



**Fairtrade International Training Manual 3.0**  
**FAIRTRADE PREMIUM COMMITTEE PRINCIPLES**

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## Table of Contents

1. INTRODUCTION.....	4
2. THE LEGAL BODY.....	5
(a) The rationale of the legal body .....	5
(b) The legal aspects to be considered.....	6
(c) Fairtrade principles to be taken into account.....	7
(d) Non-permanent workers .....	8
(e) How to proceed? .....	8
3. THE CONSTITUTION .....	11
(a) The purpose of the Constitution .....	11
(b) Content of the Constitution.....	11
4. FAIRTRADE PREMIUM COMMITTEE RULES AND REGULATIONS.....	15
5. INTERNAL AUDIT COMMITTEE .....	17
(a) Purpose.....	17
(b) How to establish an Internal Audit Committee.....	18
6. DELEGATES MODEL .....	19

### APPENDIX

- Proposed text elements for master presentation



## 1. INTRODUCTION

The Fairtrade standards for Hired Labour<sup>1</sup> oblige the Fairtrade Premium Committee (FPC) to establish a separate and independent formal legal body recognized in law and registered by a public entity which allows workers to be the sole owners and beneficiaries of the Fairtrade Premium. This requirement is expressed in Standard clause 2.1.3 on the “*legal body*”, which stipulates that the initial set up of the legal body is well thought out, structured and legally documented to assure transparency, democracy and participation.

This training module aims at assisting the FPC to comply with these requirements. It explains the rationale and the functions of each of these formalities. It reminds the FPC of the basic principles to be followed when establishing the legal body and its rules. It guides the FPC on the search for the appropriate legal form and it gives guidance on the structure and content of the constitution and the rules and regulations.

The idea is not to provide you with prefabricated solutions. This is neither desirable nor possible. It is *not desirable* because the FPC together with the workers should reflect on their organization<sup>2</sup> and on the crucial questions related to it: which legal form should we choose for our organization? How will the FPC interact with the workers? How will power be shared by the different bodies (General Assembly, Fairtrade Premium Committee, etc.)? How will the FPC be accountable to the workers and how will the workers exercise their duty to supervise and control the FPC? How will the FPC organize itself?

The basic principles are laid down in the Fairtrade standards and the *Explanatory document for the Fairtrade Premium Committee in Hired Labour situations*<sup>3</sup>. They define the purpose of the Fairtrade Premium (FP) and some fundamental rules with regard to premium administration. These basic principles have to be respected and must be integrated into the constitution and by-laws. But you do have quite a lot of freedom in the methodology you use to reach the objectives and follow the principles laid down by the standards.

It is *not possible* to provide you with a generic legal form and rules. These have to be established taking into account the specific conditions of each organization and the national laws of the country. By specific conditions we mean social, economic and cultural factors, the size and nature of the company, the composition and provenance of the workforce, etc. The national law of the country is important because it provides the legal framework for your organization. Once you choose a legal form, you are bound by the legal provisions laid down by the law for this form of organization.

As well as helping you to understand and develop the legal formalities, this module also gives guidance on some specific issues closely related to the constitution: the establishment and role of an Internal Audit Committee and the Delegates model for organizations with a large number of workers.

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<sup>1</sup> Whenever reference is made to the Fairtrade standards in this document, it refers to the Generic Fairtrade Standards for Hired Labour, issued by Fairtrade Labelling Organizations International, 2014.

<sup>2</sup> Organization is understood to mean the legal body comprising all workers, which will be established as owner of the Fairtrade Premium and all assets acquired by it.

<sup>3</sup> This document is published by Fairtrade International and can be found on the Fairtrade International website under: <http://www.fairtrade.net/hired-labour-standards.html>. A revision under the title “Explanatory document for the Fairtrade Premium Committee in Hired Labour situations” 2014



## 2. THE LEGAL BODY

### (a) The rationale of the legal body

Fairtrade standard 2.1.3 requires the establishment of a *formal legal body* that *comprises and represents all employees of the company, plantation or farm*. This legal body *owns the premium on the behalf of all workers*. The corresponding guidance explains why such a legal entity is necessary and what its function is.

