



**CODE OF
CONDUCT FOR
INDUSTRIAL
HARMONY**



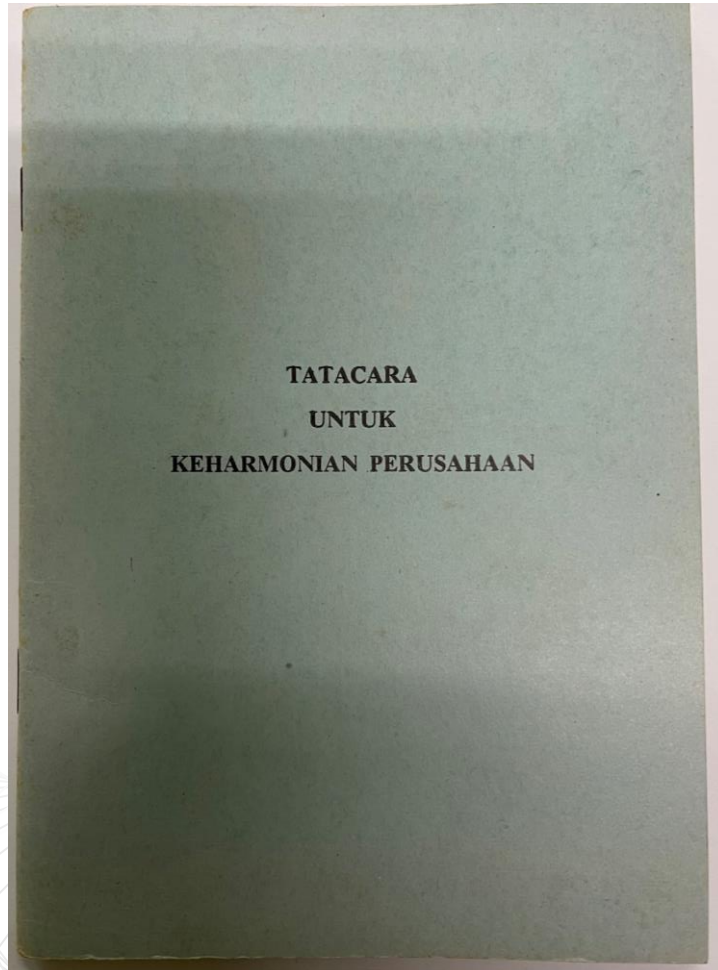
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**CODE OF CONDUCT
FOR INDUSTRIAL HARMONY**

