, as follows:

- a. Unions can freely attach information to public notice boards. Prior permission from the company is not required but copies of the information may be provided.
- b. Information distributed must not contravene applicable regulations or laws.

(3)

- a. Suppliers have an obligation to provide announcement boards specifically for union information, with a minimum of one board situated in a strategic public space, such as the canteen, the employee rest area or another location used by the company to place announcements or information for employees. If there is more than one union, then arrangements should be made between those unions.
- b. If there is a greater need for announcement boards (there is a large number of employees and / or the location is large), then the union is permitted to use existing information board facilities that are specifically for employees following the stipulations contained in Section 2(a) and 2(b) above and with agreement between other unions (where there is more than one union).

## **CHAPTER IV SUPERVISION, DISPUTE RESOLUTION AND SANCTIONS**

### **Article 8**

- (1) To supervise implementation of this FOA Protocol, the parties are obligated to form an FOA Protocol Supervision and Dispute Settlement Committee no later than 90 working days after the signing of this Protocol.
- (2) FOA Protocol Supervision and Dispute Settlement Committees will be established at company and national levels.
- (3) The FOA Protocol Supervision and Dispute Settlement Committees at the company level will have members from company level unions and company management.
- (4) The FOA Protocol Supervision and Dispute Settlement Committee at the national level will have members from national level unions, Non-Government Organisations, Brands and Suppliers.
- (5) The Standard Operational Procedures of the FOA Protocol Supervision and Dispute Settlement Committee will be determined within 90 working days after the formation of the Committee as intended in section (1).

### **Article 9 Sanctions**

- (1) Violations of the determinations in this protocol constitute actions that infringe freedom of association and redress may be sought in accordance with legislation, Codes of Conduct and other international regulations.
- (2) Efforts should be made to resolve violations via consensus building deliberations. If these deliberations do not reach a consensus then the dispute should be resolved with reference to legal regulations. If a dispute concerning an infringement cannot be resolved via such negotiations, then the matter should be referred to a court of law.

## **CHAPTER V ADDITIONAL REGULATIONS, CONCLUSION AND AMENDMENTS**

### **Article 10 Language**

1. The language used in this Protocol is Bahasa Indonesia.
2. In the case that a problem arises in the interpretation of a Protocol that has been translated into another language, then the interpretation should refer to the Protocol in Bahasa Indonesia.

### **Article 11 Amendments of Regulations**

In the instance where freedom of association conditions in a company are better than the provisions set out in this protocol, then those pre-existing provisions continue to operate.

## **Article 12** **Concluding Determinations**

1. This Protocol shall be effective from the signing thereof by the Parties.
2. This Protocol is open for signature by other parties that are prepared to adopt the Protocol provisions.
3. The procedure to become a signatory as intended in section (2) is by making a written statement which is presented to the National Level FOA Protocol Supervision and Dispute Settlement Committee.
4. Other matters which are yet to be agreed upon in the first stage of negotiations by the FOA Committee will be revisited and renegotiated in the second stage of negotiations 12 months after the FOA Protocol takes effect.

Codified in Jakarta, 7 July 2011.



## **SUPPLEMENTARY EXPLANATIONS FREEDOM OF ASSOCIATION PROTOCOL**

### **Article 1 (a)**

With consideration to the large number of suppliers, a letter of acknowledgement will be created as an appendix for signature by the suppliers who adopt this Protocol.

### **Article 3 (2)**

[In response to question: only a small proportion of suppliers have been directly involved in protocol negotiations, so how can it be effectively socialised?]

At initial stages a limited number of supplier companies were involved in the negotiation and signing of this protocol. For this reason parties who are signatories of this Protocol are tasked with its socialisation and to invite other suppliers, brands and unions to sign the protocol.

Where a union who has not signed the Protocol considers that the regulations in their collective bargaining agreement are more favourable than the regulations in this Protocol, the union can choose between their collective bargaining agreement and the Protocol.