Let's have a look at the main issues one by one:

- All workers of a company that is Fairtrade-certified are the sole owners and beneficiaries of the Fairtrade Premium (FP). But the premium does not belong to any individual worker(s) or to the company, plantation or farm. This raises the question – to whom does the FP belong?
- According to the principles of Fairtrade, the FP belongs to the collectivity of workers, not to each worker individually, but to all workers as a community.
- To be able to legally own property and enter into legal contracts and have a bank account, to be able to receive and be the owner of the premium, reduce tax, and ensure that the premium is used for the benefit of all the workers, it must be established as a legal entity or legal personality.
- The legal entity must be able not only to own the premium, but also to act legally on behalf of its members through its legal representatives, to, for example, buy and sell, sign contracts, sue and be sued.
- The members of this legal organization are all workers/employees of the company, according to the definition of 'workers' given by the Fairtrade standards<sup>4</sup>. However, no one can be forced to be a member against their will, but this decision does not exclude the condition of beneficiary of premium projects.
- The Fairtrade Premium Committee is not the owner of the FP. The FPC must be created with the purpose of managing the FP for the benefit of all workers (Standard clause 2.1.1). The FPC manages the Premium for the benefit of the workers and their families and communities. Thus, the FPC is the governing body (Board) and representative of the legal entity and acts as the administrator for this legal body.
- Therefore, the constitution of a corporate entity that comprises and represents the whole workforce of the company is required. The legal body could be – for example – an association, a charitable trust, a company a cooperative or a corporation. The FPC, as the governing body of this organization, will be automatically legalized when the organization is legally constituted, and according to the national law, any changes to the FPC or new members on the FPC has to be registered every time this occurs.

To define the appropriate legal form, the legislation of the country as well as the Fairtrade principles must be taken into account. The ideal legal form would be an optimum combination of legal requirements with Fairtrade requirements. Unfortunately there is no

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<sup>4</sup> The standards define the term "workers" as follows: "*Workers are defined as all workers including migrant, temporary, seasonal, sub-contracted and permanent workers. 'Workers' is not limited to field workers but includes all hired labour personnel, such as employees working in the company's administration. However, the term is restricted to personnel that can be unionised and therefore normally excludes middle and senior management.*"



such generic form valid worldwide. You have to find the form most appropriate for the purpose in your own country's legislation, keeping in mind both the legal aspects and the Fairtrade principles.

The legal body in accordance with the social character of the premium, should be exempt from tax or have its tax burden reduced.

The process of formalizing should start once the first FPC has been elected and orientated, and the legal body should be in place before the FPC purchases any assets.

## **(b) The legal aspects to be considered**

The legislation of each country normally offers a variety of legal forms for private (non-governmental or not-for-profit) organizations for social benefit or social and economic development, such as: society, association, cooperative, trust, charitable trust, foundation, corporation, supporting organization, etc. But the names do not necessarily have the same meaning and might point to quite different realities from one country to the other. So you have to analyse the legal forms existing in your country in order to find the most suitable one. It is probably necessary to turn to a lawyer specialized in non-governmental and not-for-profit organizations for advice and assistance. In your research you should be guided by the following basic characteristics of the legal form you are looking for:

- Private or non-governmental: i.e. institutionally separate from the Government
- Not-for-profit:
  - Is an organization that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends<sup>5</sup>.
  - While not-for-profit organizations are permitted to generate surplus revenues, they must be retained by the organization for its self-preservation, expansion, or plans;
  - Usually has a favourable tax status.
  - However, the organization should be able to invest in profitable business operations, not with the primary aim of making a profit but to have a social impact (supply of quality products at a reasonable price, job creation, development of local economy, etc.).
  - It should also be able to support business projects carried out by workers or community groups by means of loans or other forms of support.

The range of possible activities should be wide enough to allow purely social development projects (such as education, healthcare, childcare, social welfare) as well as business activities with a social and economic impact (productive, commercial or micro financial activities).

- Tax exemption: the organization should be exempt from income tax (on premium funds and any other income applied to the objectives of the organization). This is usually linked with the not-for-profit and social character of the organization.
- Possibility to restrict membership to a clearly specified group of people (employees of the company only). The procedure for enrolling new members and removing outgoing members should be as simple as possible and allow for updating according to the rotation of personnel in the company.
- Limited liability of the members: i.e. neither the members nor their private property are liable for the liabilities of the organization.

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<sup>5</sup> The Nonprofit Handbook: Everything You Need to Know to Start and Run Your Nonprofit Organization (Paperback), Gary M. Grobman, White Hat Communications, 2008.



Possibility to distribute cash as a bonus amongst all workers in an equitable way without affecting its tax status or its status as a not-for-profit organization.