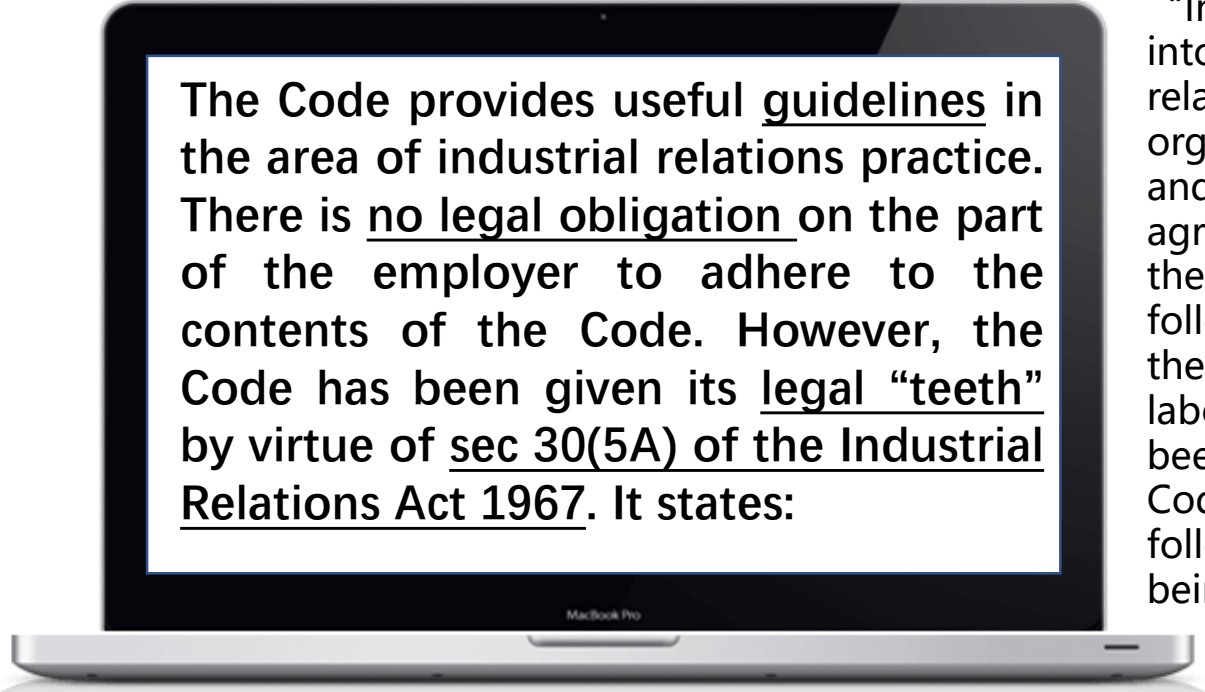
*TATACARA UNTUK
KEHARMONIAN PERUSAHAAN*

What is the Code of Conduct for Industrial Harmony?



The Code of Conduct for Industrial Harmony (the Code) is an agreement made between the Ministry of Human Resources (then known as the Ministry of Labour and Manpower) and the Malaysian Council of Employers' Organisations (the predecessor to the Malaysian Employers Federation) and the Malaysian Trades Union Congress since 1975.

What the Law States?

A silver laptop is shown from a slightly elevated front perspective. The screen is black with a white rectangular area in the center containing text. The text is in a bold, black, sans-serif font. The laptop has a small 'MacBook Pro' logo on the bottom bezel.

The Code provides useful guidelines in the area of industrial relations practice. There is no legal obligation on the part of the employer to adhere to the contents of the Code. However, the Code has been given its legal “teeth” by virtue of sec 30(5A) of the Industrial Relations Act 1967. It states:

“In making its award, the Court may take into consideration any agreement or code relating to employment practices between organisations, representative of employers and workmen respectively where such agreement or code has been approved by the Minister.” Where an employer does not follow the procedures set out in the Code, the employer in fact commits an unfair labour practice. The Industrial Court has been very consistent in its reliance of the Code in retrenchment cases. Failure to follow the Code can result in a retrenchment being declared an unfair dismissal.



The aim of the Code is “to lay down principles and guidelines to employers and workers on the practice of industrial relations for achieving greater industrial harmony”.

Under clause 7 of the Code, the central employer and employee organisations have agreed to endorse and recommend employers and workers to observe and comply with the industrial relations practices agreed upon and accepted by the Ministry of Human Resources.

cONTENTS

OF THE CODE

PART 1

RESPONSIBILITES

PART 2

EMPLOYMENT POLICY

PART 3

COLLECTIVE
BARGANING

PART 4

COMMUNICATION
AND
CONSULTATION

PART 1 : RESPONSIBILITIES

1

At the level of establishment or undertaking

(1) As **employers and workers and trade unions** representing them are jointly and severally **responsible for good industrial relations**, the first step is for both management and trade unions to accept, at the highest level, the same degree of responsibility for industrial relations as for other functions within their respective organizations.

- (2) Good industrial relations depend upon good organization of work. **Management should** therefore take all reasonable steps to ensure that:
- (a) All management personnel **understand** their responsibilities and what is required of them, and have the **training** and authority necessary to discharge such duties and responsibilities efficiently
 - (b) **Duties and responsibilities** for each group of employees are stated with clarity and simplicity in the organizational structure
 - (c) Individual employees or work-groups know what their **objectives** are and are regularly **kept informed of progress** made towards achieving them
 - (d) Where possible, work is organized in such manner so that the individual **employee** has the chance to achieve a sense of **job satisfaction**.

(3) Where a **trade union** has been **recognized**:

- (a) **Management should** take the **initiative** in seeking to establish, jointly with the trade union concerned, effective **procedures for negotiation, consultation and the settlement of grievances and disputes**.
- (b) Management and the trade union should take all reasonable steps to ensure that both the management and union personnel observe agreements reached and use **agreed procedures**.
- (c) Management should not discourage employees from joining the **recognized union and from taking an active part in** its legitimate activities.

- (4) The **supervisor is management's first "contact" man** with the employees and special attention should be given to his appointment and his needs on the job. The employer should ensure that he:
- (a) is technically proficient and adequately **trained** and possesses the personal qualities required to exercise supervision
 - (b) Has **charge of a work-group** of a size that he can supervise effectively
 - (c) Is an effective **link in the interchange of information** and views between senior management and members of his work group
 - (d) Is briefed about innovations and changes before they occur so that he can **explain management's policies and intentions** to his work-group.

