

STANDARD GUIDANCE

(COP 19) Freedom of Association and Collective Bargaining

A. Definitions and applicability

Freedom of association is the right of workers and employers to freely form and join Workers Organisations such as trade unions, worker associations and worker councils or committees for the promotion and defence of occupational interests.

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 on a continuing basis for the purpose of maintaining and improving their terms of employment and workplace conditions.

Source:

- ILO Declaration on Fundamental Principles and Rights at Work
<http://www.ilo.org/declaration/principles/freedomofassociation/lang--en/index.htm>
- ILO Better Work, Guidance Sheet 4: Freedom of Association and Collective Bargaining
<http://betterwork.com/global/wp-content/uploads/4-Freedom-of-Association.pdf>
- RJC Code of Practices (2013)

The **Freedom of Association and Collective Bargaining** section of the COP is applicable to all Members with employees.

B. Issue background

The right to freedom of association is proclaimed in the Universal Declaration of Human Rights. At work, this means the right to freely form workers organisations. Those workers who do not wish to join such organisations also have their rights protected, and may not be coerced into doing so against their will. Freedom of association does not mean that companies should organise workforces or invite unions into the workplace. It means that employers must not interfere in an employee's decision whether to join an association or discriminate against the employee for their choice.

Collective bargaining is a voluntary process that takes place between representatives of workers and representatives of employers. It usually focuses on the negotiation of terms and conditions of employment, such as wages, working hours, conditions, grievance procedures and the rights and responsibilities of each party. The main principle for the negotiation is that it should be carried out in good faith where genuine effort is made to reach agreement in reasonable time. The parties often refer to the mutually acceptable result of the negotiation as a 'collective bargaining agreement'.

Box X: Countries where freedom of association is currently restricted by law

- Most of the Gulf States (Bahrain, Oman, Qatar, Saudi Arabia, United Arab Emirates): Trade unions are banned completely
- China and Vietnam: Union is government controlled and not independent

Source: Sedex Supplier Workbook - Chapter 1.3 – Freedom of Association & Collective Bargaining (2013).

Where agreement is not reached, dispute settlement procedures range from conciliation, through mediation to arbitration.

Freedom of association is sometimes restricted for political and/or economic reasons. In some countries or their special economic zones, or for some categories of workers such as migrants, independent trade unions are completely banned. Employers have sometimes worked against freedom of association in an effort to bypass the negotiating power of workers.

On the whole, freedom of association has probably not yet received the same attention from companies as health and safety or abolition of child labour. However international attention on freedom of association has recently been magnified by trends such as globalisation, privatisation, and legal actions against companies. It continues to be a critical issue for companies because it forms part of the framework of basic human rights. Worker representation facilitates local responses to a globalised economy, and can serve as a basis for sustainable growth and investment.

C. Key regulations

International standards

Freedom of association is enshrined in Article 20 of the Universal Declaration of Human Rights (1948), which states that everyone has the right to freedom of peaceful assembly and negotiation, and that no one may be compelled to belong to an association. Article 23.4 specifically provides for the right to join a trade union.

These rights have been most defined and elaborated in international labour law. The International Labour Organisation (ILO), a tripartite United Nations agency, has adopted two major conventions on freedom of association and collective bargaining:

- Convention 87 on Freedom of Association and Protection of the Right to Organise (1948)
- Convention 98 on the Right to Organisation and Collective Bargaining (1949)

Conventions 87 and 98 are included in a small group of 'core conventions' by the ILO, under the 1998 Declaration of Fundamental Principles and Rights at Work. All ILO member countries are bound to promote and respect the core conventions, regardless of whether they have ratified them.

National law

Most national labour and employment laws have very specific provisions on freedom of association, collective bargaining and the structures which support these. It is essential to be aware of all relevant legislation in the jurisdictions of operation.

