

**Code of Practice**  
**ON**  
**Employees' Participation**

## **CODE OF PRACTICE ON EMPLOYEES' PARTICIPATION**

### **INTRODUCTION**

1. The Code of Practice set out hereunder is meant: -
  - (a) to provide practical guidance for the promotion of employees' participation at the enterprise;
  - (b) to provide practical guidance for the setting up of employees' financial participation schemes at the enterprise.
2. The standards set out in this Code are not intended to be exhaustive or to prevent the introduction of other schemes such as Quality Circles, Total Quality Management and/or other forms of employees' financial participation schemes.
3. This Code is not meant to infringe upon or impede the development of collective bargaining.

## CODE OF PRACTICE

### PART 1 - GOALS & PURPOSE

1. The Code of Practice provides principles, mechanisms and structures for promoting employee's participation which should be adopted only through voluntary agreements between employers and employees and aims at:
  - (a) improving the quality of working life and employees job satisfaction;
  - (b) improving industrial relations; and
  - (c) improving productivity and efficiency.
2. This Code is meant to apply preferably to all enterprises employing at least 50 full-time employees.

### PART II - EMPLOYEES' PARTICIPATION SCHEMES

3. The *Employees' Participation Schemes* may take the form of:
  - (a) the establishment of *Joint Consultative Councils* with a view to involving employees at all levels in the decision - taking process;
  - (b) the setting up of employees' financial participation schemes so as to ensure a fair distribution of profits and productivity gains to employees as a result of an overall performance improvement of an enterprise.

#### A. JOINT CONSULTATIVE COUNCIL

4. Establishment of a Joint Consultative Council
  - (1) There may be established a Joint Consultative Council in enterprises where employers and employees have voluntarily agreed to do so.
  - (2) A Joint Consultative Council should be a formal body of persons with no executive powers, where employees are consulted by Management on matters pertaining to the functioning of the enterprise.
  - (3) For the purpose of paragraph (1) and (2), a Council should meet, discuss and be informed of any matter relating to the following:

- (a) overall business situation;
  - (b) production and its results;
  - (c) economic and financial situation of the enterprise;
  - (d) management strategic plans;
  - (e) improvement of labour processes and introduction of new technologies and machineries;
  - (f) implementation of productivity and performance enhancement programmes such as Quality Circles and Total Quality Management;
  - (g) day to day organisation;
  - (h) employees' financial participation schemes;
  - (i) employees welfare; and
  - (j) other issues relation to labour-management cooperation.
2. A Council shall not discuss issues relating to collective bargaining and collective agreements, which should be the exclusive preserve of collective bargaining between trade union and management, as defined in the **Industrial Relations Act**.
3. Nothing should preclude a trade union to take up issues raised at the level of a Council in collective bargaining with management.

#### 5. **Membership of a Council**

- (1) A Council should consist of an equal number of representatives of employees and of management.
- (2) A representative of the employer should chair the Council.
- (3) A Secretary should be chosen from the employees' representatives.

#### 6. **Appointment of employee representatives on a Council**

- (1) The Employees' representatives on a Council should be elected according to the following procedures:
  - (a) Employees may be classified in separate colleges representing different categories, departments or sections, in accordance with industry and enterprise practice and as agreed between employees and Managements;

- (b) There should be a direct election of representatives by all employees in each electoral college;
  - (c) Where in an enterprise some or all employees in one or more electoral colleges are members of a recognised union:
    - (i) the modalities of election of representatives to the Council may, at the request of a recognised trade union, be subject of discussion and agreement beforehand between management and the recognised union while keeping a reasonable balance between representatives of unionised and non-unionised employees.
    - (ii) The principle of participation of advisers on a Council on ad hoc basis should be subject of discussion and agreement between representatives of management and representatives of employees on a council.
  - (d) Where employees in an enterprise or in an electoral college do not form part of any trade union, such employees may seek the assistance of officers of the Ministry of Labour and Industrial Relations for the purposes of agreeing on the modalities for election of representatives on a Council.
- (2) There should be adequate representation of all different departments of the enterprise.
  - (3) The total number of employees representatives should not exceed fifteen.
  - (4) Employee representatives should be elected by secret ballot with a simple majority vote.
  - (5) Elections should be held at intervals not exceeding two years.
  - (6) Where a vacancy arises, an election should be held within the appropriate electoral college to fill the vacancy.
  - (7) The employer should extend all facilities to employees for the proper holding of any election.
  - (8) Upon the formation of a Council, management should inform the Ministry of Labour and Industrial Relations of the existence of such a Council.