PART 1 : RESPONSIBILITIES

2

At national or industry level

- (5) **Employers' association** should:
- (a) **Co-operate** with the trade unions in establishing effective procedures at industry or national level for the negotiation of terms and conditions of employment and for the settlement of disputes
 - (b) **Encourage** the establishment of effective procedures among member organizations for the settlement of grievances and disputes at the level of the establishment or undertaking
 - (c) Take all reasonable steps to ensure that member organizations **observe agreements** and **agreed procedures**
 - (d) **collect, analyze and distribute information** to its members concerning industrial relations matters
 - (e) **Identify trends and new developments** in industrial relations and help its members to anticipate and keep abreast of change
 - (f) **Provide an efficient and realistic advisory service** to its members on all matters of industrial relations.

(6) A **trade union can promote the interests of its members effectively** only if it accepts, that, in common with management, it has an interest in and a responsibility for the success of the undertaking and for the national, economic and social well-being of the country as a whole. This involves co-operation with the employer in promoting efficiency and good industrial relations

- (7) To secure these aims, a **trade union should**:
- (a) **Co-operate with employers' association** in establishing effective procedures at industry level for the negotiation of terms and conditions of employment and for the settlement of disputes that arise
 - (b) **Co-operate with individual management** in establishing effective procedures for negotiation, consultation, communication and the settlement of grievances and disputes
 - (c) Take all reasonable steps to **ensure** that their officials and members **observe agreements** and **use agreed procedures**
 - (d) Make full use of the established procedures for the **settlement of disputes**.

PART 1 : RESPONSIBILITIES

- (8) To ensure that its organization is effective, a **trade union should** also:
- (a) Have **enough officials, full time** or otherwise, to maintain regular contacts not only with union members but also with management of establishments or undertakings where the union has been recognized
 - (b) Maintain a **communications system** which secures the interchange of information and views between different levels in the union and ensures that members are systematically and regularly kept informed, factually and objectively, of the progress of negotiations for a collective agreement
 - (c) **Encourage its members to attend union meetings** and to participate fully in union activities by holding branch meetings at times and at places convenient to the majority; and, where there is a large enough membership, consider forming the branch organization of the establishment
 - (d) **Establish effective procedures for the settlement** of disputes among members of the union

2

At national or industry level

(9) The trade union should also ensure that all its officials:

- (a) **Clearly know and understand** the nature and extent of their **responsibilities and authority**
- (b) Are adequately **trained** to look after members' interests in a responsible and efficient way
- (c) Wherever possible and practicable, **hold regular dialogues** with officials of **employers' association** and its members.

(11) **The employer and relevant trade union should** ensure that **procedures for dealing with questions that arise on the individual contract of employment are clearly laid down**. But it is the responsibility of the employer himself to:

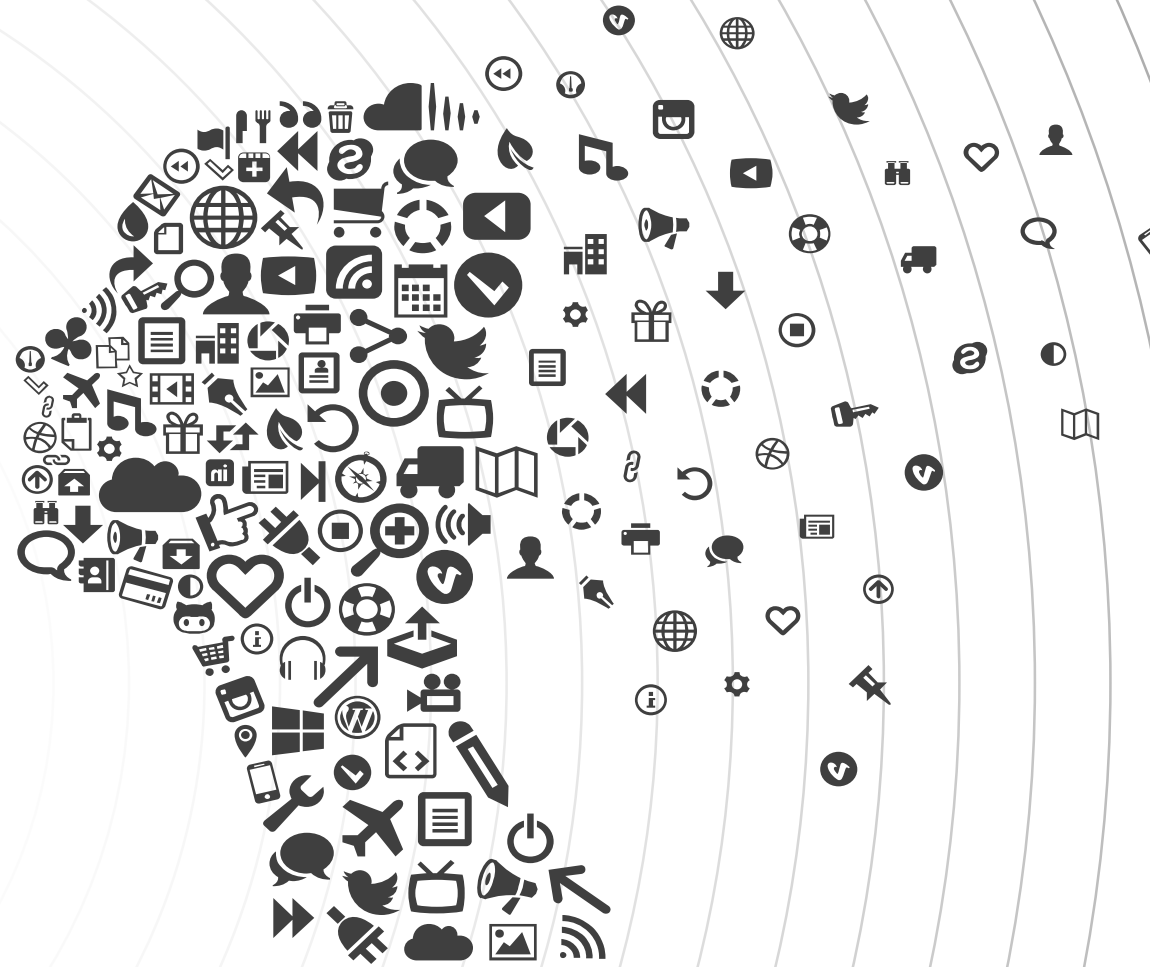
- (a) Familiarize himself with these procedures and
- (b) Make use of them when the need arises.