D. Suggested implementation approach

- **COP 19.1 Respect right of Employee to associate freely:** *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.*

Points to consider:

- Confirm that awareness of and responsibility for compliance with freedom of association and access to collective bargaining requirements is part of a senior management function, such as human resources.
- Procedures for hiring, termination and performance review must not discriminate against union members, or those seeking to form a union in accordance with Applicable Law (see also guidance on [Non-Discrimination](#)). Grievance mechanisms should be established which allow workers to raise any concerns.
- Employees have the freedom to form or join a union or worker association of their own choosing without interference from employers.
- The business should not promote any particular union or workers' association, nor should it coerce workers to join or leave one. Election of union representatives should be without obstruction or intervention from the employer.

- Unions have the right to carry out their activities as described under Applicable Law.
- **COP 19.2 Respect right of Employee to collective bargaining:** *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.*

Points to consider:

- Where a workers organisation exists, the business or its representative should enter into negotiation for the purposes of reaching a collective bargaining agreement. Once a collective bargaining agreement is reached – whether at a company, sector or national level – it should be implemented within the business.
- Consider how the business can negotiate and bargain in good faith, which involves a willingness to discuss, compromise and reach a mutually agreed solution.
- Applicable Law varies significantly across different jurisdictions - make sure the business understands its legal obligations.

Box X: Collective Bargaining Agreements and Working Hours and Remuneration

Collective bargaining agreements are legally enforceable contracts that set out terms and conditions at work, based on negotiations between an employer and a workers organisation, so are also relevant to the Code of Practices provisions for:

- **Working Hours**, as workers may collectively agree to required overtime in some circumstances, longer working hours, or work-time averaging of rest days; and
- **Remuneration**, where they may define the wage rate agreed for overtime, or govern any deductions for disciplinary purposes.

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.

For example, 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.

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 ‘collective bargaining agreements’ as defined under Indian law, because the committee is not a freely associating workers organisation or trade union.

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. The following guidance can be used by Members and Auditors in assessments of conformance with the **Working Hours** and **Remuneration** provisions in situations where there is no Collective Bargaining Agreement, and the terms and conditions are at variance from the Applicable Law, but the terms and conditions would be permitted if they were part of a Collective Bargaining Agreement (for example, required overtime):

- **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 the agreed 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.

- **COP 19.3 Countries where rights are restricted:** 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.

Points to consider:

- Employers shall respect legal alternative means for workers to associate.
- Companies must not pressure workers to join a company-controlled organisation in place of an organisation created by and controlled by workers.

Check

- ✓ Do you allow workers to associate freely in the organisations or unions of their choice?
- ✓ Do you participate in collective bargaining agreements in good faith and adhere to the agreed outcomes?
- ✓ In countries where workers' rights to associate are restricted, do you allow workers to associate in state controlled unions and/or alternative legal means of association?

E. Further information

The following websites have further information on freedom of association and collective bargaining:

- Ethical Trading Initiative (ETI) – Base Code (2012)
www.ethicaltrade.org/resources/key-eti-resources/eti-base-code
- International Labour Organisation (ILO) Convention 87 – Freedom of Association and the Right to Organise (1948)
www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C087
- International Labour Organisation (ILO) Convention 98 – Right to Organise and Collective Bargaining (1949)
www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098
- International Labour Organisation (ILO) - Declaration on Fundamental Principles and Rights at Work
www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm
- International Labour Organisation (ILO) Better Work - Guidance Sheet 4: Freedom of Association and Collective Bargaining (2009)
<http://betterwork.com/global/wp-content/uploads/4-Freedom-of-Association.pdf>
- Sedex Supplier Workbook - Chapter 1.3 – Freedom of Association & Collective Bargaining
www.sedexglobal.com/wp-content/uploads/2013/03/1.3-Freedom-of-Association-Collective-Bargaining_Sedex-Supplier-Workbook.pdf
- Universal Declaration of Human Rights – Article 20
www.un.org/Overview/rights.html
- United Nations (UN) Global Compact Principle 3 – Freedom of Association and Collective Bargaining
www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle3.html