## **7. Appointment of employer representatives**

An employer may appoint any person of the management team, as he thinks fit, to represent management on the Council.

## **8. Meeting of the Council**

- (1) The Council should meet at least once every month during normal working hours.
- (2) Two-thirds of the membership of the council should constitute a quorum.
- (3) The Council should regulate its proceedings, in such manner, as it deems fit.
- (4) Management should provide a Council with relevant information and documentation requested by the employee's representatives, including financial information on the enterprise and administrative facilities for the secretary.
- (5) The discussions of deliberations of a Council must be characterized by good faith.
- (6) The members of the council should not divulge any confidential information about the enterprise, including financial information and production information.

## **9. Protection of Council Members**

- (1) Employee's representatives should continue to receive their full salary and benefits while performing the work of the Council.
- (2) Employee's representatives should be given by management appropriate time-off facilities to attend to the business of a Council.
- (3) Employee's representatives should not be dismissed from employment solely as a result of their participation on the Council.

## **10. Financing**

- (1) Management should provide adequate facilities, for the council members to meet and carry out their business and provide all reasonable and necessary financing for the proper discharge of the Council duties.
- (2) Employees should not be made to contribute financially to the business of the Council.

## B. EMPLOYEES'S FINANCIAL PARTICIPATION SCHEMES

### 1. Establishment of the Schemes

- (1) An enterprise may adopt Financial Participation Schemes subject to agreement between an employer and a recognised trade union and where there is not trade union, after agreement between the employer and the employees.
- (2) For the purpose of sub paragraph (1), Employees' Financial Participation Schemes may take the form of:
  - (i) Cash based gain-sharing or/and
  - (ii) Deferred profit sharing
  - (iii) Employee share ownership.
- (3) The Financial Participation Schemes are not intended to be a substitute for the payment of basic wages. They are intended to award to employees, on top of their remuneration, a variable proportion of gains related to the enterprise results.
- (4) All full time employees having worked for 12 consecutive months should be eligible to participate in any Financial Participation Schemes, except for the Cash-based gain-sharing scheme where:
  - (i) all employees irrespective of the months of service in any year, and
  - (ii) any employee whose employment has been terminated by reason of redundancy, or who retired, in the course of the year.

## I CASH-BASED GAIN-SHARING

2. **A Cash Based Gain-Sharing Scheme** may take the form of:
  - (i) Productivity sharing which may comprise such plans as Proceed Sharing, Value Added and Improshare; and
  - (ii) Profit sharing.
3. An enterprise opting to implement any of the **Cash Based Gain-Sharing Schemes** should conclude an agreement between the employer and the recognised trade union, and where there is no trade union, between the employer and employees, specifying the basis on which gain-sharing is determined. The agreement should inter alia, mention whether the gain-sharing scheme is related to profit or to productivity, cover the productivity baseline, the bonus formula, the frequency of the bonus payment and option for review where changes occur as a result of product/service mix, or capital investment.
4. The maximum proportion of gain-sharing allocated to an employee should not exceed 20%.
5. A uniform rate of calculation must be made for all categories of employees (managerial as well as non-managerial).
6. The amounts distributed to an employee as gain-sharing are deductible from the enterprise taxable profits.
7. An enterprise should provide its employees information regarding its financial position at regular intervals but at least once a year.

### (1) PRODUCTIVITY SHARING SCHEMES

#### Proceed sharing plan

- (1) An enterprise implementing a Proceed sharing plan may apply the following formula for the calculation of employees' bonus:

$$\frac{(\text{Bonus fund} - \text{Reserve fund}) \times 100}{(\text{actual monthly payroll cost})}$$

Where:

Bonus fund =

$$\left\{ (\text{Actual net sales for a specific month} \times \text{labour force share ration}) - (\text{action payroll cost}) \times (\% \text{ of employee bonus share}) \right\}$$

Where:

Labour share ratio = % of payroll to net sales over a historical period of 5 to 10 years to be determined by management and employee representatives.

Actual payroll cost = wages and salaries already paid (include overtime and shift allowance).

