

Policy Series
No. 3



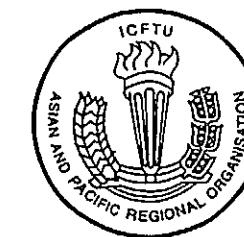
Code of Conduct on Labour Practices



International Confederation of Free Trade Union
Asian and Pacific Regional Organisation

C 01 - 02692

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on

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FOREWORD

The International Confederation of Free Trade Unions (ICFTU) at its 16th World Congress held in Brussels in June 1996 decided on five priority areas for action. One of them is the issue of tackling multinational companies (MNCs). The ICFTU-APRO at its 16th Regional Conference held in December 1996 also took up the issue. Following which the ICFTU-APRO held a regional symposium on MNCs in July 1997. One of the recommendations of the symposium for trade unions to look into is the issue of code of conduct for MNCs. An expert meeting was then held in September 1997 in cooperation with the Friedrich Ebert Stiftung to discuss a model code based on the materials produced by the ICFTU/ITS Working Party on MNCs.

There has been a mushrooming of MNCs in the region especially during the last decade with Asian MNCs playing an increasingly more prominent role. This is especially the case of MNCs from Japan, South Korea, Hong Kong and the Republic of China. MNCs from Singapore, Malaysia, Thailand and Indonesia have also made their presence felt during the last few years. Except for the case of Japan and South Korea where some employers/business associations do have some form of guidelines for their members in terms of practices for investing overseas there have been practically no specific codes of conduct for these MNCs.

Some American and European MNCs do have their own codes of conduct on labour practices and to a certain extent covering environmental issues as well. However most of these codes are being used as public relation gimmicks to sell their products. There have been questions recently as to whether such codes were actually being adhered to by the contractors and/or sub-contractors engaged by these MNCs as seen in Indonesia. There is thus a need for trade unions to be actively involved in the application of codes of conduct to MNCs.

However codes of conduct on labour practices in any form are not substitutes or alternatives for collective bargaining agreements. Such codes of conduct should be based on international standards in the form of labour standards of the International Labour Organisation. Codes of conduct should be used as instruments to ensure that at least the ILO core labour standards are fully respected.

This booklet is divided into three parts. The first part covers the general principles while the second part is on a model code of conduct on labour practices and the third part covers the implementation and monitoring aspects of such a code. The text of these had been endorsed by the Executive Board of the ICFTU-APRO in October 1997 in Singapore. However one must keep in mind that due to the ever changing situations such a model code should be accordingly subject to review and updating where necessary to take into any new development.

Thus after more than three years of its first publication the booklet was updated in January

2001 to reflect the development in the areas of concern. With the financial assistance from the Japan Institute of Labour it was reprinted including among others the updates on the issues on child labour and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up.

I wish to place on record the initiatives taken by Bro. Takashi Izumi, the immediate past General Secretary of ICFTU-APRO, for his invaluable contributions in having the first version of the booklet printed in the first place.

Noriyuki Suzuki
General Secretary
ICFTU - APRO

Singapore
January 2001

PART 1 GENERAL PRINCIPLES

*Codes of Conduct
must be based on
international
standards
universally applied.*

The main purpose of the model code is to promote the inclusion of core international labour standards defining human rights at the workplace in all codes of labour practices. Amongst these standards we emphasise trade union rights because their observance is critically important to the participation of working women and men in actions that directly concern their livelihood and conditions of work and to effective monitoring of codes by those they are intended to benefit. Codes of Conduct should not pledge to observe national law and practice where a superior ILO and or other internationally-recognised standard exists.

*Codes of labour
practice must
include all core
ILO labour
standards.*

Core standards include the two key conventions on freedom of association (Convention No. 87 on Freedom of Association and Convention No. 98 on the Right to Organise and Collective Bargaining). They also include Convention No. 29 on Forced Labour, Convention No. 105 on the Abolition of Forced Labour, Convention No. 138 on the Minimum Age for Employment, Convention No. 182 on Elimination of the Worst Form of Child Labour, Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination in Employment and Occupation. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up should be respected. When necessary, interpretation of the meaning of these standards should be based on ILO findings.