(10) As the basic **relationship between an employer and the individual employee** is defined in the individual contract of employment, it should **be expressed in clear and precise language**. It is the employee's responsibility to satisfy himself that he or she **understands the terms of the contract and to abide by them**.

PART

02 :

EMPLOYMENT POLICY



PART 2 : EMPLOYMENT POLICY

(12) A sound employment policy is a prerequisite to good employer-employee relations. It should also reflect the Government's policy requirements, announced from time to time. Good planning and efficient use of manpower are important both for the success of the establishment and for the security of those employed in it. The employer should, therefore:

- (a) Keep fluctuations in manpower requirements to a minimum by means of advance planning
- (b) Make changes, wherever necessary, with as little disruption as is necessary
- (c) Where practicable, maintain, in consultation with the employees or their representatives or trade union, as appropriate, a scheme for transferring employees from one job to another within the establishment or undertaking so that unavoidable changes in manpower requirements can be handled smoothly.

EMPLOYMENT POLICY

1

RECRUITMENT

5

REDUNDANCY &
RETRENCHMENT

2

TRAINING

6

WORKING
CONDITIONS

3

PAYMENT SYSTEM

4

SECURITY OF EMPLOYMENT

RECRUITMENT

1



(13) Recruitment and selection policy can help good industrial relations by ensuring that workers are engaged for jobs suited to their abilities. The employer should, therefore:

- (a) **Define the qualifications and experience** needed for the vacant job
- (b) Ensure that **selection is based on suitability** for the job
- (c) Consider **filling the vacancy by transfer or promotion** before trying to recruit from outside
- (d) **Explain the terms and conditions of employment** to applicants before they are engaged
- (e) Ensure that those who carry out **recruitment and selection are competent** to do so and that the recruitment and selection methods are regularly checked to be effective

TRAINING

2



(14) Adequately **trained employees** are essential for the success of the undertaking. Training appropriate to his work also helps the individual to develop his potential, to increase the satisfaction he finds in his work and to improve his earning capacity.

(15) Newly recruited employees (**PROBATIONER**) should be given initial instruction covering:

(a) The organization, its **employment policy and welfare and social facilities** that are available

(b) Specific **training** in the job to supplement previous training and experience.

(16) **Younger persons** entering employment or the first time should be given broader basic instructions covering a general **introduction to working life**.

(17) In appropriate cases, **further training** should be provided when **there is a significant change** in the **content of the job** or in the level of the job being performed.

PAYMENT SYSTEM

3



(18) Although payment systems vary according to the nature and organization of the work, local conditions and other factors, the following principles should be observed so as to ensure that the system of payment is soundly based and thereby reduces the incidence of disputes arising:

(a) Payment systems should be as **simple** as possible

(b) **Differences in rates** should be related to the requirements of the job which should, wherever possible, be assessed by agreed as well established methods

(c) **Piece-work rates, incentive bonuses,** etc should be **determined by agreed or well established methods**

(d) **Rates of payment** should be jointly **negotiated** where a recognized trade union exists.

