

New Zealand-Malaysia Agreement on Labour Cooperation

Preamble

In order to provide a framework for constructive dialogue and assistance on labour cooperation, the Government of New Zealand and the Government of Malaysia, hereinafter referred to singularly as “Party” and collectively as the “Parties”;

Desiring to strengthen the growing economic and political relationship;

Committed to the pursuit of sustainable development as well as recognising its interdependent and mutually reinforcing pillars, in particular, economic and social development;

Taking into account the national circumstances of each Party;

Recalling the Parties’ resolve to improve working conditions and living standards in their respective nations, and protect, enhance, and enforce workers’ basic rights, taking into account the different levels of national development;

Sharing the aspiration that jobs created for workers by our nations are compatible with the Decent Work objectives of the International Labour Organization (“ILO”);

Affirming that labour laws, regulations, policies and practices will not be used for trade protectionist purposes; and

Respecting the sovereign right of each Government to set, administer and enforce its own labour laws, regulations, standards and policies;

Hereby enter into this Agreement on Labour Cooperation (“the Agreement”).
The Agreement is as follows:

Article 1

Objectives

The objectives of the Parties shall be to:

- (a) promote and achieve better understanding of each Party’s labour systems, policies and practices;
- (b) facilitate the improvement of capacities and capabilities of the Parties, including relevant stakeholders of each Party;
- (c) participate in a forum to discuss and exchange views on labour issues of mutual interest or concern with a view to reaching consensus on those issues;
- (d) promote the improvement of working conditions and quality of life of workers in their respective nations;
- (e) facilitate cooperation and dialogue in order to strengthen the broader relationship between the Parties;
- (f) promote better understanding and observance of the principles embodied in the ILO *Declaration of Fundamental Principles and Rights at Work* and the Follow-Up to the Declaration (1998) (Annex 1); and

- (g) improve the development and management of human capital for enhanced employability, business excellence, and greater productivity for the benefit of both workers and employers.

Article 2

Key Understandings

1. The Parties reaffirm their respective obligations as Members of the ILO.
2. The Parties reaffirm their commitment to the principles of the ILO *Declaration of Fundamental Principles and Rights at Work* and the Follow-Up to the Declaration (1998).
3. Each Party shall work actively to ensure its labour laws, regulations, policies and practices are in keeping with their respective international labour commitments.
4. Each Party shall respect the other Party's sovereign right to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations.
5. Each Party shall ensure that its labour laws, regulations, policies and practices shall not be used for trade protectionist purposes.
6. Neither Party shall seek to encourage or gain trade or investment advantage by weakening or failing to enforce or administer its labour laws,

regulations, policies and practices in a manner affecting trade between the Parties.

7. Each Party shall promote public awareness of its labour laws, regulations, policies and practices domestically, and endeavour to ensure that the processes and institutions for their operation and enforcement are fair and equitable.

Article 3

Cooperation

1. Taking account of their national priorities and available resources, the Parties shall cooperate on mutually agreed labour issues.

2. Each Party may, as appropriate, invite the participation of its relevant stakeholders and other organisations in identifying potential areas for cooperation and undertaking cooperative activities as mutually agreed.

3. Each Party shall encourage and facilitate, as appropriate, the following activities:

- (a) collaborative research and development on subjects of mutual interest;
- (b) exchange of labour experts and management personnel;
- (c) exchange of technical information and publications;

- (d) workshops and exchange of best practice; or
- (e) any other modes of cooperation agreed upon by the Parties.

Such cooperation shall take into consideration each Party's labour priorities and needs as well as the resources available. The funding of cooperative activities shall be decided by the Parties on a case by case basis.

4. The Parties' intention is to cooperate in labour areas of common global or domestic interest. Cooperative activities may be in areas including:

- (a) labour laws, regulations, policies and best practices in employment relations, including the promotion of labour rights and obligations and decent work;
- (b) compliance and enforcement systems, including management of labour disputes;
- (c) labour management cooperation, including initiatives to foster improved workplace productivity;
- (d) occupational safety and health;
- (e) human capital development, training and employability; or
- (f) any other cooperative activities agreed to by the Parties.

5. To facilitate the cooperation provided for under this Article, as a first step, the Parties shall exchange lists of their initial priorities.

Article 4
Institutional Arrangements

National Contact Points

1. Each Party shall designate a national Contact Point for labour matters to facilitate communication between the Parties.

Labour Committee

2. The Parties shall establish a Labour Committee which may include senior officials of their Government agencies responsible for labour matters. The functions of the Labour Committee shall include:

- (a) establishing an agreed work programme of cooperative activities;
- (b) overseeing and evaluating the cooperative activities;
- (c) serving as a channel for dialogue on matters of mutual interest;
- (d) reviewing the operation and outcomes of this Agreement; and
- (e) providing a platform for dialogue.