*Codes of labour
practice are not a
substitute for
international inter-
governmental
co-operation.*

Codes of labour practices are not substitute for international inter-governmental cooperation - but they can be one element in a long term strategy to achieve a comprehensive international framework for international business activity. Well-conducted campaigns for codes of conduct lead to increased public knowledge and acceptance of international labour standards, and put pressure on international business to respect basic standards of behaviour in the treatment of workers. Codes of conduct cannot by their nature overcome all the problems created by the lack of legal enforcement. Only multilaterally-negotiated agreements by governments can achieve the universal application of core labour standards.

*Codes of Conduct
are not a substitute*

The objectives of codes are best achieved when governments respect the trade union rights of workers. Standards, even when

for, nor an alternative to, collective bargaining

observed, cannot replace the representation function of trade unions at the workplace, nor do standards cover all of the legitimate concerns of workers. Codes of conduct supplement action by workers themselves where their rights to join free and independent trade unions and to bargain collectively with their employer are secure and protected. Codes of conduct should therefore not address issues that are more appropriate for collective bargaining and help establish sound industrial relations practice.

Codes of Conduct must be independently monitored

Codes of conduct will only be successful if they are implemented and independently monitored. In our view this is most likely to be achieved where secure and independent trade unions are able to work for the application of the code in workplaces. A model agreement establishing an independent monitoring programme would assist in identifying both the principles and elements involved in monitoring programmes and the problems that would have to be resolved in order to make any programme work.

Elements of a model code

Short and simple with effective implementation and monitoring

The model code we are proposing is relatively a short list of key principles. It is meant to be accompanied by an agreement between the company and an appropriate trade union organisation spelling out how the code will be implemented and monitored.

Easy to use

This approach has the advantages that come from clearly separating principles from their application. These advantages are readily apparent in negotiations and later when problems arise and there is need for interpretation. A brief code of conduct is easier to promote and to understand. It lends itself well to posting in workplaces and avoids the impression that the code is obtuse and contains "loopholes".

Builds on experience and trade union expertise

The model code of labour practice in Part 2 is based on a code prepared by the ICFTU, the ITGLWF and FIET(now known as UNI) and subsequently adopted by FIFA. It is limited to labour standards and practices and does not include concerns such as the environment, consumer interests or responsible business practices with respect to illicit payments or fair competition. Although these are legitimate concerns for workers and their trade unions, it is with respect to labour practices that trade unions must and can play the leading role.

Applicable to individual companies and industry associations

The draft code is intended for companies that directly employ people and that sub-contract work to suppliers in several countries. It can also be used by industry associations or employer organisations. The adoption of codes by industry associations may have several advantages including wider application and the possibility of some kind of industry sanction.

Three key responsibilities for business

The model code has three parts: a preamble, the main contents and the closing section. The preamble establishes three principles: First, the company accepts responsibility for its workers, including workers involved in contracting and subcontracting agreements. Second, the company pledges to observe the core ILO labour standards and to ensure that workers are provided with fair wages and decent working conditions. Third, the company pledges to make observance of the code a condition of any agreements that it makes with contractors and suppliers and to require them to extend this obligation to their subcontractors.

Core issues of labour practices

The body of the code is based on the same core ILO conventions that also constitute the standards which the ICFTU has advocated for a trade and labour standards provision in the World Trade Organisation. These include prohibitions against child labour, forced or bonded labour and discrimination. They also include freedom of association and the right to collective bargaining. This is followed by the basic labour conditions - wages, hours and working conditions (including health and safety) and their formulation in the code, also derived from ILO standards.

Establishing a labour contract

This section also addresses the issue of regular employment relationships. Increasingly employers avoid the obligations of the employment relationship by treating workers as "independent contractors" when in fact their situation is the same as that of regular employees. The ILO is in the process of developing an international standard on this subject.

Making standards stick

The closing section provides the most importance obligations contractors, subcontractors, suppliers and licensees must undertake in implementing the code and pledges the company to enforce its code using a range of sanctions up to and including termination of any agreements. This part also states that the code establishes only minimum standards that must not be used as a ceiling or to discourage collective bargaining.

