

SINDH ACT NO.XVIII OF 2016

THE SINDH COMPANIES PROFITS (WORKERS' PARTICIPATION) ACT, 2015

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[19th May, 2016]

to provide for participation of workers in the profits of companies.

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

Preamble

It is hereby enacted as follows:-

Short title and commencement.

1. (1) This Act may be called the Sindh Companies Profits (Workers' Participation) Act, 2015.

(2) It shall extend to the whole of Province of Sindh.

(3) It shall come into force at once and shall be deemed to have been taken effect from 1st July, 2011.

2. In this Act, unless there is anything repugnant in the subject or context –

Definitions.

(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 (XLVII of 1984), and includes –

(i) a body corporate established by or under any law for the time being in force;

(ii) a company whose registered office is situated in the Province of Sindh and has its office, department and branches in Islamabad, the capital territory or falling in more than one Province and has a common balance sheet;

(iii) any institution, organization or association whether incorporated or not, declared by the Federal 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) "profits" in relation to a company, means such of the net profits as are attributable to its business, trade, undertaking or other operations in Pakistan;

(e) "rules" means rules made under this Act;

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- (f) "Schedule" means Schedule to this Act;
- (g) "scheme" means the scheme set out in the Schedule;
- (h) "worker" in relation to a company means an employee of the company, including employed by or through the contactors, who falls within the definition of a worker as defined in clause (xxxii) of section 2 of the Sindh Industrial Relations Act, 2013 (Act No.XXIX of 2013) and has been in the service, working for or in the company, for a period of not less than six months.

3. (1) Every company to which the scheme applies shall –

Establishment of Fund.

- (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 close of that year; and
- (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:

Provided that the Sindh Revenue Board, for sufficient reasons, may extend the above said time, for further period of fifteen days; and

- (c) furnish to 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. (1) As soon as may be, but not later than two months, after the establishment by a company a Fund under section 3, there shall be constituted a Board of Trustees consisting of the following trustees, namely:-

Constitution of the Board of Trustees.

- (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.

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(2) The persons holding office as trustees shall elect for one year a person to be the Chairperson 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 Chairperson 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 Chairperson 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 Government may, from time to time, give.

(7) 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 interests 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 or direct that the Board shall stand superseded for such period as may be specified in the order; and
- (b) direct that, pending the election or 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.

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(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 expiry 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. (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 Government by order so directs, pay by way of penalty a sum which may extend to twenty thousand rupees and, in case of a continuing failure, a further sum which may extend to two thousand rupees for every day after the first during which the failure continues.

Penalty.

(2) A penalty imposed by an order under sub-section (1) shall, if it is not paid within the time specified in the order, be recoverable as an arrears of land revenue under the Sindh Land Revenue Act, 1967.

(3) Government may, upon an application made in his behalf by any person aggrieved by an order made under sub-section (1) within a period of six months from the date of 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 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. 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 purpose of, or necessary for ensuring proper compliance with, the provisions of this Act, the rules and the scheme.

Power to call for information.

7. (1) Any difference arising between the Board and the company relating to the administration of the scheme shall be reported to Government whose decision thereon shall be final.

**Settlement of disputes.
Etc.**

(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 provided in the Payment of Wages Act, 1936 (IV of 1936), for the settlement of claims arising out of deductions from wages.

8. There shall be no discrimination on the basis of sex, religion, sect, colour, caste, creed and ethnic background in the employment, professional development and benefits for the purpose of this Act.

Protection against discrimination.

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9. 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 conditions, 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. **Delegation of power.**
10. Government may make rules to carry out the purposes of this Act. **Power to make rules.**
11. 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. **Ordinance to override other laws.**
12. (1) The provisions of the Companies Profits (Workers Participation) Act, 1968, in its application to the Province of Sindh, are hereby repealed. **Repeal and Saving.**
- (2) Notwithstanding the repeal of the provisions of the Act under sub-section(1), all orders or rules made, notifications issued, actions and proceedings taken under the said Act shall continue to remain in force until altered, amended or repealed under the provisions of this Act.

THE SCHEDULE SCHEME (See section 2(f))

1. The scheme applies to all companies engaged in industrial undertakings which satisfy any one of the following conditions, and to such other companies as Government may, by notifications in the official Gazette, specify in this behalf, namely:- **Scope of the scheme.**
- (1) The number of workers employed by the company at any time during a year is hundred or more.
 - (2) The paid up capital of the company as on the last day of its accounting year is Rs.20 lacs or more.
 - (3) The value of the fixed assets of the company (at cost) as on the last day of the accounting year is Rs.40 lacs or more; provided that for the companies established on or after 1st day of July 2006 –
 - (a) Sub-paragraph (2) shall have effect as if for the figure and word “20 lacs” the figure and word “5.00 million” were substituted; and
 - (b) Sub-paragraph (3) shall have effect as if for the figure and word “40 lacs” the figure and word “20.00 million” were substituted.

