

BOI
SRI LANKA

**GUIDELINES FOR THE
FORMATION & OPERATION OF
EMPLOYEES' COUNCILS**

BOARD OF INVESTMENT OF SRI LANKA
(31 March 2004)

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Date of Commencement : 31st March 2004

GUIDELINES ON EMPLOYEES' COUNCILS

(1) Introduction

As a measure of promoting employees' participation in decision-making on matters affecting them and labour-management consultation and co-operation on matters of mutual concern at the enterprise level, the Board of Investment (BOI) of Sri Lanka facilitates the establishment of Employees' Councils consisting of elected representatives of employees in the BOI enterprises.

(2) Objects and Functions of Employees' Council

2.1 The objects and functions of the Council shall be –

- (a) the regulation of relations between the employees and the management of the enterprise.
- (b) the promotion and maintenance of effective participation of employees in the affairs of the enterprise through consultation and co-operation between the employees and the management of the enterprise on matters of mutual concern to both parties.
- (c) the representation of employees in collective bargaining and settlement of industrial disputes.
- (d) the contribution to the promotion and maintenance of industrial peace and improvement of efficiency and productivity in the enterprise.
- (e) the promotion of the interests, welfare and well-being of the employees in the enterprise generally.

(3) Composition of the Council

- (i) A council shall consist of not less than five (5) members but not more than ten (10) members, representing the different departments of the enterprise and the different categories of employees employed therein. This does not, however, preclude the possibility of the number being increased to more than 10 members in exceptional cases where the size of the workforce warrant such an increase.
- (ii) The Council shall, while providing for proportional representation to the different categories of employees in the enterprise, encourage and promote the active participation of female employees in the affairs of the Council.

- (iii) Every member of the Council shall be elected by secret ballot by the eligible employees of the enterprise.

(4) Eligible Employees

- (i) Every employee employed in the enterprise other than employees in managerial grades shall be eligible to be elected and to vote at elections for membership of the Council.
- (ii) An employee who resigns from employment, vacates his post or whose employment has been terminated by the employer will, *ipso facto*, cease to be an eligible employee.
- (iii) List of eligible employees of an enterprise shall be prepared from the nominal roll and the current wages records of the enterprise.

(5) Election to the Council

- (i) Election to the Council shall be through secret ballot of eligible employees in the enterprise in case the number of nominations received exceeds the number of members to be elected.
- (ii) First election for the creation of the Council shall be organized by the Director of the BOI Industrial Relations Department or his representative, in close consultation with all parties concerned, and carried out by a three member Electoral Board constituted by the eligible employees of the enterprise..
- (iii) Subsequent elections to the Council shall be carried out by a three-member Electoral Board which shall be constituted by the Council.
- (iv) A representative of the Commissioner General of Labour may be present at the elections as an observer only when both parties request him to be present.
- (v) When the term of office of the Council expires, the Electoral Board constituted by the Council shall hold elections to fill the positions in the Council within a period of one month from the date of expiry of the term of office of the Council.
- (vi) Where the Electoral Board of a Council fails to hold the election within one month of the date of expiry of the term of office of the Council, the Director of the Industrial Relations Department of the BOI or his representative may, in close consultation with the Council, facilitate the carrying out of the election by the Electoral Board of the Council.

- (vii) The Electoral Board shall :
 - (a) call for and receive nominations
 - (b) arrange, hold and supervise elections to the Council
 - (c) declare the results of the election
 - (d) convene first meeting of Council presided by one of the members of the Board for the Election of President, Vice President and Secretary of the Council.
- (viii) Banners, posters or hand bills are not to be exhibited or distributed or meetings held in the premises in the process of canvassing votes in connection with the election.

(6) Term of Office of the Council

- (i) The term of office of the Council shall be 02 years from the date of election.
- (ii) The Electoral Board shall take suitable steps to fill any vacancy arising in the Council as a result of the resignation of a member or a member ceasing to be an employee in the enterprise.

(7) Registration of the Council

- (i) Upon the establishment of an Employees' Council, the President of the Council shall register the Council with the Department of Industrial Relations (BOI) together with the names of members of the Council, within a period of one month of its establishment.
- (ii) Every subsequent change in the membership of the Council shall be notified by the President of the Council to the Department of Industrial Relations of the BOI, within two weeks of such change.

(8) Conduct of Business of the Council

- (i) The Council shall elect a President, Vice President and a Secretary at the first meeting convened by the Electoral Board.
- (ii) The Council shall meet as often as is necessary and at least once a month. The date, time and venue of the meeting shall be arranged by the President of the Council.

- (iii) The Council will discuss any matters affecting the interests of the employees of the enterprise and decide on matters to be taken up for discussion with the employer. Decisions of the Council will be by majority vote.
- (iv) Minutes of all proceedings, including names of those present, matters discussed, decisions taken and voting shall be maintained by the Secretary. Minutes will be signed by the President, Secretary and at least one other member of the Council.
- (v) The employer shall allow up to two (02) hours duty leave every month for a meeting of the council and provide the necessary premises and facilities for the conduct of the meetings of the Council.

(9) Duties of the Council

The general duties of the Council will include the following:-

- (a) making recommendations to the employer on matters benefiting the enterprise and the employees;
- (b) ensuring that effect is given to any written law affecting employees
- (c) making recommendations to the employer on measures to be taken to prevent industrial accidents and eliminate health hazards.
- (d) promoting and ensuring the efficient operation and functioning of the Council.
- (e) such other duties as the members of the Council may, by a majority vote, deem necessary and desirable.