Additionally, where a union has not signed the Protocol, suppliers and brands who have signed will remain bound by all the protocol regulations which are non-reciprocal in nature. In fact, many supplier factories producing brand goods do not yet have workplace unions. Provided that suppliers have signed the protocol with the brands, its implementation should not be effected by the absence of a union. For instance, brands are still obliged to conduct monitoring on the implementation of the Protocol.

Where the union hasn't signed the Protocol its regulations still apply as long as they relate to the obligations of brands or suppliers. This includes workplaces where only one party has signed, in which case that the signatory becomes responsible for socialising the Protocol that amongst other unions, suppliers or brands.

The parties have had the experience that the establishment of unions is frequently impeded, with many union leaders or members experiencing criminalisation. These experiences have provided the rationale for this particular provision.

This provision is intended to ensure that brands take responsibility in protecting freedom of association.

Article 3 (3)

In the case that the union of a company prefers the provisions in the collective bargaining agreement, than the union can choose between the protocol and the collective bargaining agreement provisions.

Article 3 (4)

The Supervision and Dispute Settlement Committee will determine whether a provision in the Protocol is superior or inferior to a provision in a CBA.

Article 3 (5)

In the case where a union who has not signed the protocol considers that the provisions regulated under the CBA are superior to those in the Protocol, then the union can choose which determinations will be governed by the CBA and the Protocol.

Article 4 (5) (b)

Unions are obliged to hand over the duty officers' schedule (which is based on a rotation system) to supplier company management prior to implementation, so that the supplier company management can inform the relevant section.

Article 4 (5) (c)

Refer to the implementation of Article 5 subsections (3) (b) and (c) as well as subsections (4) (a) and (b).

Article 4 (6)

The union representative released is decided upon by the relevant trade union. Duty officers are union representatives who takes turns at working in the secretariat to carry out union activities.

Article 4 (7)

Provided this does not interfere with production processes in terms of avoiding work position vacancies.

Article 4 (10)

Outside the context of carrying out organisational activities as provided for under freedom of association, union representatives may still be subject to disciplinary actions if they violate company regulations or laws.

The definition of *criminalisation* in this provision is in reference to the situation where reports are made to legal authorities against union representatives or members on the basis of their union activities.

Article 5 (1) (a)

Routine union meeting schedules are to be submitted to suppliers.

Article 5 (1) (c)

Suppliers are obliged to loan out a vehicle if there is one provided and it is not in current use.

Article 5 (1) (e)

This provision is based on the principle of fairness.

Article 5 (3)

This provision applies to the improvements of secretariat facilities which fall under the responsibility of suppliers.

Article 5(4)

To *support and facilitate* refers to giving permission or dispensations and the provision of facilities including a secretariat, the loan of vehicles and so on, as provided for within this Protocol.

Article 6 (1)

The creation of a collective bargaining agreement does not depend upon the number of unions as per the 115/PUU-VII/2009 Constitutional Court decision.

Article 7 (1)

*Information* as referred to in this provision must not conflict with applicable legal regulations.

Article 8 (1)

The committee only handle cases which are in accordance with the criteria in the Supervision and Dispute Settlement Committee Standard Operational Procedures which will be later discussed and reconciled with the implementation of this protocol.

Article 8 (2)

Brands are not included in the company level Supervision and Dispute Settlement Committees.

Article 8 (5)

The scope and criteria for disputes to be resolved by the Supervision and Dispute Settlement Committee will be clarified in the Supervision and Dispute Settlement Committee Standard Operational Procedures which will be later discussed and reconciled with the implementation of this protocol.

Article 9 (2)

The *consensus building deliberations* referred to in this provision are bipartite negotiations at the supplier level.

**Letter of Acknowledgement**

Herewith the parties sign the Freedom of Association Protocol  
Jakarta, June 7<sup>th</sup> 2011.

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