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Explanation: - In this scheme –

- (a) “industrial undertaking” means an institution, organization, enterprises or establishment which involves the use of electrical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency and which is engaged in any one or more of the following operations, namely: -
- (i) the subjection of goods or materials to any manufacturing, assembly, finishing or other artificial or natural process, which changes their original condition or adds to their value;
 - (ii) ship-building;
 - (iii) the transformation, generation, conversion, transmission or distribution of electrical energy, including hydraulic power; and
 - (iv) the working of a mine, oil-well or any other source of mineral deposit, including blending, refining and purification of oils and gases; and includes companies engaged in the marketing and distribution of gas or oil or in the carriage of men or goods by sea or air, and any other institution, organization, enterprises or establishment which Government may, by notification in the official Gazette, declare to be an industrial undertaking for the purposes of this scheme; and
- (b) references to paid up capital and the value of the fixed assets of the company shall, in the case of a company incorporated outside Pakistan but having a Branch in Pakistan, be construed as references respectively to the capital invested in such Branch and the value of the fixed assets of the Branch.

2. (1) The amount allocated or accruing to the Fund shall be available to the company for its business operations. The company may, however, request the Board to utilize the amount in the Fund for investment under sub-paragraph (7) and the Board may decide to so invest the amount.

Investment of Fund.

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(2) The company shall pay to the Fund in respect of the amount in the Fund available to it for its business operations as aforesaid interest at the rate of 2-1/2 percent above the bank rate or 75 percent of the rate at which dividend is declared on its ordinary shares, whichever is higher. In case there is more than one class of ordinary shares on which different rates of dividend have been declared, then the weighted average of the different rates of dividend shall be taken for the purpose of determining the rate of interest. The interest to the Fund shall accrue on and from the first day of the year next succeeding the year in which the scheme becomes applicable to the company. Even when the company does not wish to utilize the amount available to it under sub-paragraph (1), the interest at the rate aforesaid shall be payable by the company for the period between the date of allocation of any amount to the Fund and the date of its investment under sub-paragraph (7).

(3) If, at any time after the establishment of the Fund, the company raises any additional capital, otherwise than through the issue of bonus or bonus shares, the Fund shall have the first option to convert any amount available to the company under sub-paragraph (1) or any of the assets of the Fund into ordinary equity capital up to a ceiling of 20 percent of the paid up capital of the company prior to such conversion or 50 percent of the additional capital, whichever is less.

Explanation:-In this sub-paragraph, "additional capital" does not include any capital offered or to be offered to foreign participation of the company.

(4) For the exercise of the right of conversion under sub-paragraph (3), the Board shall be given sufficient time to sell assets of the Fund to raise the amount needed for subscription to the additional issue of capital by the company.

(5) The shares acquired in the manner set out in sub-paragraph (3) shall participate in future bonus and right issues in the same manner as other shares.

(6) The shares acquired in the manner set out in sub-paragraph (3) shall carry voting rights in the same manner as other shares and such voting rights shall be exercised by the Board on behalf of the Fund.

(7) The amount in the Fund which, under sub-paragraph (1), the company has requested to be utilized for investment under this paragraph may be invested by the Board for the purchase of any of the following namely: -

- (a) National Investment Trust (unit) Certificates;
- (b) Government securities including Defence and postal Savings Certificates; and

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3. All workers shall be eligible to the benefits of the scheme and to participate in the Fund. However, a worker not completing six months of employment with the company during a year of account shall not participate in the Fund in respect of that year.

**Eligibility to benefits
of scheme**

4. The share of a worker in the annual allocation to the Fund shall be expressed in units or fractions of units (worked out to two places of decimal) of the face value of Rs.10 determined in the following manner, namely:-

**Distribution of
benefits to workers.**

- (a) The number of available units shall be so divided into three parts for the three categories of workers mentioned below that a worker in the first of those categories gets four units for each two units that a worker in the second of those categories gets or for each one unit that a worker in the last of those categories gets: -

Categories

1. Workers drawing average minimum monthly wages as fixed by Government from time to time.
 2. Workers drawing average monthly wages exceeding the minimum wages as fixed by Government from time to time but not exceeding twenty thousand.
 3. Workers drawing average monthly wages exceeding twenty thousand rupees.
- (b) The average monthly wages shall be rounded up to the nearest Rs.10.
- (c) The number of units available to each category of workers shall be divided equally among all the workers in that category to determine the share of each workers of that category.
- (d) Notwithstanding anything contained in this scheme, no worker shall, in any one year, be entitled out of the annual allocation to units exceeding the amount of four times of the minimum wages for unskilled worker as given in the Schedule of Minimum Wages for Unskilled Workers Ordinance, 1969 (West Pakistan Ordinance XX of 1969) in value in so far as such allocation is relatable to clause (b) of sub-section (1) of section 3. Any amount left out of the annual allocation after the units have been so allocated shall be transferred to the Fund constituted under section 3 of the Workers Welfare Fund Ordinance, 1971 (XXXVI of 1971). No part of such amount shall be deemed to be included in the net asset value of the Fund established under this Act and no individual worker shall have any lien on this amount by virtue of holding any units.