4

SECURITY OF EMPLOYMENT



(19) Insecurity of employment and fear of the consequences of redundancy and retirement have a major influence on attitudes to work and good industrial relations. Consistent with the efficiency and success of the undertaking, **the employer should provide greatest possible stability in terms of job tenure.** The employer should also, where practicable:

- (a) Offer prospects for advancement and **promotion** within the undertaking with **opportunities for any necessary training**
- (b) Provide **retirement, retrenchment and sick pay schemes** to supplement statutory provisions.

5

RETRENCHMENT AND REDUNDANCY



Legislative Protection

1

The Code of Conduct for Industrial Harmony 1975

Article 20 : Appropriate measures to avoid retrenchment.

Article 21 : Consultation with trade union.

Article 22 : Agreed practices in retrenchment exercise. .

2

Industrial Relations Act, 1967, Section 20

Section 20 : The retrenched employee has the right to claim in response to challenge unfairly retrenched if there is any element of unfair labour practice.

3

Industrial Relations Act, 1967, Section 13(3)

Section 13(3) : Recognizes right of employer to terminate the services of employees for reasons of redundancy or reorganization of an employer's profession, business, trade or work or criteria for such termination.

4

Sarawak Labour Ordinance , Cap 76, Section 12(2), (3)

Section 12(2) : the employer must give the employee the appropriate period of notice.

Section 12(3) : Recognizes right of employer to terminate the services of employees for reasons change in the ownership of the business in which the employee is employed,

5

Labour Regulations (Temporary Termination and Retrenchment Benefits [Sarawak]) Rule 2008

Provides that an SLO employee entitled to termination benefits based on length of services if he has been employed for at least 12 months.

6

Employment Insurance System (EIS)

SOSCO intends to assist employees in situations where they have lost their employment in assistance for job search allowance, early re-employment allowance, reduced income allowance, training allowance and training fee.

Avenues for Redress



**Industrial
Relations
Department**

Filing a representation under s20, Industrial Relations Act 1967 for unfair dismissal.



**Labour
Department**

Filing a complaint to Director of Labour Department for enquiry for termination notice and layoff benefits.



Sosco

Applying assistance in term of financial, job search, training at SOSCO for lost job.



Civil Court

Filing civil claims for damages or restitution right or benefits of the employee.

