



RJC Code of Practices Achieving Certification in India

Mumbai and Surat – April 2014

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RJC Statistics in India

	As at April 2014
Number of Members (head office in India)	45 (10% of total RJC Membership)
Number of Certifications	37 (2 Re-Certifications)
Number of Members with certified facilities in India	52 (11% of total RJC Certified Members)
Number of facilities certified	113
Number of employees working at certified facilities	At least 18,183

2013 Code of Practices

RJC CODE OF PRACTICES



GENERAL
REQUIREMENTS



RESPONSIBLE
SUPPLY CHAINS
& HUMAN RIGHTS



LABOUR RIGHTS
& WORKING CONDITIONS



HEALTH, SAFETY
& ENVIRONMENT



DIAMONDS, GOLD
& PLATINUM GROUP
METAL PRODUCTS



RESPONSIBLE
MINING SECTOR

In this session ... 10 topics

	India guidance	Common NCs	New provision
COP 1 Legal Compliance		√	
COP 3 Reporting			√
COP 5 Business Partners		√	
COP 6 Human Rights			√
COP 9 Bribery and Facilitation Payments		√	
COP 10 Money Laundering		√	
COP 14 Working Hours	√	√	
COP 15 Remuneration	√		
COP 19 Collective Bargaining	√		
COP 21 Health and Safety	√	√	



RJC Certification - (COP 1) Legal Compliance

COP 1 - Legal Compliance

1.1 Members shall have systems in place to maintain awareness of and ensure compliance with Applicable Law

Key Points:

- Focus is on the Member's systems (i.e., management processes and documentation) to maintain awareness and compliance
- Not a legal compliance audit
- Aimed at laws that are relevant to the Code of Practices

Legal Compliance – Other Provisions

Legal compliance is also specified in various provisions of the Code of Practices, for example:

- Bribery and Facilitation Payments
- Money Laundering and Finance of Terrorism
- Working Hours
- Remuneration
- Health and Safety
- Product Disclosure

If you have a legal non-conformance against one of the above?

- NC is raised against that provision – identifying the issue
- If it also relates to an inadequate overall system for legal compliance, then an NC might also be raised against COP 1 Legal Compliance

Major Non-Conformance

Applies if the Member has:

- Not identified legal requirements relevant to the Code of Practices, or

- There is a known non-compliance and:
 - There is inadequate attempt to rectify the non-complying condition, and/or

 - This situation has the potential to result in an imminent Risk to Workers, the Community or the Environment.

Minor Non-Conformance

Applies if the Member has a known non-compliance and:

- There is adequate attempt to rectify the non-complying condition, and
- The non-compliance does not result in an imminent Risk to Workers, the Community or the Environment.

Applicable Law - Information and Advice

Laws can include:

- legislation, regulations and legally required codes or standards;
- permits, licences and other forms of authorisation;
- local by-laws; and
- decisions, directions, rulings or interpretations issued by relevant courts and tribunals

Because RJC Member's operate in so many sectors and geographies, RJC does not provide specific legal advice on Applicable Law.

If in doubt, Members should seek legal advice on their obligations eg service providers, government departments, regulatory agencies, local industry associations

Determining applicable law / standard

Members are expected to:

- Comply with the Applicable Law if it sets a higher standard than the Code on a relevant issue
- Comply with the Code if it sets a higher standard than the Applicable Law, providing it would not result in a violation of the law

If there is a disagreement between the Auditor and the Member on what the law requires and the Member can demonstrate an understanding of the legal requirements, this should be taken into account in determining conformance.

If required, the matter can be brought to RJC for guidance by either the Member or the Auditor.

Major Non-Conformance under COP 2009

Finding: The facility has not provided a crèche facility to female workers.

Law: According to Section 48 (1) of the Factories Act , 1948, in every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six and such women.

COP 2009: Major Non-Conformance under 4.1 Legal Compliance – all legal non-conformances were elevated to Major.

COP 2013: Change to NC ratings + new Standards Guidance:

- where the Factories Act requires the provision of an on-site crèche, but workers do not wish to use an on-site facility, signed letters from all employees indicating that they have sufficient access to offsite childcare would be required.
- Auditors must verify through worker interviews that no coercion of workers was involved in obtaining these statements.

Minor Non-Conformance – Pending permits

Issue: Member has not obtained the Occupancy certificate for a new floor of a building from the concerned authority (as required by the *Bombay Provincial Municipal Corporation Act*, 1949. 263: Completion certificates, permission to occupy or use). The Member had submitted the necessary paperwork, had received the on-site inspection and was following up for the occupancy certificate.

Finding: Minor non-conformance for 2.6 (Health and Safety) was raised (COP 2009 version)

Corrective action outcome: The Member shall continue efforts and obtain the occupancy certificate for the new floor from the concerned authority.

Guidance: Pending approvals are common. Where the matter is procedural and there appears no reason why the permit would not be provided, this can be accepted by Auditors as a situation of conformance.