Guidelines for an implementation and monitoring agreement

<i>Achieving credibility</i>	Trade union organisations negotiating codes of conduct with companies or industry associations should negotiate a separate agreement concerning how the code of conduct will be implemented and how it will be monitored.
<i>Relationships</i>	A principle purpose of the agreement should be to establish the relationship between the company and an appropriate trade union organisation. If other organisations such as NGOs are to be involved, then the agreement should establish the relationship between the company, the trade union and these organisations.
<i>The role of unions and NGOs in helping business to apply codes</i>	The need to establish these relationships is because, in the end, the code belongs to the company which has adopted it. It is an agreement or pledge by the company to the workers concerned and to the public and consumers. An implementation and monitoring agreement belongs both to the company and to the organisations which are party to it. It is an agreement between the company and those organisations that have sought a code and that are likely to follow-up with its implementation. The agreement is where the expectations over implementing and monitoring the code are spelled out.
<i>Codes of Conduct must be implemented</i>	Implementation refers to the whole range of activities that could be taken by a company to give effect to a code of labour practices. Implementation could involve everything from important details such as ensuring that the code is translated into appropriate languages to such large undertakings as monitoring compliance with the code.
<i>Embedding codes in companies' culture</i>	Responsibility for codes of conduct should not be left with the public relations department (or agency) of the company that adopts a code but should be incorporated into the overall philosophy of the company, and responsibility for implementing the code placed in the appropriate part of the organisation and assigned at each workplace. Observance of the code must be made an enforceable, and enforced, part of any agreements the company enters into when outsourcing. Companies must take the ability of subcontractors and suppliers to observe the terms of their code into account when selecting subcontractors and suppliers. This should be spelled out in the agreement.

An important definition

Implementation and monitoring are often confused. Monitoring, which means to watch or check, and in this context to watch or check that the terms of the code are being respected, is one aspect of implementing a code. Some companies claim that they monitor subcontractor compliance with their code through their quality control programmes. This is called "internal monitoring". Internal monitoring is contrasted with external monitoring which would be conducted by an organisation other than the company.

Social auditors

Independent monitoring is a key issue surrounding codes of labour practice. It is the basis by which workers can obtain confidence in a code of labour practice. Independent monitoring involve trade unions and in some cases non-governmental organisations (NGOs) that have an interest in the effective implementation of the code.

Quality of audits vital

The quality of monitoring is vital. Important issues including the standards and procedures for monitoring and the selection and training of monitors have to be resolved. The experience of the labour inspectorate and of trade union organisations should be drawn upon.

Trade unions must have a role in establishing and accrediting systems of independent monitoring

The ICFTU believes that the most effective systems for monitoring labour practices are always the concerned workers themselves through their own secure trade unions. However codes of labour practice are meant to address the widespread exploitation that exists largely because there are no trade unions and trade union rights not respected. In these situations the ICFTU recommends that the most appropriate trade union organisation to become involved in negotiating and monitoring codes should be the industry or professional international trade union organisation/s (ITS) covering the sector or company concerned.

Involving unions in monitoring

The details of monitoring would require an agreement of a trade union organisation. Trade union organisations should, together with business and other organisations, always jointly control any mechanisms established for the purpose of independent monitoring of codes covering labour practices. As the only representative organisations of workers, appropriate trade union organisations should be involved at the decision making level where systems of independent monitoring are established and accredited.

Unions should have information to do their job

Union parties to codes (e.g. ITS) must be in a position to ensure that codes are applied in practice for all the workers covered. The most effective systems of monitoring codes will be based on the work of free and independent unions and international unions (e.g. ITS) that are party to the negotiation of any code. The company or companies involved should therefore provide lists of the names and addresses of their subsidiaries and contractors sub-contractors suppliers and franchisees to the parties to the code and permit access to premises. Where necessary, organisations that are mutually agreed as independent, qualified and capable may be designated to supplement the work of unions. Companies adopting codes should not make claims concerning their code that are not based on a verified and accredited system of independent monitoring.