Common Misconceptions, Pitfalls and Mistakes

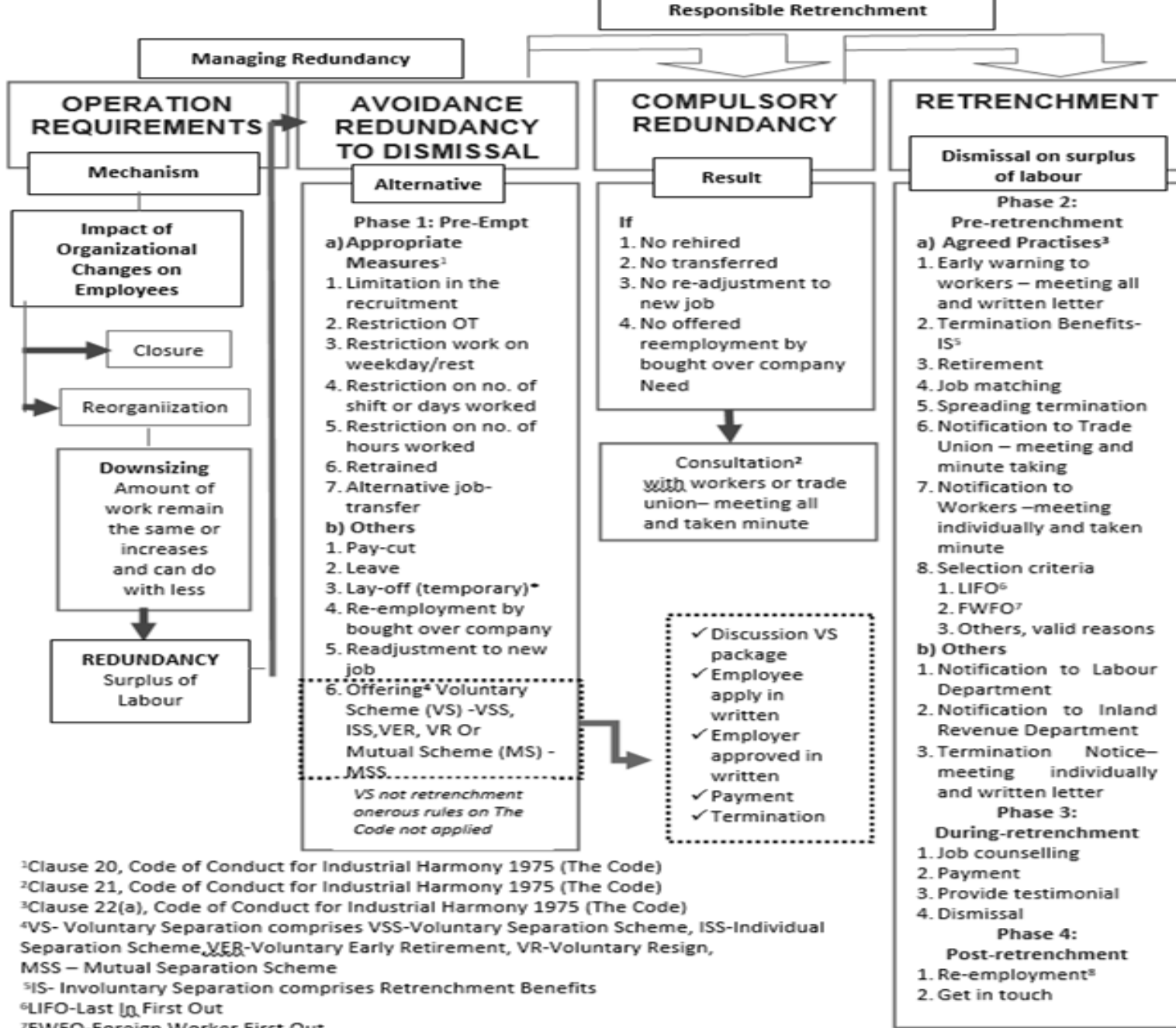
EMPLOYER

1. No implement the agreed measures of the code.
2. No implement appropriate measures of the code.
 3. No notice given MSS or VSS.
 4. External causes as genuine redundancy.
 5. Non genuine redundancy - Done mala fide.
 6. Unfair payment on redundancy benefits.
 7. Unfair selection criteria.
 8. Unsupported on documentations or facts.
 9. No offered redundancy benefits.
 10. Carried out in bad faith.
 11. Forced to accept VSS or MSS.
 12. Proposed for resignation.
13. Non-Genuine redundancy-purely as punishment for poor performance or misconduct as reasons.
 14. Termination simpliciter based on contract of service.
 15. Insist prerogative to transfer.
 16. Immediate retrenched without notice.
 17. Outsourcing – job still there.
18. Financial crisis but purchased new asset or salary increment or bonus.



EMPLOYEE

1. Cause of redundancy, retrenchment and separation is employer's fault.
2. Not told – reasons.
3. No choice – forced to accept VSS or MSS.
4. Afterthought upon receiving the VSS or MSS.
5. Accepted to resign as good faith.
6. No alternative employment.
7. Whole process done in bad faith.
8. Refused new employment offer but requested for redundancy benefits.



Procedure of Managing Redundancy

¹Clause 20, Code of Conduct for Industrial Harmony 1975 (The Code)

²Clause 21, Code of Conduct for Industrial Harmony 1975 (The Code)

³Clause 22(a), Code of Conduct for Industrial Harmony 1975 (The Code)

⁴VS- Voluntary Separation comprises VSS-Voluntary Separation Scheme, ISS-Individual Separation Scheme, VER-Voluntary Early Retirement, VR-Voluntary Resign, MSS – Mutual Separation Scheme

⁵IS- Involuntary Separation comprises Retrenchment Benefits

⁶LIFO-Last In First Out

⁷FWFO-Foreign Worker First Out

⁸Clause 23, Code of Conduct for Industrial Harmony 1975 (The Code)

*Non-applicable to monthly rated employees

FUNDAMENTAL QUESTIONS:

The Industrial Court has outlined well established principles for retrenchment, which are as follows:

1

Whether there is a Genuine Redundancy situations?

Genuine redundancy only arises for three particular reasons due to closing down and restructuring:

- I. the business stops doing what the person was employed to do;
- II. the business stops doing it where the employee was employed to do it;
- III. there is a reduced need for people in the employee's category doing that kind of work in that place.

2

Whether the employer conformed with accepted standards of good industrial relations practices?

Retrenchment exercise being carried out, as followed in The Code, Clause 20 -22.