Implementation suggestions

Establish procedures for monitoring legal developments and identifying key areas of legal risk.

Consider establishing a Legal Compliance Register, to identify:

- relevant applicable legislation and regulations, required licences and permits, and reporting and disclosure obligations;
- status of compliance and future actions needed to maintain compliance
- measures for bringing any potentially non-complying situation into compliance.

Establish procedures for providing training about legal requirements to ensure employees have an appropriate level of understanding.



RJC Certification - (COP 3) Reporting

COP 3 - Reporting

COP 3.1: Members shall communicate to stakeholders at least annually on their business practices relevant to the RJC Code of Practices.

COP 3.2: Members with Mining Facilities shall report annually on their sustainability performance using the Global Reporting Initiative (GRI) Guidelines and GRI Mining and Metals Sector Supplement or comparable reporting guidelines. The reports shall have external assurance.



Key questions

What are the relevant issues to your business?

How are you approaching them?

How can you communicate this?

Relevant issues

Consider the scope of subjects covered by the Code of Practices

Of these, which ones are most relevant to the business?

To determine relevance, prioritize based on:

- Level of direct and indirect impacts from the business
- Concerns of stakeholders

Examples: human rights due diligence, factory working conditions, promotion of responsible business practices with business partners, reduction of wastes or energy use, local procurement.

Company approach to the relevant issues

Include in your communication for the identified relevant issues some information on:

- The Member's policies or statements of position
- Actions the Member has taken, or plans to take
- Where possible, quantitative or qualitative outcomes that the actions are expected to achieve

Communicating performance

- Adopt a flexible, practical approach to the form and content of the report/communication

- Establish mechanisms for communication (email, social media etc.)

If you have a website, post it

- For a small business, the report/communication could be in the form of a memorandum or email, it does not need to be a formal, printed publication.

- RJC is happy to work with Members on case studies for the RJC website too!



RJC Certification - (COP 5) Business Partners

Key terms

Business Partner: a business Entity with which a Member has direct business relations and that buys and/or sells a product or service that directly contributes to the extraction, manufacture or sale of Diamond, Gold and/or Platinum Group Metals Jewellery products.

Best Endeavours: acting honestly, reasonably and making a positive effort to perform the relevant obligation, in this case to promote responsible business practices amongst Members' business partners.

Ability to influence: Members' influence over business partners will vary, depending on the nature of the relationship, the size of each organisation, and the economic and social context of the business. Auditors will take a Member's ability to influence into account when assessing best endeavours.

COP 5 - Business Partners

5.1 Members shall use their best endeavours, commensurate with their ability to influence, to promote responsible business practices among their significant Business Partners.

5.2 Contractors working on Members' Facilities and Visitors to these Facilities shall be required to comply with the Member's policies, systems and procedures relevant to the Code of Practices

Applicable Law

- Contractors who are working on the premises of Members are generally considered to be under the legal responsibility of the Member business
- Most regulations mandate the need to have controls and a reasonable level of supervision for activities conducted by such business partners
- The Code therefore requires these business partners to comply with the Member's relevant management and operating systems when working on their premises or sites

Implementation suggestions

For 5.1 (best endeavours to promote responsible business practices among significant Business Partners) :

1. Review all important business relationships and determine those that are significant
2. Conduct an assessment to establish the risks attributable to significant business relationships (new RJC Risk Assessment Toolkit available if looking to document this process)
3. Engage with the identified significant business partners and raise awareness about responsible business practices, commensurate with the opportunity to effect positive change

Implementation suggestions

For 5.2 (Visitors, and Contractors working at Members' Facilities to comply with the Member's policies, systems and procedures relevant to the Code):

1. Document reporting relationships with on-site contractors and consider incorporating policies and obligations, such as relating to health and safety, into contract documentation
2. Provide all visitors and contractors with orientation explaining relevant policies, systems and procedures
3. Monitor the contractor to ensure that specified business systems and risk control measures are implemented

Check

- ✓ Have you identified your significant business partners?
- ✓ Do you need to prioritize your communications with these business partners? A risk assessment process can help assess the level and nature of risks with significant business partners
- ✓ Can you show the auditor how you have promoted responsible business practices to the identified/prioritized business partners?
- ✓ Can you show the auditor how any business partners working on your premises are required by you to comply with your requirements, relevant to the Code of Practices?



RJC Certification - (COP 6) Human Rights

Human Rights

- Universal rights and freedoms
- Belonging to all people without discrimination
- Based on internationally recognised standards and law
- Relevant to all businesses, regardless of size, sector or country of operation



RJC Code of Practices 2013

- COP revision incorporates business responsibility to **respect** from UN Guiding Principles on Business and Human Rights.
 - Written policy on human rights (COP 6.1a)
 - Human Rights Due Diligence Process (COP 6.1b)
 - Remediation process, where this identifies human rights impacts (COP 6.1c)

COP 6.1a: Written policy to respect human rights

The policy statement can be a stand-alone policy or incorporated in the COP **Policy and Implementation** requirement.