Codes must involve the workers they are meant to protect

At a minimum, workers must be informed of the terms of any code of conduct applying to them in a language that they can understand and must be provided with a secure and confidential means of reporting violations of the code. Workers should not be disciplined, dismissed or discriminated against for providing information concerning the observance of a code of conduct.

The cost of independent monitoring should be borne by the companies concerned

The adoption and implementation of codes of conduct are an acknowledgement of the social responsibilities of international business that also confers benefits on the company. Companies should not attempt to reap the public relations benefits of a code of conduct that they are unwilling to implement. Companies should not make implementation contingent on support from governments or charities. Companies may support implementation directly or indirectly through a foundation or other institution established for the purpose of assisting companies implement, monitor or verify and accredit monitoring systems.

Possible negative consequences to workers must be taken into account

If the implementation of a code of conduct has negative effects on individual workers such as displacing child workers or displacing workers in the informal sector with other workers formally employed, programmes must be put in place to compensate or assist the transition of the workers concerned. The means should include compensation by the employer or user enterprise and where appropriate, technical assistance provided through the ILO or on an accredited basis.

PART 2 A MODEL CODE OF CONDUCT ON LABOUR PRACTICES

Preamble

1. *(name of company)* recognises its role as a global actor which has impacts on social and economic development issues covering workers basic rights including job security and human resource development; environment; consumerism etc. However, this Code deals only with certain issues of labour practices.
2. *(name of company)* recognises its responsibilities to workers for the conditions under which its products or services are made and that these responsibilities extend to all workers producing products or services for *(name of company)* whether or not they are employees of *(name of company)*.
3. Any workers producing products or services manufactured, sold or distributed by *(name of company)* must be provided with fair wages and decent working conditions, and the international labour standards established by Conventions 29, 87, 98, 100, 105, 111, 138 and 182 of the International Labour Organisation as well as other relevant international labour standards must be observed. Due respect should also be accorded to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.
4. *(name of company)* will require its contractors, their sub-contractors, suppliers and licensees to provide these conditions and observe these standards when producing or distributing products or components of products for *(name of company)*. *(name of company)* will, prior to placing orders with suppliers, engaging contractors and subcontractors or granting licenses, assess whether the provisions of this Code can be met.
5. For the purposes of this Code the term contractor shall mean any person or organisation who contracts with *(name of company)* to perform work or provide services. The term subcontractor means any person or organisation with a contractor, as defined above, for the purpose of performing work or providing services related to or as part of an agreement with *(name of company)*. The term supplier means any person or organisation who provides *(name of company)* with materials or components used in the final products, or the final products, sold by

(name of company). The term licensee means any person or organisation who as part of a contractual arrangement with (name of company) uses for any purpose the name of (name of company) or its recognised brand names or images.

MODEL CODE OF LABOUR PRACTICE

6. (name of company) and its contractor, their subcontractors, suppliers and licensees involved in the production and/or distribution of products for (name of company) shall ensure that the ILO Declaration on Principles and Rights at Work and its Follow-up is respected and that:-

- **EMPLOYMENT IS FREELY CHOSEN**

There shall be no use of force, bonded or prison labour (ILO Conventions 29 and 105). Nor shall workers be required to lodge "deposits" or their identity papers with their employer.

- **THERE IS NO DISCRIMINATION IN EMPLOYMENT**

Equality of opportunity and treatment regardless of race, colour, sex, religion political opinion, nationality, social origin or other distinguishing characteristic shall be provided (ILO Conventions 100 and 111).

- **CHILD LABOUR IS NOT USED**

There shall be no use of child labour. Only workers above the age of 15 years or above the compulsory school-leaving age shall be engaged (ILO Convention 138). ILO Convention 182 on the prohibition and immediate action for the elimination of child labour shall be respected. Adequate transitional economic assistance and appropriate educational opportunities shall be provided to any replaced child workers.