### **(c) Fairtrade principles to be taken into account**

Besides fitting into the legal framework, the organization must safeguard the basic principles and objectives of Fairtrade as well as the FPC structure and its functions as laid down in the Fairtrade standards. These principles are:

- The legal body must be development and empowerment oriented, and guided by the principles of democratic participation, cooperation, equality, transparency and responsibility. The principle of 'one person one vote' must be followed.
- Its objective must be the empowerment of workers and the sustainable social and economic development of workers and their communities (as laid down in the intent and scope of Section 2 of the Fairtrade Standards on Social Development).
- It must be formed by all workers, or better still all employees of the company. For the definition of the term 'worker', reference is made to the explanation of the term in the Definitions to the Generic Fairtrade Standards for Hired Labour: *The term 'workers' is defined as all workers including migrant, temporary, seasonal, sub-contracted and permanent workers. 'Workers' is not limited to field workers but includes all hired labour personnel, such as employees working in the company's administration. However, the term is restricted to personnel that can be unionised and therefore normally excludes middle and senior management.*
- Every single worker must be entitled to become a member of the legal body. The only condition for membership is their status as employee of the company. No additional conditions, such as membership fee or share subscription, can be required. No exclusion on the basis of gender, employment category, nationality and other distinctions is allowed.
- However, no employee can be forced to register as a member against their will. Freedom of association (the freedom not to join) must be respected. If an employee does not join the legal body, they will continue as a beneficiary of the Fairtrade Premium. The participation of all the workers in decision-making processes relating to the Fairtrade Premium projects is required by Fairtrade International Standards. If a worker ceases to be an employee of the company, they will automatically lose their membership and all rights associated with that membership.
- The members have no titles or legal claims on the property of the legal body. This also applies for resigning members who cannot claim to take their share with them.
- The FPC acts as the administrator of the legal body. The FPC has legal and financial duties to perform on behalf of the workers. Election of the FPC must be according to standards 2.1.9 and 2.1.10.
- The first elected FPC should define in writing the aims of the legal body. This should be written down in the form of terms of reference or constitution according to standard 2.1.4 and terms of reference need to be approved by the General Assembly of workers.
- The FPC is accountable to the workers (General Assembly) and must meet and consult with the workers, according to standards 2.1.14 and 2.1.16.
- The main source of income is the Fairtrade Premium (the legal body has been created for the purpose of receiving and using the premium).
- The legal body must be legally independent from the company, and the FPC must be able to make decisions independently of the company or other committee. The company has no rights on the property of the organization and is not liable for the commitments and liabilities of the legal body.



## (d) Non-permanent workers

The Fairtrade standards clearly determine that the direct beneficiaries of Fairtrade International, through the Fairtrade Premium in particular, are workers and their families and the communities they live in. This includes permanent, migrant, seasonal and temporary workers. This is expressed in the intent and scope of Chapter 2: Social Development of Generic Hired Labour Standards.

All groups of workers should be represented in the FPC including migrant, seasonal or temporary workers. Representation of all the workers is essential to ensuring that all the workers' needs and priorities are considered in Fairtrade Premium projects. We understand that a representative is a person who represents the interest of others in the legal body. If seasonal/temporary workers cannot practically be present for meetings, then an elected permanent worker could be chosen to represent their interests. This is expressed in clauses 2.1.9 and 2.1.10.

Management and workers should decide which groups of workers need to be represented and how everyone will be able to participate in the FPC.

In practice this might cause some difficulties. Temporary/seasonal workers are on the farm only for a limited time. Also, they might work just for one period or season and then never come back. To involve these workers in the Fairtrade programme and in the legal body is certainly a challenge. However, you should always be guided by the principle that the premium is for the benefit of all workers. The way this principle is put into practice depends on the specific conditions. Find the best way to do it in your situation. You will probably have to make a distinction between benefits and membership. The following considerations might guide you:

With regard to benefits:

- The FPC should always keep in mind the needs of all groups of temporary/seasonal workers and find ways to support them through specific projects.
- All temporary/seasonal workers should be allowed to benefit from premium projects while working on the farm.
- If the temporary/seasonal workers live in the area, they should be able to benefit from community projects even while they are not working on the farm. They should also be encouraged to submit project proposals for the benefit of their communities.
- If they live far away, they should be able to make a project proposal that benefits them as a group while working on the farm (e.g. projects that make life easier for migrant workers and their families).

With regard to membership in the legal body:

- Temporary/seasonal workers who have a strong and durable link with the company (e.g. they work during the harvest on the farm and come back every year) could be allowed to become members of the legal body and to fully participate while they are working on the farm should they so wish. This specific consideration has to be reflected in the constitution of the legal body.