Industrial Court Award

No consultation



Hight Court : Credit Corporation (YM) Sdn Bhd v Choo Kam Sing & Anor [1999] 8 CLJ 86

In genuine retrenchment scenario, no reasonable employer would pay out non-contractual bonuses and salary adjustments. The fact also there was no consultation with the claimant before his dismissal.

Failure to follow The Measures



Suseela Devi Balakrishnan v Inti Internaitonal College Kuala Lumpur Sdn Bhd [Award : 343 of 2019]

The claimant applied and paid VSS total RYM199,086.10. The Court held there was insufficient justification and improper handling of VSS.

Victimization



Perak Freight Service Sdn Bhd v Azlan Muszaffar Othman [2001] 3 ILR 44

The Court held that the company failed to establish a bona fide retrenchment exercise and the position was redundant but purely of employ other as replacement. Done in mala fide and an act of victimisation.

Bargaining on Termination Benefits



Siti Azimah Binti Ymat Taib v Trapia Malaysia Sdn Bhd [Award 265 of 2019]

This is crucial as the Claimant as Human Resources Manager with many years standing ought to be aware her rights. The Court finds the Claimant had bargained on her VSS compensation. There was no evidence on her challenging on grounds of unlawful dismissal.

JASPAL SINGH V ALUMINIUM COMPANY OF MALAYSIA BHD [1987] 2 ILR 558

Services
Redundant

The Industrial Court held In the law of redundancy it is important to note that it is the **services of the employee which must be made redundant and not his position or title.**

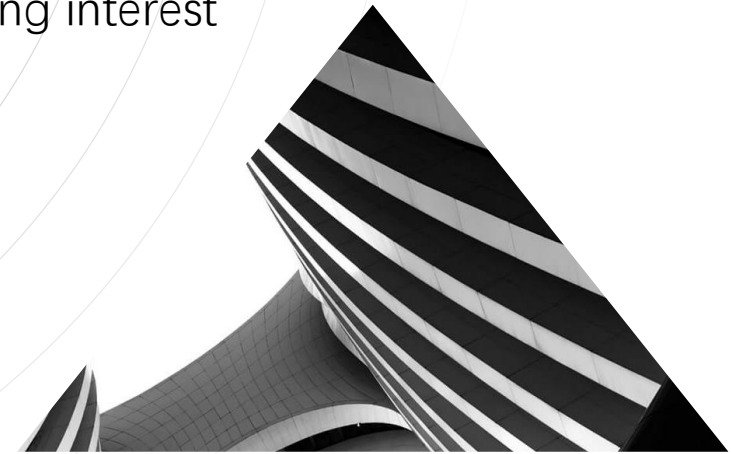
In this case, it was clear that there was no redundancy as claimed by the company. The company continued to exist. It also made a profit in the year 1991, though the company claimed that the company's profit margin was reduced. It was also clear that the company's loss of profit was not because the business was bad but firstly because the company ordered new equipment's for itself and secondly the company showed a loss in the year ending 1990/91. These losses were mainly due to the depreciation in value of the fixed assets, which amounted to a loss in profit margin of the company. Therefore, the claimant's termination was an unfair labor practice and also a dismissal without just cause or excuse since there was no redundancy.

Pengkalen Holdings Bhd v James Lim Hee Meng [2000] 2 ILR 252

Termination Benefit

The Industrial Court stated that the retrenchment compensation:

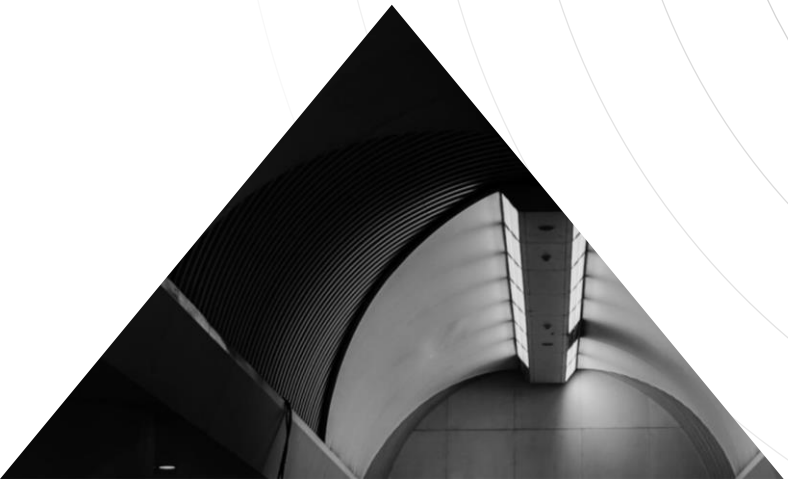
[S]erves as a cushion against the hardships faced by an employee who has to contend with the loss of his employment and the consequential loss of his immediate means to earn an income. In the context of good industrial relations practice, it serves to minimise resistance and opposition to genuine reorganisation measures undertaken by management. It acknowledges a workman's security of tenure and recognises the fact that though no fault of his, such security of tenure has to be given away to his employer's overriding interest of economy and efficiency.



