

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT MUZAFFARABAD**

Dated: 27th March, 2017

No. LD/Legis-Act/208-219/2017. The following Act of Assembly received the assent of the President on the 16th day of March 2017, is hereby published for general information.

(ACT XIV OF 2017)

**An
Act**

to provide for participation of workers in the profits of the Companies

WHEREAS it is expedient to provide for participation of workers in the profits of Companies and for matters ancillary thereto;

THEREFORE, it is hereby enacted as follows:-

1. **Short title, Extent and Commencement.**- (1) This Act may be called the Companies Profits (Workers Participation) Act, 2017.
 - (2) It shall extend to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context,-
 - (a) "Board" in relation to a Fund means a Board of Trustees constituted under Section 4 for the management and administration of the Fund;
 - (b) "Company" means a Company within the meaning of Companies Ordinance, 1984 as adopted in Azad Jammu and Kashmir and includes,-
 - (i) a body corporate established by or under any law for the time being in force;
 - (ii) any institution, organization or association whether incorporated or not, declared by the Government in the official Gazette, to be a company for the purposes of this Act;
 - (c) "Fund" means a Workers' Participation Fund established under Section 3;
 - (d) "Government" means the Azad Government of the State of Jammu and Kashmir;

- (e) “Profit” in relation to Company means such of the “net profits” as defined in Section 87-C of the Companies Act, 1923 (VII of 1923), as are attributable in its business, trade, undertakings or other operations in Azad Jammu and Kashmir;
- (f) “Rule” means the rules made under this Act;
- (g) “Scheme” means the scheme set out in the Schedule; and
- (h) “Worker” and “Workman” means any and all persons not falling within the definition of employer who is employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity.

3. **Establishment of fund.**- (1) Every Company to which the Scheme applies shall,-

- (a) establish a Workers’ Participation Fund in accordance with the Scheme as soon as the accounts for the year in which the Scheme becomes applicable to it are finalized but not later than nine months after the closure of that year;
- (b) Subject to adjustments, if any, pay every year to the Fund not later than nine months after the close of that year five percent of its profits during such year; and
- (c) furnish to the Government and the Board, not later than nine months after the close of every year of account, its audited accounts for that year, duly signed by its auditors.

(2) The amount paid to the Fund under clause (b) of sub-section (1) in relation to a year shall be deemed to have been allocated to the Fund on the first day of the year next succeeding that year.

4. **Management of the Fund.**-(1) As soon as may be, but not later than two months, the establishment by a Company of a fund under Section 3, there shall be constituted a Board of Trustees consisting of the following trustees, namely:-
- (a) two persons elected by the workers of the Company from amongst themselves; and
 - (b) two persons nominated by the management of the Company of whom at least one shall be a person from the accounts branch of the Company.
- (2) The persons holding office as trustees shall elect for one year, a person to be the Chairman of the Board alternatively from amongst the trustees elected under clause (a) of sub-section (1) and those nominated under clause (b) of that sub-section, the first Chairman being from amongst the later.
- (3) A trustee shall, unless he sooner ceases to represent the interest he was elected or nominated to represent, hold office for such term and on such conditions as may be prescribed by rules.
- (4) All decisions of the Board shall be expressed in terms of the opinion of the majority of the trustees and in the event of the trustees being equally divided in their opinion, the Chairman shall have and exercise a second or casting vote.
- (5) The Board shall manage and administer the Fund in accordance with the provisions of this Act, the Scheme and any rules made in this behalf.
- (6) The Board shall, in the exercise of its powers and performance of its functions under this Act, be subject to such directions as the Government may from time to time give.
- (7) The Government, if it is of opinion that a trustee or a Board has been persistently failing in the performance of his or its functions or has generally been acting in a manner inconsistent with the objects and interest of the Fund, may, after giving such trustee or, as the case may be, the board, an opportunity of showing cause against it, by order,-
- (a) remove such trustee from his office and direct that the Board shall stand superseded for such period as may be specified in the order; and
 - (b) direct that, pending the election of nomination of a person in place of the trustee removed from office or, as the case may be, the reconstitution of the board the powers and functions of the trustee so removed for the

Board shall be exercised and performed by a person specified in the order.

(8) A casual vacancy in the office of a trustee shall be filled as soon as may be, by the election or, as the case may be, nomination of another person and the person elected or nominated to fill such vacancy shall hold office for the unexpired term of his predecessor.

(9) Upon the supersession of a Board under sub-section (7), the trustees in that Board shall cease to hold office and references to the Board in this Act, the Scheme and the Rules shall be construed as references to the officer specified in the order under that sub-section.

(10) Before the expiry of the period of supersession, the Board shall be reconstituted in accordance with the provisions of this Act so as to enable it to take over its functions upon the expiration of such period.

(11) No act or proceeding of the Board shall be invalid or questioned merely on the ground of the existence of a vacancy in, or defect in the constitution of the Board.

5. **Penalty.**- (1) Where a Company to which the Scheme applies fails to comply with any of the provisions of this Act or the Scheme, every director, manager or other officer responsible for the management of the affairs of the Company, shall, if the Government by order so directs, pay by way of penalty a sum which may extend to five thousand rupees and, in case of a continuing failure, a further sum which may extend to one thousand rupees for every day after the first during which the failure continues.

(2) A penalty imposed by an order under sub-section (2) shall, if it is not paid within the time specified in the order, be recoverable as arrears of land revenue.

(3) The Government may, upon an application made in this behalf by any person aggrieved by an order made under sub-sections (1) within a period of six months from the date of the order, review the order and may, upon such review, pass such order as it may think fit.

(4) Notwithstanding anything contained in this Act or the Scheme, if any defaulting employer strictly complies with the provisions of Section 3 and distributes the benefits in accordance with paragraph 4 of the Scheme for the period of default on or before the date fixed by the Government, no such penalty shall

be imposed and the Company shall not be liable to pay interest as provided in paragraph 2 of the Scheme.

6. **Power to call for information.**- The Government may, at any time, call upon a Company or a Board to furnish it with such information and documents, including the records of the proceedings of the Company or the Board, as may be relevant or useful for the purposes of, or necessary for ensuring proper compliance with the provisions of this Act, the rules and the Scheme.
7. **Settlement of disputes, etc.**- (1) Any difference arising between the Board and the Company relating to the administration of the Scheme shall be reported to the Government whose decision thereon shall be final.

(2) All claims of a worker relating to the benefits of the Scheme, whether against the Board or the Company, shall be settled in the same manner as is provided for in the Payment of Wages Act, 1936 (IV of 1936), as adopted and enforced in Azad Jammu and Kashmir, for the settlement of claims arising out of deductions from wages.
8. **Delegation of power.**- The Government may, by notification in the official Gazette, direct that all or any of its powers or functions under this Act may, subject to such limitations, restrictions or condition, if any, as may be specified in the notification, be exercised or performed also by any officer subordinate to it or by any authority so specified.
9. **Power to make rules.**-The Government may make Rules to carry out the purposes of this Act.
10. **Act to override other laws.**- The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, or in any contract or the memorandum or articles of association of a Company.

Sd/-
(Mehr-un-Nisa Qadri)
Section Officer (Legislation)