% of employee Bonus share = 75% (Standard of Scanlon Plan)

Reserve Fund = (25% of bonus fund)

### Value Added Plan

(2) an enterprise implementing a Value Added Plan may apply the following formula for the calculation of employee's bonus:

$$\frac{(\text{Bonus fund} - \text{Reserve Fund})}{\text{Actual payroll costs}} \times 100$$

Where:

Bonus fund =

$$\left\{ \left[ (\text{Base ratio} \times \text{value added for actual month}) - \text{Action payroll cost} \right] \times (\text{Employee bonus share}) \right\}$$

Where:

Value added = (Gross sales turnover - all bought in materials and services of the enterprise of a period of 3 to 5 years as agreed by employer and employees' representatives)

Base ratio = (payroll costs/value added for a period of 3 to 5 years as agreed by employer and employees' representatives)

Actual payroll costs = (wages and salaries + benefits)

Employee bonus share = 50% (standard of Rucker Plan)

Reserve Fund (25% of bonus fund)

### **Improshare Plan**

- (3) an enterprise implementing an Improshare Plan may apply the following formula for the calculation of employees' bonus:

(Improshare standard hours) - (total actual hours worked) x (employee share) as a percentage of Total Hours actual worked

Where:

Improshares standard hours = Work hour standard x base productivity factor

### **(11) PROFIT SHARING SCHEME**

An enterprise implementing a Profit Sharing Scheme may apply the following formula for the calculation of employees' bonus:

$$\frac{\text{Profit sharing Bonus}}{\text{Total Payroll}} \times 100$$

Where:

Profit sharing bonus = % of enterprise contribution x net profit before tax

Where:

% of contribution of enterprise = 15% of net profit before taxes.

## **11. DEFERRED PROFIT SHARING**

9. A Deferred Profit Sharing Plan may be implemented on the following basis:
- (1) An employee may opt to place his cash gain-sharing in his employers' saving plan.
  - (2) An employee may voluntarily place additional funds in the employer's saving plan up to one-fourth of his annual gross earning.
  - (3) For the purpose of sub-paragraph (1) an enterprise should constitute a saving plan.
  - (4) The deferred profit-shares of an employee should be subject to a retention period which should be not less than 1 year and not more than 5, to be agreed upon between an employer and a recognized trade union and where there is no trade union, on agreement between the employer and the employees.

- (5) An employee should not be authorized to withdraw his deferred profit shares during the retention period (except to cover a medical emergency or to buy a house)
- (6) Where an enterprise savings plan is established, an agreement must be reached between the employer and the recognized trade union and where there is no trade union, between the employer and the employees specifying how and where the gain-sharing allocations are to be invested during the five-year period.
- (7) For the purpose subparagraphs (3) and (6) a Saving and Investment Committee should be set up comprising of 3 management's representatives and 3 employees' representatives to manage the saving plan and to examine the implications and profitability of investment of employees' gainshare. The employer's and employees' representatives may be assisted by their advisers on the committee.
- (8) The share of an employee gain-sharing should not be invested without his consent.
- (9) An employee should receive information on the investment flow of his enterprise on a regular basis, in any case at least once a year.
- (10) An employee should be refunded the total of his deferred profit trust account on expiry of the retention period at a rate which should not be less than the bank interest rate and more than the amount he would have been entitled had he opted for the cashed gain-sharing plan.
- (11)
  - (a) Where an employee resigns, is dismissed or retires before the expiry of the retention period, he should be refunded his deferred profit trust account on a pro rata basis, following the principle stated at paragraph (10).
  - (b) Where an employee dies, his deferred profit trust account on a pro-rata basis, following the principle stated at paragraph (10), should be refunded to his heirs.

\* This is optional

V. **EMPLOYEE SHARED OWNERSHIP**

- (10) This Scheme is aimed at giving employees access to share capital.
- (1) It may take the form of:
    - (i) The allocation of a quota of shares (to be agreed upon between employees and employers) directly to individual employees at preferential conditions (lower costs, right of pre-emption in public purchase offers, deferred payment) or at special condition for high seniority employees.
    - (ii) The creation of Employee Stock Ownership plans (ESOP).
  2. The ESOP may be financed by:
    - (i) an enterprise that may place or give sufficient cash to the trust;
    - (ii) an enterprise corporate profits or retained earnings or;
    - (iii) by the trust itself that borrows the money or the enterprise that borrows the money.
  3. For the purpose of paragraph 1 (ii), an enterprise should set up a Board of Trustees, comprising of 2 representatives of management and employees to hold and manage the stock on behalf of employees.
  4. All full-time employees may be included in an ESOP.
  5. Stock acquired by an ESOP should be allocated to individual employee account.
  6. Stock may be allocated to employees on the basis of his share of the total payroll or on seniority or on the basis of a combination of seniority or payroll share.
  7. The stock allocated to an employee should be deemed to be ordinary and redeemable shares.
  8. An employee who acquires stock under an ESOP scheme should enjoy the same rights and benefits vested to any ordinary shareholder.
  9.
    - (a) Where an employee resigns, is dismissed or retires, he will receive a fair value of his ESOP vested shares.
    - (b) Where an employee dies, a fair value of his ESOP vested shares should be paid to his heirs.