East Asiatic Company (M) Bhd Vs Valen Noel. Yap [1987] 1 ILR 363

Genuine Redundancy

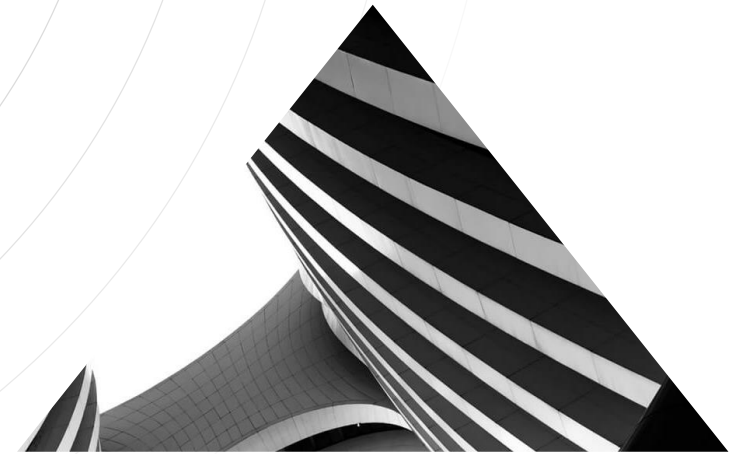
The Industrial Court noted that right of the employer is limited by the rule that he must act bona fide and not capriciously or with motives of victimization or unfair labour practice.



Burden of Proof

Bayer (M) Sdn Bhd v. Ng Hong Pau [1999] 4 CLJ 155

On redundancy it cannot be gainsaid that the appellant must come to the Court with concrete proof. The burden is on the appellant to prove actual redundancy on which the dismissal was grounded.



FEDERAL COURT IN
SAID DHARMALINGAM ABDULLAH V
MALAYAN BREWERIES (MALAYA) SDN BHD
(1997) 1 CLJ 646

Code of Conduct
for
Industrial Harmony

The reasonableness of the dismissal may well depend on the procedure followed. It is pertinent to point out that article of the Code of Conduct for Industrial Harmony, jointly agreed on 9 February 1975, by the Malaysian Council of Employers' Organisation and the Malaysian Trade Union Congress with the Minister for Labour, provides, inter alia, for pre-dismissal inquiry ...



6

WORKING CONDITION



(25) Good physical working conditions help to achieve good industrial relations. The first need is for the employer to ensure that the standards laid down by law are fully complied with. But this is not enough by itself, for most work-places could be made **safe, healthier** and more pleasant to work in if more care were taken about the working environment — like improving the cleanliness, tidiness and general appearance of the work-place; reducing strain and monotony involved in the work; encouraging workers and their representatives to co-operate in improving working conditions and providing for consultation with workers on their representatives on these matters. Workers or their trade union representatives should co-operate with employers in making the best use of the arrangements for consultation in this field

3

COLLECTIVE BARGAINING



The Code points out the importance of close rapport with senior management and trade union officers. The effectiveness of the collective bargaining system is largely dependent upon the relationship between the two parties

PART

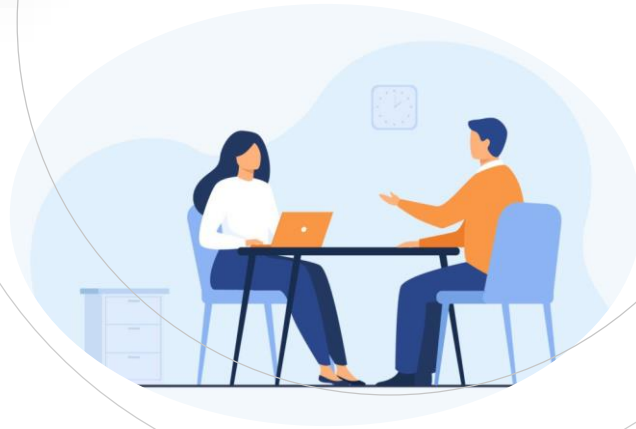
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COMMUNICATION AND CONSULTATION



4

COMMUNICATION AND CONSULTATION



The Code puts it simply thus: **“The employer should regularly provide employees with as much information as possible on matters affecting them.”** The communication channels should be varied and suited to the different levels of employee.