- **FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING ARE RESPECTED**

The right of all workers to form and join trade unions and to bargain collectively shall be recognised (ILO Conventions 87 and 98). Workers representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions. (ILO Convention 135 and Recommendation 143)

Employers should recognise the constructive contribution of trade unions

to preventing exploitation and adopt a positive approach towards the activities of trade unions and an open attitude towards their organisational activities.

- **LIVING WAGES ARE PAID**

Wages and benefits paid shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs and provide some discretionary income.

Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law and/or by collective bargaining agreements be permitted without the expressed permission of the worker concerned. All workers shall be provided written and understandable information about the conditions in respect of wages before they enter employment and of the particulars of their wages for the pay period concerned each time that they are paid.

- **HOURS OF WORK ARE NOT EXCESSIVE**

Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 40 hours per week and shall be provided with at least one day off for every 7 day period. Overtime shall be voluntary, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

- **WORKING CONDITIONS ARE DECENT**

A safe and hygienic working environment shall be provided, and best occupational health and safety practice shall be promoted, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Physical abuse, threats of physical abuse, unusual punishments or discipline, sexual and other harassment, and intimidation by the employer is strictly prohibited.

- **THE EMPLOYMENT RELATIONSHIP IS ESTABLISHED**

Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship must not be avoided through the use of labour-only contracting arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment. Workers should be provided the

opportunity to participate in education and training programmes.

7. Contractors, subcontractors, suppliers and licensees shall undertake to support and co-operate in the implementation and monitoring of this Code by:-

- providing (*name of company*) with relevant information concerning their operations;
- permitting inspection at any time of their workplaces and operations by approved inspectors;
- maintaining records of the name, age, hours worked and wages paid for each worker and making these available to approved inspectors on request;
- informing, verbally and in writing, the workers concerned of the provisions of this Code, and,
- refraining from disciplinary action, dismissal or otherwise discriminating against any worker for providing information concerning observance of this Code.

8. Contractors, subcontractors, suppliers and licensees found to be in breach of one or more terms of the Model Code of Conduct shall lose the right to produce or organise production of goods for (*name of company*).

9. Questions as to the interpretation of the meaning of the provisions of this Code shall be resolved according to the procedure outlined in the Memorandum of Understanding on the (*name of company*) Code of Labour Practices between (*name of company*) and (*names of other parties to this agreement*).

10. The provisions of this Code constitute only minimum standards and conditions for the purpose of preventing exploitation. (*name of company*) does not intend, will not use, and will not allow any contractor, supplier or licensee to use these minimum standards and conditions as maximum standards or as the only conditions permitted by (*name of company*) or to serve as the basis for any claim as to what standards or conditions of employment should be provided.

PART 3 IMPLEMENTATION AND MONITORING CODES OF CONDUCT ON LABOUR PRACTICES: GUIDELINES FOR TRADE UNION NEGOTIATORS

1. The parties to this memorandum agree that to be effective, the Code of Conduct must be accompanied by arrangements for its implementation including procedures for independent monitoring to ensure that the provisions of the code are being observed. The purpose of this memorandum is to set out how the Code of Labour Practices will be implemented and monitored.

General obligations of (*name of company*) to implement the Code

2. (*name of company*) agrees to take positive actions to implement the Code and to incorporate the Code into all of its operations and to make the code an integral part of its overall philosophy and general policy.

3. (*name of company*) will fix responsibility for all matters pertaining to the Model Code of Conduct within its organisation and inform the (*other parties to this agreement*) where this responsibility is fixed.

4. The Board of Directors (*other governing body*) of (*name of company*) shall periodically review the operation of the Code and shall receive reports on the independently monitoring of the observance of the code.

5. (*name of company*) will make observance of the Code a condition of all agreements that it enters into with contractors and suppliers. These agreements will obligate these contractors, and suppliers to require observance of the Code in all agreements that they make with subcontractors in fulfilling their agreement with (*name of company*).

6. (*name of company*) will, in line with the principles described in this memorandum of understanding, establish an independent programme of implementation to ensure that the Code is being positively complied with by all parties obliged to observe the Code.