The policy statement should be:

- Appropriate to your size and circumstances
- Approved at senior levels of the company
- Informed by internal and/or external expertise, as appropriate
- Clear on expectations of employees, contractors and business partners
- Publically available
- Reflected in operational policies and procedures

COP 6.1b: Human Rights Due Diligence

In general terms, a Member exercises due diligence by taking a **proactive approach** to managing the Human Rights related risks of its operations and activities.



Help from RJC:

- *COP Standards Guidance*
- *Human Rights Working Group - open to all Members*
- ***Human Rights Due Diligence Toolkit (Excel)***

Due Diligence: How much is enough?

The RJC Toolkit has been designed to fulfil the requirements of the Code of Practices for a Human Rights Due Diligence process (COP 6.1b). Members are however free to use their own approach, as appropriate to their circumstances.

The Toolkit is likely to be most useful for:

- small to medium enterprises,
- low human rights risks, and/or
- those undertaking Human Rights Due Diligence for the first time.

However it can be used by any kind of business, and supplemented where needed with more detailed risk tools such as the RJC Risk Assessment Toolkit or in-house processes.

Human Rights Due Diligence - Overview

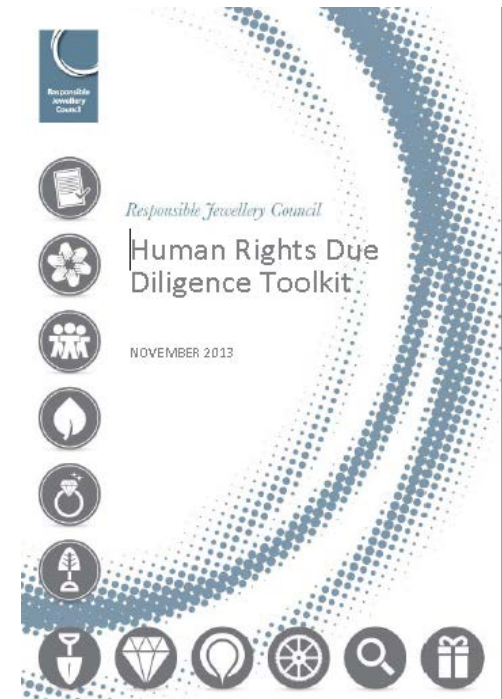
- Should cover adverse human rights impacts that:
 - the business may cause or contribute to through its own activities
 - may be directly linked to its operations, products or services by its business relationships.
- Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations.
- Should be regularly updated, for example when starting a significant new activity or business relationship, recognizing that the human rights risks may change over time.

Which Human Rights?

Labour Rights and Working Conditions <i>•use the toolkit to confirm implementation of these core human rights-related COP requirements</i>	Responsible Supply Chains and Human Rights <i>•use the toolkit to review human rights risks with business partners and challenging situations</i>	General Requirements <i>•consider how well human rights considerations have been integrated in business systems</i>
General Employment Terms (COP 13)	Business Partners (COP 5)	Legal Compliance (COP 1)
Child Labour (COP 17)	Conflict-Affected Areas (COP 6.2)	Policy and Implementation (COP 2)
Forced Labour (COP 18)	Sourcing from Artisanal and Small-Scale Mining (COP 7)	Reporting (COP 3)
Freedom of Association and Collective Bargaining (COP 19)	Security (COP 11)	
Non-Discrimination (COP 20)	Other supply-chain specific risks	
Other business-specific risks		

RJC Human Rights Due Diligence Toolkit

- Microsoft Excel™ based toolkit with guidance and simple to use features.
- Includes 20 Human Rights indicators that allow you to check for human rights risks. These are cross-referenced to related parts of the 2013 Code of Practices.
- Based on your assessment, the Toolkit will make recommendations for further action to address risks.
- An Action Plan Template is integrated into the Toolkit.





RJC Certification - (COP 9) Bribery and Facilitation Payments

Key terms

Bribery: offering or giving, demanding or accepting of any undue advantage, to or from a government official, politician or private sector employee.

Facilitation payments: paid to receive preferential treatment for something that the payment receiver is otherwise still required to do.

COP 9 – Bribery and Facilitation Payments (summary)

9.1 Establish policy/ies that:

- **Prohibit Bribery in all practices and transactions by the Member and by agents acting on behalf of the Member**
- **Protect employees from penalty for identifying concerns**
- **Set criteria for acceptance of gifts to or from third parties**

9.2 Systems in place to manage Bribery risk:

- **Identify and monitor high risk parts of the business**
- **Training relevant employees**
- **Recording of relevant gifts**
- **Investigation of incidences of suspected Bribery**
- **Sanctions for any Bribery**

COP 9 - Bribery and Facilitation Payments (summary)

9.3 Where Facilitation Payments are permitted by Applicable Law:

- **Undertake to eliminate, or reduce Facilitation Payments over time**
- **Limit the nature and scope of Facilitation Payments**
- **Implement controls to monitor and account for Facilitation Payments**

Note Facilitation Payments are not legal in India – they are considered a form of bribery.