3. The Labour Committee shall meet within the first year of the date of entry into force of this Agreement and subsequently thereafter as mutually

agreed by the Parties. Unless the Parties agree otherwise, the venue for meetings shall alternate between the Parties.

4. The Labour Committee may establish working groups to discuss labour issues as required, which may meet intersessionally.

5. After three years from the date of the entry into force of this Agreement, or as otherwise agreed by the Parties, the Labour Committee shall review the operation and outcomes of this Agreement.

6. The Labour Committee and national Contact Points may exchange information and coordinate activities between meetings.

Public Participation

7. In carrying out its work, the Labour Committee may consult or seek the advice of relevant stakeholders or experts in each Party and may decide to invite their attendance at the meetings of the Committee.

8. Each Party may provide an opportunity for relevant stakeholders to submit views or advice to it on matters relating to the operation of this Agreement.

9. Each Party may develop mechanisms, as appropriate, to inform its public of activities undertaken pursuant to this Agreement, in accordance with its laws, regulations, policies and practices.

10. The Labour Committee shall release a report on its work at the end of each Committee meeting.

Article 5

Consultation

1. Any differences or disputes between the Parties concerning the interpretation and/or implementation and/or application of any of the provisions of this Agreement shall be settled amicably through mutual consultation and/or negotiations between the Parties, and not by any third party or international tribunal.

2. A Party may request consultations with the other Party through the national Contact Point regarding any matter arising over the interpretation or operation of the Agreement. The national Contact Point shall identify the office or official responsible for the issue and assist, if necessary, in facilitating communication between the Parties. Unless the Parties otherwise agree, consultations shall commence within 30 days of a Party's delivery of a request for consultations to the other Party's national Contact Point.

3. If consultations fail to resolve the matter, either Party may request for the Labour Committee be convened to assist in resolving such issues. The Labour Committee shall meet as soon as practicable, and no later than 90 days following the request. Once the request is received, the national Contact Points shall liaise to verify the facts in relation to the issue before the Labour Committee meets.

4. To assist its deliberations the Labour Committee may request advice from an independent expert or experts identified and agreed by the Labour Committee.

5. The Labour Committee shall produce a report providing conclusions and recommendations on resolving the issue and, where agreed by the Parties, it shall be made public.

6. If the issues are unable to be resolved, they shall be referred to the relevant Ministers responsible for the labour issue concerned for consideration.

7. The Parties shall implement the conclusions and recommendations of the Labour Committee, or the agreed outcome of the Ministers' consideration, as soon as practicable.

Article 6

Disclosure of Information

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information, subject to their national laws.

Article 7
Final Provisions

This Agreement shall enter into force on the date of its signature, or as otherwise mutually agreed by the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at, this day of, 2009

**For the Government of New
Zealand:**

For the Government of Malaysia:

**Kate Wilkinson
Minister of Labour**

**Senator Dato' Maznah Bt. Mazlan
Deputy Minister of Human
Resources**

ILO Declaration on Fundamental Principles and Rights at Work
86th Session, Geneva, June 1998

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned, to claim

freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting Fundamental Rights at Work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference

1. Recalls:

- (a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;
- (b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including, by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

- (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
- (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and

to realize the principles concerning fundamental rights which are the subject of these Conventions; and

- (c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

Follow-up to the Declaration

I. OVERALL PURPOSE

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow-up will allow the identification of areas in which the assistance of the

Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e), of the Constitution; and the Global Report will serve to obtain the best results from the procedures carried out pursuant to the Constitution.

II. ANNUAL FOLLOW-UP CONCERNING NON-RATIFIED FUNDAMENTAL CONVENTIONS

A. Purpose and scope

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures to replace the four-year review introduced by the Governing Body in 1995, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration.

B. Modalities

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.

4. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

III. GLOBAL REPORT

A. Purpose and scope

1. The purpose of this report is to provide a dynamic global picture relating to each category of fundamental principles and rights noted during

the preceding four-year period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

2. The report will cover, each year, one of the four categories of fundamental principles and rights in turn.

B. Modalities

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution.

2. This report will be submitted to the Conference for tripartite discussion as a report of the Director-General. The Conference may deal with this report separately from reports under article 12 of its Standing Orders, and may discuss it during a sitting devoted entirely to this report, or in any other appropriate way. It will then be for the Governing Body, at an early session, to draw conclusions from this discussion concerning the priorities and plans of action for technical cooperation to be implemented for the following four-year period.

IV. IT IS UNDERSTOOD THAT

1. Proposals shall be made for amendments to the Standing Orders of the Governing Body and the Conference which are required to implement the preceding provisions.

2. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.

The foregoing is the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up duly adopted by the General Conference of the International Labour Organization during its Eighty-sixth Session which was held at Geneva and declared closed the 18 June 1998. In faith whereof we have appended our signatures this nineteenth day of June 1998.