7. (*name of company*) will provide or ensure the provisions of translations of the Code in the languages used at the places where products, or their components, are produced and/or distributed by or under agreement with or for (*name of company*) and provide authorised texts of the Code for compliance by contractors, and suppliers and subcontractors obliged to observe this Code.

8. *(name of company)* will maintain full and up-to-date information on all contractors, subcontractors and suppliers obliged to observe the Code and to provide this information to approved inspectors in timely manner and to *(any of the other parties to this agreement)* upon request. *(name of company)* must observe its own Code.
9. *(name of company)* accepts responsibility for observing the Code with respect to all employees and workers that it supervises and agrees to:-
 - i. fix responsibility for implementing this Code at each place that it owns or controls;
 - ii. ensure that all workers are aware of the contents of the Code by clearly displaying an approved text of the Code at all workplaces and by orally informing these employees in a language understood by them of the provision of the Code;
 - iii. refrain from disciplining, dismissing or otherwise discriminating against any employee for providing information concerning observance of this Code;
 - iv. provide approved inspectors unlimited access without requiring notice to facilities that *(name of company)* owns or controls; and
 - v. maintain records of the names, ages, hours worked and wages paid for each worker, to make these records available for inspection by approved inspectors, and to allow inspectors to conduct confidential interviews with workers.

The Code must apply to the contractors, subcontractors and all suppliers of *(name of company)*

10. *(name of company)* will ensure that all contractors, subcontractors and suppliers involved in production and/or distribution of products under agreement with or for *(name of company)* adhere to the provisions of the Code and include this obligation in agreements that *(name of company)* enters into with any contractors, subcontractors and suppliers. Such agreements will require contractors, subcontractors and suppliers:-
 - i. to fix responsibility within their own organisations for observance of the Code and to inform *(name of company)* where this responsibility is fixed;

- ii. to fix responsibility for observance of the Code at all workplaces where work related to the agreement with *(name of company)* is performed;
- iii. to display clearly an approved version of the Code in all workplaces where work related to the agreement with *(name of company)* is performed;
- iv. to orally inform all workers engaged in work related to the agreement with *(name of company)* of the contents of the Code in a language understood by them;
- v. to refrain from disciplining, dismissing or otherwise discriminating against any worker for providing information concerning observance of this Code; and
- vi. to provide approved inspectors unlimited access without requiring notice to their facilities where work related to an agreement with *(name of company)* is performed; to maintain records of the names, ages, hours worked and wages paid for each worker, to make these records available for inspection by approved inspectors and to *(name of company)* upon request, and to allow approved inspectors to conduct confidential interviews with workers.

Termination of agreements for failure to observe the Code

11. It is understood that the purpose of the Code is to protect workers and children from abuses and not to injure business organisations. Observance of the Code by contractors, subcontractors and suppliers must be an enforceable and enforced condition of agreement with *(name of company)*. In order to achieve this:-
 - i. *(name of company)* will ensure that all agreements that it enters into related to the production of products or their components allow for the termination of the agreement for failure to observe the Code by any contractors, subcontractors and suppliers;
 - ii. *(name of company)* may authorise a procedure with fixed time limits to rectify situations where its Code of Labour Practices is not being fully observed by a contractor, subcontractor or supplier. The agreement by the contractor, subcontractor or supplier to abide by this procedure would enable the continuation of the agreement with *(name of company)*. *(name of company)* may authorise contractors or subcontractors or suppliers to institute

similar procedures with respect to their contractor, subcontractors and suppliers.