Implementation suggestions

- Ensure you are aware of the Applicable Law!
- Appoint a senior manager
- Establish a written policy
- Reference the policy in appropriate contracts
- Establish written procedures for monitoring high risk parts of the business
- Inform employees about relevant risks
- Ensure criteria for giving and accepting gifts and for any Facilitation Payments are clear and practical
- Establish a gift register
- Inform those who receive any facilitation payments about the Member's policy/ies that limit their nature and scope

Minor Non-Conformance – Recording gifts

Finding:

- The Member does not maintain a register for gifts received.
- Procedures for approval to offer gifts are not formalized.
- The upper limit for gift offerings is not quantified.
- Employees are not aware of the facility's policy prohibiting bribery.

Recommendation: The Member shall establish effective, formal procedures to monitor, oversee and fully account any gifts offered or received as well as any facilitation payments carried out. Furthermore, the Member shall ensure that the policy prohibiting bribery is well circulated, that trainings are effective and that the policy is fully understood by employees.

Minor Non-Conformance – Agents acting on behalf of Member

Minor Non-Conformance

Finding: The facility's procedures do not include communicating the company's RJC Policy on Gifts & Gratuity with their contractors and suppliers.

Recommendation: Member's Policy on Gifts & Gratuity be communicated to all contractors and suppliers. During the assessment, the change in the procedure has already been updated into the procedures of the facility. Management has already drafted the communication that will be sent out to their contractors and suppliers asking them to confirm with their understanding of the policy.

Pre-audit Checklist

- ✓ Anti-bribery policy/ies in place covering all required content
- ✓ Policy communicated to employees and agents
- ✓ Documentation showing that systems are in place (eg., risk assessment, gift register)



RJC Certification - (COP 10) Money Laundering and Finance of Terrorism

Key terms

Money laundering: the process by which the financial proceeds of crime are disguised to conceal their illegal origin.

Financing of terrorism: any kind of financial support to those who encourage, plan or engage in terrorism.

Financial Action Task Force (FATF): an international organisation whose purpose is to develop policies to combat money laundering and terrorist financing.

Know Your Customer (KYC) principles are principles established to combat money laundering and finance of terrorism.

Beneficial owner: the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted.

COP 21 - Money Laundering and Finance of Terrorism (summary)

10.1 Apply Know Your Customer principles for Business Partners:

- ✓ **Establish identity and where applicable, the beneficial owners**
- ✓ **Maintain an understanding of their business**
- ✓ **Monitor transactions for suspicious activity**
- ✓ **Report suspicions to the relevant authority.**

10.2 Maintain records of all cash or cash-like transactions which occur above the relevant financial threshold under Applicable Law.

Where required, report these to the relevant designated authority.

How does money laundering work?

Profits from criminal activities go through a succession of transfers and deals until the illegal source of the funds is obscured.

1. Break down to small sums of cash deposited into bank accounts
2. Transfer through different bank accounts and jurisdictions
3. Bring back to the legitimate economy via purchases of high value assets, (for example gold, diamonds and jewellery) followed by resale.

Legal requirements

Anti-money laundering legislation and regulations apply in most countries.

Dealing in high value goods often triggers regulatory requirements to implement internal transaction monitoring and controls.

Due to the criminal nature of the activity it is essential to be aware of the relevant legislation in every operating jurisdiction.

- Note international transactions that may be subject to more than one regulatory jurisdiction.

Know Your Customer (KYC) Implementation

- Conduct a risk assessment to identify vulnerability to ML/TF
- Establish procedures for customer identification
- Maintain proper records
- Monitor transactions, commensurate with risk
- Train relevant employees
- Establish reporting procedures

Review

- ✓ Have you documented the identity of all suppliers and customers?
- ✓ Have you carried out a risk assessment to identify vulnerability to involvement in money laundering or the finance of terrorism?
- ✓ For high-risk suppliers and customers, or where required by regulation, have you established the beneficial ownership and principals of these businesses?
- ✓ Can you show the auditor how you monitor transactions for unusual or suspicious activity, against a general knowledge of the nature of their business?
- ✓ Do you have procedures for reporting suspicious transactions to the relevant designated authorities?

Minor Non-Conformance – Having all data

Finding (COP 2009): The Member has not received the complete information regarding its customers. The KYC and KYS forms were sampled on a random basis and were reviewed on the date of the audit. As per the sample up to 92% information in KYC and 100% information in KYS was received.

Recommendation: The Member shall ensure that they receive the complete information regarding its customers.