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Explanation:

In this paragraph, "average monthly wages" means total wages drawn during the year of account divided by 12, or by the number of months a worker actually worked during a year in respect of which he is entitled to the benefit under the scheme, as the case may be, and "wages" has the same meaning as in clause (vi) of section 2 of the Payment of Wages Act, 1936 (IV of 1936); but does not include any overtime allowance or bonus.

5. The disbursement of the benefits from the Fund shall be as under:
- (a) 100 percent of the annual income of the Fund, including capital gains realized, shall be distributed each year to workers in proportion to their units of entitlement.
 - (b) A worker who voluntarily leaves the employment of the company or whose services are terminated shall be entitled to receive 100 percent of the net asset value of the units standing in his name.
 - (c) A worker who continues in the service of the company shall be entitled to receive 100 percent of the net asset value of the units in his name each year or he may choose to **retain** his share in the Fund, provided that a worker while in employment may choose to encash all the units standing in his name at any time at his discretion.
 - (d) A worker, in the event of his retirement or, his nominated beneficiary, in the event of the worker's death (from whatsoever cause) while in the employment of the company, shall receive 100 percent of the net asset value of the units standing in the worker's name.

Disbursement of benefits.

6. To determine the net asset value of a unit, the total net assets of the fund namely, market value of the securities, cash and other assets resulting from the investment and reinvestment, capital accretion thereto and all incomes of any kind arising therefrom shall be divided by the number of units in the Fund. Net asset value of the entire Fund shall be computed once every year and each worker's unit entitlement determined at the same time. Additional units will be given to the workers according to the amount they voluntarily contribute to the Fund.

Definition of the net asset value of the unit.

7. A worker may voluntarily choose to contribute a part of his wages, cash, bonus, dividend or interest to the Fund. For each unit of contribution, he shall receive credit for 1-1/4 units. Contribution received during the course of a year of account shall, however, be deemed to be contribution received on the last day of that year. If at any time a worker chooses to leave the employment of the company or his services are terminated or in the event of his retirement or death or on the expiry of three years from the date he voluntarily chooses to contribute a part of his wages, cash bonus, dividend or interest to the fund, he, at his option, or, in the event of his death, his nominated beneficiary, may receive the net asset value of the units representing his contribution. The contribution by a worker in any one year of account shall not exceed ten percent of his annual wages during such year.

Employee's own contribution.

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8. All companies to whom the scheme applies shall be allowed the allocation made to the scheme as a deduction to arrive at the taxable income. **Fiscal concessions to the Companies.**
9. The income of the Fund including capital gains shall be exempt from income tax. **Tax treatment of the income of the Fund.**
10. All sums paid out by the Fund shall be exempt from Income tax in the hand of the workers. **Tax treatment of the income of the workers.**
11. The office of the Board of Trustees shall be located at the factory premises or, if there is more than one factory run by the company, at the registered head office of the company. All expenses of the Board, including the cost of maintaining accounts, shall be borne by the company. **Working and location of the Board of Trustees.**
12. The Fund accounts shall be audited annually at the company's expense in the same manner as the accounts of the company are audited: **Audit of the Fund accounts.**
- Provided that Government may, at its own cost, appoint independent **recognized Chartered** Accountants for a special audit of the accounts of the Fund.
13. The benefits to a worker under this scheme shall be in addition to, and not in derogation or substitution of, any other benefits to which the worker may be entitled under any other law, contract, terms and conditions of employment or otherwise. **Scheme's benefits to be in addition to other benefits.**
14. Notwithstanding anything contained in this Act or this scheme, Government may, by notification in the Official Gazette, make special provisions for the participation of workers in the profit of companies engaged in industrial undertakings which operate only for a part of the year. **Special Provision for industries working seasonally.**
15. Notwithstanding anything contained in this Act or this scheme, Government, may, at the request of a company which is engaged in more than one industrial undertakings located at different places, permit the splitting up of the Fund amongst the various undertakings or groups of undertakings and constitution of a Board of Trustees for each such undertaking or group of undertakings; and thereupon the provisions of this Act and this scheme shall have effect in relation to such undertakings or groups as if each such undertaking or group were a company. **Companies engaged in more than one industrial undertaking.**
16. The Board of Trustees may, with the prior approval of Government, enter into a contract with the National Investment Trust or the National Bank of Pakistan or any other Securities, entrusting the management of the Fund to that Corporation, Trust or Bank on such fee which shall be payable by the company, and on such terms and conditions as may be mutually agreed upon. **Entrustment of management of Fund to Investment Corporation of Pakistan, etc.**