12. Such procedures (11(ii)) shall be authorised only where:-
 - i. there is a reasonable expectation that the situation will be corrected and that the Code will be observed in the future;
 - ii. the period specified for correcting the situation is reasonable; and
 - iii. recognisable and unmistakable violations of the Code are ceased immediately.
13. Such procedures (11(ii)) shall not be authorised more than once for the same contractor, subcontractor or supplier.
14. With respect to child labour, such procedures shall require that there be no further engagement of children and that child workers be replaced by adults, where possible from the same family. *[Optional clause where specific child labour eradication programmes are involved, procedures shall also include measures to assist the children concerned through provision of educational opportunities and transitional economic support.]*
15. Contractors, subcontractors and suppliers must, as part of their agreement with *(name of company)* agree to terminate any contract or agreement for the production of goods or services by any contractor, subcontractor or supplier that they engage in order to fulfil terms of their agreement with *(name of company)* not fully observing the Code, or they must seek and receive approval from *(name of company)* to institute a procedure with fixed time limits to rectify situations where the Code of Labour Practices is not being fully observed.
16. Where there is repeated failure to observe or to ensure observance of the Code by a particular contractor, subcontractor or supplier, the agreement shall be terminated. Repeated failure shall be defined as two occasions for the same or similar violation.
17. In situations where it is not clear whether a particular practice constitutes a violation of the Code, relevant international labour standards of the International Labour Organisation (ILO) and the expert advice available from the ILO shall be sought for guidance. When such situations are determined to exist, *(name of company)* agrees to inform and consult the *(other parties to this agreement)*.

18. The existence of violations of the Code shall be determined by an independent monitoring programme supported by *(name of company)* and by substantiated complaints from any other source.

MONITORING ARRANGEMENTS

19. Independent monitoring will be undertaken by competent staff composed of duly appointed trade union and management representatives. Trade union representatives may, if they so wish, be accompanied by the relevant ITSs.

Where a trade union may not be able to designate its members on the monitoring body, it has the right to be represented by the ITS of its choice or by another trade union organisation so designated by it.

External monitoring may be reverted to only as a last resort and by mutual agreement.

20. All expenses for monitoring services will be borne by the company.
21. Selection of external monitors
 - i. Monitors shall be fully independent of *(name of company)* and be so designated when acceptable to both parties. Such persons could, by agreement, be drawn from established human rights, development organisations or other bodies qualified and capable of providing independent verification of labour conditions;
 - ii. Such individuals or organisations shall be identified and agreed through consultation with *(the other parties to this agreement)* and where appropriate, with the assistance of the International Labour Office. These individuals/organisations are referred to as external monitors in this memorandum; and
 - iii. The arrangements for external monitoring must provide for a sufficient number of individuals/organisations to properly carry out such work in all countries where the company has operation, affiliates, suppliers, contractors and subcontractors.

22. Training and conduct of monitors

- i. All individuals involved in this independent monitoring programme shall participate in a training programme to be developed by mutual agreement of the parties to the Code and

the guidelines;

- ii. All individuals and/or organisations engaged in this monitoring programme must respect the commercial confidentiality of information obtained in the exercise of the duties, without prejudice to their responsibility to disclose breaches or alleged breaches of the Code; and
- iii. Wherever possible and appropriate approved monitors may subject to the consent of parties to this agreements cooperate with labour inspectorate of the respective country.

23. Monitoring by spot checks

- i. Monitoring must be by the actual observance of working conditions through unannounced inspection visits ("spot checks") to premises where production and/or distribution of goods produced by *(name of company)* or under agreement with and for *(name of company)* is performed;
- ii. The frequency of inspections should be such that each premise involved in the production and/or distribution of goods by *(name of company)* or under agreement with and for *(name of company)* shall be visited as often as necessary but at least once during a twelve month period;
- iii. Monitors shall be permitted to interview workers on confidential basis;
- iv. In addition to routine inspections, inspections shall be undertaken at specific locations following substantiated complaints, where there is sufficient reason to believe that the Code is not being observed, or upon the request of *(the other parties to this code)*;
- v. Inspections shall be conducted in a way which does not cause undue disruption of work in the premise being inspected;
- vi. In consultation with *(name of company)*, the *(other parties to this agreement)* may nominate representatives to accompany monitors during inspections;
- vii. Written reports on each visit shall be provided by the monitors to the parties to the agreement; and

- viii. The findings of this inspection and monitoring process shall in the first instance be discussed by the parties with a view to remedial action. Where corrective action may not be forthcoming within a reasonable period the findings can form the basis for any public claims as to the operation of the Code.