Standards Guidance (2013): ‘100% data’ at all times is difficult as the collection and maintenance of relevant data is an ongoing process. Auditors should take into consideration the extent and nature of any missing information, the reasons why the information is missing, and whether it demonstrates weaknesses in the Member’s management systems.

If basic identity information is missing such that an active counterparty could not be contacted or located, or there are frequent information gaps that indicate systems are not performing properly, or legally required information is missing, or the Member is not taking action to collect the missing information then the Member is likely to be in a situation of non-conformance.



RJC Certification - (COP 14) Working Hours

International Standards & Applicable Law

- International Labour Organisation (ILO) conventions set widely-accepted standards for on working hours, weekly rest and annual leave.
- Applicable Law sets requirements for working hours.
- National law may vary from the ILO Conventions and takes precedence.

Management system

- Be aware of all relevant legislation and regulation in all relevant jurisdictions
- Assign responsibility for setting and monitoring working hours
- System for maintaining proper records of hours worked, overtime and leave, including entitlements
- Train those responsible for day to day administration

14.1 - Normal work week

14.1 Members shall comply with Applicable Law on working hours.

The normal work week, not including overtime, shall not exceed 48 hours unless higher limits have been set by Applicable Law

14.2 - Overtime

14.2 If overtime work is required for business needs, Members shall ensure that:

a. Overtime work is requested by the Member under a voluntary overtime system. Required overtime is permitted only where it is within the limits allowed under Applicable Law or Collective Bargaining Agreements.

b. The sum of the normal work week and overtime hours shall not exceed 60 hours in a week unless defined otherwise by Applicable Law or permitted under a Collective Bargaining Agreement.

India Context – Standards Guidance

Conformance:

Overtime is within applicable limits and evidence that workers have right to refuse overtime.

Minor Non-conformance:

Average working hours over the year, including overtime, within applicable limits and evidence that it is voluntary.

Major Non-conformance:

Average working hours over the year, including overtime, above applicable limits and/or evidence that it is not voluntary.

.... Similar approach to BPP

14.3 - Leave

14.3 Members shall provide all Employees with at least one rest day in seven consecutive working days in accordance with ILO Convention 14.

Work time exceeding this limit is permitted only under a Collective Bargaining Agreement or Applicable Law that allows for work time averaging including adequate rest periods.

14.4 Members shall provide Employees with all legally mandated Public Holidays and leave, including maternity and paternity, compassionate and paid annual leave. Where no Applicable Law exists, paid annual leave shall be provided in accordance with ILO Convention 132

Review

- Ensure awareness of and compliance with the applicable law in all relevant jurisdictions
- System in place for recording hours worked, overtime and leave for each worker
- All overtime is either voluntary, or within the limits allowed under Applicable Law or a CBA
- Sum of the normal work week and overtime hours within the limit of 60 hours in a week, or otherwise in compliance with Applicable Law or a CBA
- Provide one rest day in 7 consecutive working days provided, or otherwise in compliance with Applicable Law or a CBA

Minor Non-Conformance under COP 2009 – Calculating hours

Finding:

- The facility does not limit overtime to 12 hours per week.
- The facility does not guarantee the 7th day of rest.

Recommendation: The Member shall ensure employees are granted adequate rest time, including limiting overtime to a maximum of 12 hours per week and a 7th day of rest. Ensure that overtime is limited to a maximum of 12 hours per week.

COP 2013: The sum of the normal work week and overtime hours shall not exceed 60 hours in a week unless defined otherwise by Applicable Law or permitted under a Collective Bargaining Agreement.

The change is designed to accommodate the seasonal nature of the jewellery supply chain. Some companies set a shorter normal work week, which allows more flexibility for expanded hours during the peak demand.

Minor Non-Conformance – Work after 9.30pm

Law: As per Section 13 of Maharashtra Shops and Establishments Act 1948. Opening and closing hours of commercial establishments. No commercial establishment shall on any day be opened earlier than 8.30 a.m. and closed later than 9.30p.m.

Finding: It was observed that the employees have worked after 9.30 pm which is not in accordance with the applicable law.

Recommendation: The member shall ensure that employees don't work after the closing hours as stipulated by the applicable law.

RJC Member's answer: Due to seasonal work some employees had to extend beyond 9.30 pm. The company has amended its employment policy to include directive stopping any kind of office work beyond 9.30 pm. The same has also been informed to all employees.



RJC Certification - (COP 15) Remuneration

Key terms

Remuneration is paid by employers to workers. It includes wages or salaries and any other benefits in cash or in kind.

The legally required **minimum wage** is the higher of that set by the government or that contained in an applicable collective bargaining agreement.

A **Collective Bargaining Agreement** is a legally enforceable written contract between the management of a company and its employees, represented by a trade union or equivalent, that sets out terms and conditions of work. Collective bargaining agreements must comply with Applicable Law.