(10) Right of Representation in Collective Bargaining and Disputes Settlement

- 10.1 (a) The members of an Employees' Council established in an enterprise shall have the right to represent any one or more of the employees in such enterprise in any proceedings under the provisions of the Industrial Disputes Act, provided -

- (i) No less than the prescribed *percentum* of the eligible employees of the enterprise authorize the members of the Council, in writing, to represent them as their duly elected representatives in collective bargaining and industrial disputes concerning terms and conditions of employment.
 - (ii) an individual employee, who has a dispute with the enterprise authorises any one of the members of the Council to represent him/her as his/her duly elected representative in such proceedings.
- (b) For the purposes of sub-paragraph (a) (i), “ prescribed *percentum* “ means the minimum percentage union membership required for a trade union to bargain collectively with the employer of the employees in the enterprise on whose behalf it seeks to bargain in accordance with the provisions of Industrial Disputes Act, Chapter 131.
- (c) For purposes of nominating the members of the Council for representation functions referred to in sub-paragraph (a), the employees of the enterprise shall follow the format provided for such nomination in APPENDIX – A or APPENDIX – B, as appropriate
- (d) A copy of such nomination shall, where appropriate be -
 - (i) deposited with the Director, Department of Industrial Relations of the BOI for representation purposes.
 - (ii) delivered to the Human Resources / Personnel Manager of the enterprise for recognition purposes.
 - (iii) attached to every collective agreement and Memorandum of Settlement, as evidence of the right of representation. and
 - (iv) produced before the Commissioner of Labour, a Labour Tribunal, an Arbitrator or Industrial Court, as proof of the right of representation.

- 10.2 The number of members of an Employees' Council who are entitled to represent the employees of an enterprise, for the purposes of the Industrial Disputes Act, shall be not more than the number determined in the manner set out hereunder:

	<u>Number of Employees</u>	<u>Number of Representatives</u>
(a)	1 – 25	1
(b)	26 – 100	2
(c)	101 – 400	3
(d)	401 – 750	4
(e)	More than 750	5

(As per Regulation 38(2) of the Industrial Disputes Regulations 1958).

- 10.3 Where both a trade union which has been recognised for collective bargaining purposes and an Employees' Council exist in an enterprise the Employees' Council shall not represent the employees in collective bargaining and settlement of industrial disputes concerning terms and conditions of employment.

(11) Procedure for Resolution of Matters taken up by the Council

- (i) The Council to submit to the employer a statement containing matters to be taken up for discussion with him with a view to settlement.
- (ii) Employer to respond to the statement of matters submitted by the Council within two weeks.
- (iii) A meeting between the parties to take place within two weeks thereafter and negotiations to continue with a view to reaching a settlement of such matters as expeditiously as possible.
- (iv) The employer may nominate not more than five (05) representatives to discuss matters with the Council.

- (v) Any matters discussed between the Council and the employer but not resolved will be taken up by the Council with a view to settlement with –
 - a) the appropriate disputes settlement authority in accordance with the Disputes Settlement Procedure outlined in Labour Standards and Employment Relations Manual, where the disputed matters relate to bargainable issues.
 - b) the IR Department of BOI where the disputed matters relate to non-bargainable issues.

(12) Meeting of Employer and the Council

- 12.1 The employer and the Council shall meet as often as is necessary and, at least, once in every three months to –
 - (a) discuss matters of mutual concern to both parties, and
 - (b) review the employment relations situation at the enterprise with a view to ensuring the maintenance of industrial peace and improving efficiency and productivity.
- 12.2 The meetings for the purposes referred to in the preceding sub-paragraph shall be convened by the employer only in common agreement with the Council.
- 12.3 The procedure for the conduct of such meetings shall be determined by mutual agreement between the employer and the Council.

(13) Relationship between the Council and the Employer

- (i) It shall be the duty of the employer and the Council to work together in a spirit of mutual trust for the good of the enterprise and its employees.
- (ii) The employer and the Council shall work together to improve the efficiency and productivity of the enterprise and the well-being of the employees.

(14) Interpretation of Guidelines

Any matters of interpretation of the guidelines will be decided by the BOI and its decision will be final and conclusive.

(15) Amendments to the Guidelines

The guidelines contained herein may be amended from time to time as deemed necessary by the BOI, and the amendments so effected will be read and construed as part of the guidelines superceding the amended provisions.

(16) Date of Commencement

These guidelines shall come into effect from 31st March 2004 and shall supersede the previous guidelines that were in operation until 30th March 2004.

APPENDIX –A

NOMINATION OF EMPLOYEES' COUNCIL
MEMBERS FOR REPRESENTATION
FUNCTIONS

INDUSTRIAL DISPUTES ACT, CHAPTER 131

We, the employees of (...*state name and address of company here* ...) whose names and signatures appear in the attached Schedule, hereby nominate for the purposes of the Industrial Disputes Act, Chapter 131, the following members of our Employees' Council, namely,

	Name	Status
1.		President
2.		Vice President
3.		Secretary
4.		Member
5.		Member

to act on our behalf as our duly nominated representatives, in collective bargaining / in settling the industrial dispute between the abovementioned employees and the company.

THE SCHEDULE

(State the Name of Company here)

No.	NAME OF EMPLOYEE	SIGNATURE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
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16.		
17.		
18.		
19.		
20.		
21.		

APPENDIX –B**NOMINATION OF EMPLOYEES' COUNCIL
MEMBERS FOR REPRESENTATION
FUNCTIONS****INDUSTRIAL DISPUTES ACT, CHAPTER 131**

I, (.....state the name of the employee) the undersigned employee of (... *state name and address of company here* ...) hereby nominate, for the purposes of the Industrial Disputes Act, Chapter 131, the following member of the Employees' Council, namely Mr/Ms.....
to act on my behalf as my duly nominated representative in settling the industrial dispute between the undersigned and the abovementioned company.

Date:

Signature
(State the Name of Employee)