24. Involvement of the Workers Concerned

- i. *(name of company)* recognises and accepts the role of the workers the Code is meant to protect in monitoring observance of the Code. The approved version of the code that contractors, subcontractors and suppliers are obliged to display clearly at workplaces should also provide information to assist workers in reporting violations of the Code. *(name of company)* in consultation and co-operation with *(the principal parties to this agreement)*, develop a practical means for receiving complaints that takes into account the difficulty workers may have in reporting violations and the need for confidentiality in order to protect any workers reporting such violations; and
- ii. *(name of company)* also recognises the role of *(the other parties to this agreement)* in monitoring observance of the Code. *(name of company)* agrees to make information available to the *(the other parties to this agreement)* upon request and subject only to the condition that the commercial confidentiality of this information is respected, but without prejudice to the right of *(the other parties to this agreement)* to disclose, subject to the condition specified in 23. (viii), where the Code may not be fully observed. Such information will, as a minimum, include the list of contractors, subcontractors and suppliers, reports from monitors, complaints from employees of contractors, subcontractors and suppliers and other substantiated complaints concerning observance of the Code.

UNDERTAKINGS BY *(the other parties to this agreement)*

- 25. The *(other parties to this agreement)* undertake to publicise their support for the adoption by *(name of company)* of the model Code of Conduct and their agreement with the provisions contained therein. They further agree to:
 - i. Establish and inform *(name of company)* of contact points within their respective organisations for all matters relating to this Code of Conduct and this agreement;



- ii. Advise (*name of company*) in the first instance of any alleged breach of the provisions of the Code which comes to their attention;
- iii. Respect the commercial confidentiality of information provided by (*name of company*), without prejudice to their right to disclose situations where the Code is not being fully observed;
- iv. Assist (*name of company*) to the extent possible in the implementation and monitoring of the Code;
- v. Assist (*name of company*) to identify potential individuals or organisations to monitor the Code and to advise (*name of company*) on the development of the training programme for monitors; and
- vi. [Optional section: Seek the involvement and support of the International Labour Organisation in the implementation and monitoring of the Code, including in the identification and training of monitors, in settling questions of interpretation over the Code in situations that are not clear as well as in the development and implementation of a programme for the elimination of child labour.]

REVIEW AND FOLLOW-UP

- 26. The parties to this agreement shall meet within six months following the adoption of Code of Conduct by (*name of company*) to review progress on its implementation and thereafter at the request of either (*name of company*) or the (*the other parties to this agreement*) following reasonable notice.

DEFINITIONS

- 27. For the purpose of this memorandum the term contractor means any person or organisation who contracts with (*name of company*) to perform work or provide services. The term subcontractor means any person or organisation who contracts with a contractor as defined above to perform work or provide services related to or as part of an agreement with (*name of company*). The term supplier means any person or organisation who provides (*name of company*) with materials or components used in the final products or the final products sold by (*name of company*).

INTERPRETATION

- 28. Question over the interpretation of the Code or of this memorandum shall be resolved through consultation between the parties to this memorandum. Where such consultation may not lead to a resolution of the problem, the

parties to the Code may seek the services of mutually acceptable mediator within 2 weeks of the impasse. The mediator so chosen should render his/her opinion within 2 to 3 weeks of his/her taking in hand the problem and such opinion shall be binding on both parties.

OPTIONAL SECTIONS

CHILD LABOUR PROGRAMME

- 29. (*name of company*) agrees to promote and make financial commitments to a programme or programmes that:-
 - i. replace child workers involved in production and/or distribution of goods and services for or by (*name of company*) with adults (*where possible from the same family*);
 - ii. provide the children concerned with educational and vocational training opportunities, including through the establishment of educational facilities and/or expansion of existing facilities; and
 - iii. provide transitional economic support for the children concerned and their families to enable withdrawal of the children from the workplaces.
- 30. It is understood the these programmes and financial support provided to them by (*name of company*) would be determined through agreements reached between (*name of company*), (*the other parties to this agreement*) and any appropriate national authorities or organisations in countries where child labour has been used to produce products for (*name of company*). It is understood that such organisations would include, as much as practical, trade unions and the International Labour Organisation and may include any mutually-agreed non-governmental organisations responsible for conducting these programmes.