Cop 15 – Remuneration (summary)

15.1 Wages for normal work week

Members shall pay all Employees a wage for a normal work week, not including overtime, based on the higher of either the applicable legal minimum wage plus associated statutory benefits, or the prevailing industry standards.

15.2 Overtime wages

Members shall reimburse overtime work at a rate at least equal to that required by Applicable Law or a Collective Bargaining Agreement.

15.3 Method of payment

Members shall make wage payments to Employees that are: a). on a regular and pre-determined basis, b). by bank transfer or in cash or cheque form, c). accompanied by a wage slip which clearly details wage rates, benefits and deductions where applicable.

15.4 Deductions

Members shall only make employer-determined deductions from wages under certain circumstances.

15.5 Provisions

Members shall not force Employees to buy provisions from the Member's own business or Facilities.

15.6 Loans

Members that provide wage advances or loans shall ensure that the interest and repayment terms are transparent and fair, and not deceptive to the Employee.

India Context - Employees Provident Fund – Standards Guidance

In 2011, the Madras high court and the Madhya Pradesh high court in two separate cases held that various allowances paid by the employer to its employees under different heads such as conveyance, education, food concession, medical, special holidays, night shift incentives, city compensatory allowance, etc., qualified as basic wages under section 2(b) of the PF Act and needed to be included while computing the PF contribution.

In December 2012, the circular was put in temporary abeyance pending further investigation by the EPFO.

In view of the ongoing clarification process being undertaken by the EPFO, **the RJC position on calculating employees' PF contributions is that Members need to be able to justify their calculation basis to auditors, based on section 2(b) of the PF Act.** Applicable Law, which includes applicable high court decisions, should be taken into account in making this determination.

Implementation Suggestions (for 15.1)

- ✓ Understand the Applicable Law related to remuneration and statutory benefits in all countries of operation.) The correct minimum wage rate will vary according to region, type of factory and skill level of the worker. Any collective bargaining agreement should deal with wages, overtime rates, methods of payment, and deductions (if applicable).
- ✓ Where probationary or training employment is legally allowed, the wage shall not be below the legal minimum applicable to that category of work.
- ✓ Piece rate payments are common in the diamond cutting/polishing sector and to some extent in the manufacture of jewellery. Members shall not set production targets, piece rates or any other incentive or production system at such a level that workers need to work beyond the applicable normal work week, excluding overtime, in order to make at least the minimum wage or the prevailing industry wage, whichever is higher. Models such as a 'Monthly Fixed Rate' are increasingly used for piece rate work in the diamond sector in India. This sets a legal minimum wage on the average output in normal working hours of piece rate workers for the company, which will vary depending on the size of goods.
- ✓ Where payment of statutory benefits depends on registration of employees into social insurance schemes and the like, Members are responsible for the required administration to ensure that employees receive their benefits in accordance with the Applicable Law.

Check

- ✓ Can you show the auditor that wages for all employees are the higher of minimum wage or prevailing industry standards?
- ✓ Is overtime paid in accordance with Applicable Law and/or a collective bargaining agreement?
- ✓ Are employee wage payments made regularly, by bank transfer/cash/cheque, and accompanied by a wage slip?
- ✓ Are employer-determined deductions only made with a documented due process, and do not result in less than minimum wages?
- ✓ Are employees forced to buy provisions from you?
- ✓ If you provide wage advances or loan, can you show the auditor that the repayment terms are transparent and fair?

Minor Non-Conformance - Payments

Finding:

- Wages are being paid before the 10th of each month instead of the 7th of each month.
- For one employee in one month the local minimum wage requirement was not respected. The facility paid the outstanding amount to the employee during the onsite assessment.

Recommendation: The Member shall establish effective systems and procedures to ensure all employees are paid on time, in accordance with local minimum wage requirements.



RJC Certification - (COP 19) Freedom of Association and Collective Bargaining

Key terms

Freedom of association is the right of all workers, without distinction whatsoever, to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Collective bargaining is a process through which employers (or their organisations) and workers' associations (or in their absence, freely designated workers' representatives) negotiate terms and conditions of work. Both are fundamental rights and they are linked. Collective bargaining cannot work without freedom of association because workers' views cannot be properly represented. Workers must be free to choose whether and how they are to be represented and employers must not interfere in this process.

A **Collective Bargaining Agreement** is a legally enforceable written contract between the management of a company and its employees, represented by a Workers Organisation, that defines terms and conditions of work. Collective bargaining agreements must comply with Applicable Law.

A **Workers Organisation** is a voluntary association of workers organised for occupational purposes with the aim of furthering and defending the interests of workers.

COP 19 – Freedom of Association and Collective Bargaining

19.1 Members shall respect the right of Employees to associate freely in trade unions or workers organisations of their choice, without interference or negative consequences to them from the Member.

19.2 Members shall respect the right of Employees to collective bargaining, and shall adhere to collective bargaining agreements, where such agreements exist. Members shall, subject to Applicable Law, participate in any collective bargaining processes in good faith.

19.3 Members who operate in countries where Applicable Law restricts the right to freedom of association and collective bargaining shall not obstruct alternative means of association for Employees that are permitted under Applicable Law.

India Context - Worker Representative Committees – Standards Guidance

In some businesses or jurisdictions, forms of worker engagement or agreements may not satisfy the requirements of the Freedom of Association and Collective Bargaining provisions.

In India, many companies do not have trade unions and therefore collective bargaining does not take place. However, **Worker Representative Committees** may be formed to provide a forum to raise and discuss issues between the committee and the management. Under the Indian Industrial Disputes Act, the function of these committees is to secure and preserve amity and good relations between the employer and workers, to comment upon matters of their common interest or concern, and endeavour to compose any material difference of opinion in respect of such matters.

RJC encourages the use of such Committees as a potential forum to raise awareness of the RJC Code of Practices.

India Context - Worker Representative Committees – Standards Guidance

Workers who are members of such committees are not elected and are generally nominated by general consensus among the workers. Meeting minutes and sometimes Memoranda of Understanding (MOUs) are used to document discussions, outcomes and agreements between the committee and management. However these are not considered equivalent to CBAs as defined under Indian law, because the committee is not a freely associating workers organisation or trade union.

Applicable Law and CBAs are relevant in COP 2013 as a means to seek variations to Working Hours and Remuneration (eg overtime rates).

RJC recognises that Members aim to bring their practices into conformance with the RJC Code of Practices, and that depending on the circumstances, this may take time.

India Context - Worker Representative Committees – Standards Guidance

The following guidance can be used by Members and Auditors in assessments of conformance with the **Working Hours and Remuneration provisions**.

- **Conformance:** Collective Bargaining Agreements exist as defined under Applicable Law and govern the relevant work terms/conditions.
- **Minor Non-conformance:** some form of legally constituted worker engagement exists and there is agreed documentation (eg minutes of properly constituted meetings) that governs the relevant work terms/conditions; and variation of the terms/conditions would be permitted by law if they were part of a Collective Bargaining Agreement, but the agreed documentation does not constitute a Collective Bargaining Agreement under the Applicable Law. Corrective action will be required over the Member's certification period to bring the matter into conformance. This could be via instituting processes to enable proper Collective Bargaining Agreements, or alternatively, ensuring compliance with Applicable Law for the employment terms and conditions.
- **Major Non-conformance:** no form of legally constituted worker engagement governs the relevant terms/conditions.

Minor Non-Conformance – Works Committee

Finding: Appropriate employee representation in the Works Committee is not ensured.

Recommendation: It is recommended that the Member organize elections to select an adequate number of employee representatives for the Works Committee, which shall be no less than the number of representatives from management.

This is very relevant if the Committee is being used as a means to negotiate employment terms.



RJC Certification - (COP 21) Health and Safety

COP 21 - Health and Safety (summary)

- 1. Safe and healthy working conditions in compliance with the law**
- 2. Specific requirements – e.g. sanitary facilities, fire safety equipment**
- 3. Risk Assessments for workplace Hazards**
- 4. Mechanism for workers to raise H&S issues with management**
- 5. Information and training about H&S**
- 6. Personal Protective Equipment provided free of charge**
- 7. Access to adequate on-site facilities including first-aid**
- 8. Emergency procedures and evacuation plans**
- 9. H&S incident investigation and use of results**
- 10. Cobalt-free scaifes for diamond cutting and polishing**

Getting Started – Documentation

- ✓ Read the Standards Guidance document
- ✓ Identify relevant legal requirements
- ✓ Obtain available information from relevant authorities
- ✓ Ensure all permits are up to date
- ✓ Assemble relevant internal documentation related to H&S

Getting started – Management systems

- ✓ Is management aware of legal requirements?
- ✓ Who is responsible for workplace H&S at each Facility?
- ✓ Are employees trained and knowledgeable about H&S issues?
- ✓ Do you have H&S-related policies and procedures in place?
- ✓ Is there a system for keeping relevant records?
- ✓ Do you know how to conduct risk assessments?
- ✓ Is there a strong H&S culture?

Risk assessments

Members must assess the risks of workplace Hazards and implement controls to minimize the Risks of accidents and injury.

The Risk Assessment shall consider Hazards including:

- use of machinery and mobile equipment:
- storage and handling of chemicals;
- exposure to excessive fumes, airborne particles, noise and temperature levels
- inadequate lighting and ventilation;
- repetitive strain activities; considerations for any workers under 18 years of age and expectant mothers
- general hygiene and housekeeping issues.

Observation

Assign someone to check against the relevant requirements of the provision through first-hand observation – walk through the facility, eg.:

- ✓ General tidiness and hygiene?
- ✓ Equipment in a good state of repair?
- ✓ PPE available and used?
- ✓ First-aid provisions in place?

Keep a record of findings and follow-up actions to address weaknesses. ‘Fresh eyes’ can be helpful.

Common issues

- Emergency exits locked, blocked or improperly marked
- Unfinished construction / renovations
- Improper storage systems, including for Hazardous Materials
- Inadequate first aid provisions and fire safety equipment
- Poor state of electrical plugs and switches, hazardous use of extension cords
- Lack of proper use of PPE
- Insufficient mechanisms for workers to raise safety concerns

Establishing a “safety culture”

- ✓ Involve your employees in H&S
- ✓ Establish a written policy on health and safety
- ✓ Inform and train employees
- ✓ Nominate a person at each workplace to be responsible for H&S
- ✓ Ensure there is a mechanism for employees to raise concerns
- ✓ Workers should be able to raise health and safety issues without fear of criticism or reprisal.
- ✓ Regularly test emergency procedures
- ✓ Consider programs for general health and wellbeing

India context - Healthy & Safety – Standards Guidance

The Indian Factories Act of 1948 specifies a number of requirements for certain types and size of factories that are potentially relevant to the **Health and Safety** provision. These include the following, and Members and Auditors should consider the following factors in determining conformance ratings.

a). Engagement of a Safety Officer: Other relevant forms of external health and safety training can be used as a parallel means to support the implementation of the Factories Act requirement for RJC Certification (COP 21.1).

b). Engagement of a Welfare Officer: Other relevant forms of external personnel management or industrial relations training can be used as a parallel means to support the implementation of the Factories Act requirement for RJC Certification (COP 21.1).

India context - Healthy & Safety – Standards Guidance (continued)

c). Provision of Ambulance Room / Trained Nurse / Doctor on premises: An on-site facility such as a first aid or nurse room, with access to appropriate transport to local hospitals where required, can be used as a parallel means to support the implementation of the Factories Act requirement for RJC Certification.

d). Provision of Canteen: Provision of a meals allowance combined with adequate time and physical access to food prepared outside the factory can be used as a parallel means to support the implementation of the Factories Act requirement for RJC Certification

e). Provision of Crèche: Where the Factories Act requires the provision of an on-site crèche, but workers do not wish to use an on-site facility, signed letters from all employees indicating that they have sufficient access to offsite childcare would be required.

Emergency exits and fire safety

Relevant COP provisions are

- 21.1 – general: safe and healthy working conditions in accordance with Applicable Law
- 21.2e - clearly marked, unlocked and unblocked emergency exits and escape routes
- 21.2d - fire safety equipment and alarms
- 2.15c - appropriate training in fire safety and emergency procedures
- 21.8 - establish emergency procedures and evacuation plans for all reasonably foreseeable emergencies, which are accessible or clearly displayed, regularly tested (including evacuation drills), and periodically updated.

Emergency exits – Applicable Law

- The Indian Factories Act contains very similar requirements to the RJC COP, namely to provide a **safe means of escape** for all persons in the event of a fire, the **necessary fire safety equipment and facilities**, and ensuring that **workers are trained** in fire escape routes and procedures (section 38).
- The Gujarat Factories Rules (1963), in rules 66 and 66A, include requirements for exits from factory buildings to be adequate in relation to its size and the number of persons employed to enable reasonably free and unobstructed passage (66-1a), and **exit doorways to open outwards**, that is, away from the room but not obstructing the travel along any exit (66A-9u).
- The Maharashtra Factories Rules (1963), in rules 70-9d, requires there be at least **two ways of escape from every room of a factory**. A factory is defined as premises where manufacturing is carried out, which would not include an office that carried out diamond trading only.
- The National Building Code of India (2005) is also a relevant and more recent piece of legislation, and Part 4 of the Code deals with fire and life safety. The Code recognizes that safety of life is more than a matter of means of exits. Accordingly the Code allows **for a risk-based approach to determining that the building is safe for occupancy**.

Non-Conformances to date - Exits

- Fire door opening inwards: 3 Members
- No secondary fire exit – 1 Member

COP 2013 contains no specific guidance on this issue.

General guidance for Legal Compliance applies – Minor Non Conformance where:

- The Member knows
- There is adequate attempt to rectify the non-complying condition (for example investigating options for change), and
- The non-compliance does not result in an imminent Risk to Workers, the Community or the Environment (demonstrate through successful evacuations, training etc)

This is an area RJC wants to monitor closely.

Questions and discussion!

RJC CODE OF PRACTICES



GENERAL
REQUIREMENTS



RESPONSIBLE
SUPPLY CHAINS
& HUMAN RIGHTS



LABOUR RIGHTS
& WORKING CONDITIONS



HEALTH, SAFETY
& ENVIRONMENT



DIAMONDS, GOLD
& PLATINUM GROUP
METAL PRODUCTS



RESPONSIBLE
MINING SECTOR