## (e) How to proceed?

To establish your legal body you have to follow a series of steps.

The following procedure is recommended:





- Consult a lawyer or legal expert<sup>6</sup> who is knowledgeable about not-for-profit organizations and social and economic development. They should give you guidance on the type of organization to choose for your purpose and establish the list of formal requirements for registration.
- In order to register the organization, a constitution is needed. The constitution must fulfil the legal requirements (the mandatory provisions for the legal form you have chosen) as well as the Fairtrade principles and the Fairtrade standards. The constitution has to be in the line with the terms of reference described in standard 2.1.4. It is a combination of legal provisions and Fairtrade requirements.
- The FPC should prepare terms of reference and these need to be approved by the General Assembly of workers. The terms of reference form the basis for a draft constitution. For guidance you can use Chapter 3 in this document. Since this is quite a technical matter, you might wish to seek external advice, for instance from the Fairtrade International producers support or your regional producer network. You should also look for legal advice from a lawyer. They should help you to draw up the constitution in order to make it fit into the legal framework.
- Consult with the workers. The draft constitution should be explained to and discussed in detail with the workers. You will probably need more than one meeting. The presence of the lawyer during this process is recommended.
- Amend the draft taking into account the observations and suggestions made by the workers.
- Check the final draft again with the lawyer. They should also advise you on the legal requirements for the procedure to approve the constitution.
- Finally, the constitution must be adopted by a General Assembly.
- Register the organization with the competent Government authority. Who this authority is depends on the type of organization and the legislation in your country.
- For registration, you will need a series of documents (the lawyer should help you to have them ready). Normally you need as a minimum:
  - The approved constitution including the name and address of the organization
  - The minutes of the General Assembly that approved the constitution
  - The list of founding members
  - The list of the first governing body (the first FPC in your case)Other requirements might be established by the law; the lawyer should advise you on this.
- After registration, other formalities, according to the law, might be necessary (for instance applying for a tax ID). The lawyer should advise you on this.
- Ensure that the legal body you choose will benefit from income tax exemption. Tax exemption for not-for-profit organizations is not always automatic. The organization must apply for it, submitting the relevant documents.
- Where registration of the legal body is likely to take a long time to complete, alternative banking arrangements must be put in place for receipt of the Fairtrade Premium. However, the legal body should be in place before the FPC purchases any assets.
- When the legal body is in place, the arrangements made to receive the Fairtrade Premium during the constitution process, must be changed in order to ensure that premium money is in a bank account in the name of the organization.
- With the help of the lawyer, enquire about the legal requirements for the operation of your organization (for example whether you have to follow certain rules on bookkeeping, reporting to the supervising authority, etc.).

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<sup>6</sup> Refer to Fairtrade International producer support or your regional producer network.



### **Sources of information**

<http://www.asianphilanthropy.org/index.html>

For information on the not-for-profit (charitable) sector in Asia and the Pacific. Contains practical information on legal forms, incorporation, taxation, etc.



## 3. THE CONSTITUTION

### (a) The purpose of the Constitution

The Fairtrade standards explicitly refer to the Constitution or Terms of Reference in clause 2.1.4: “*The Fairtrade Premium Committee **must have and follow terms of reference***”. A Constitution is indispensable for the legalization and good functioning of the legal body and the Fairtrade Premium Committee. The term Constitution<sup>7</sup> refers to a written document, which establishes the rules and principles by which an organization is governed.

In the context of Fairtrade International, the Constitution has two functions:

- Firstly, it is necessary as the founding document for the organization to be legally registered. For this purpose, it must combine the legal provisions applicable to the organizational form and the Fairtrade principles; as discussed in the previous chapter.
- Secondly, it lays down the basic principles and rules by which the organization is governed.

You should distinguish between Constitution and Rules and Regulations:

- The Constitution is the primary document, which regulates objectives, membership, governance and other basic principles of the organization as a whole. It must be approved by the General Assembly (GA) of workers. It is usually difficult to change; amendments to the Constitution need a qualified majority of votes in the GA and must be registered with the supervisory authority. It should, therefore, be as concise as possible and only contain the fundamentals.
- The Rules and Regulations make up the secondary document (also called by-laws) that regulates the details of the internal operations of the organization, such as the detailed functioning of the FPC, meeting procedures, financial procedures, etc. They must be based on the Constitution, but regulate the functioning of the organization in more detail.

### (b) Content of the Constitution

In this chapter we will list the elements that should be contained in the Constitution. Again keep in mind that certain issues are determined by national law and/or by the Fairtrade standards. In these matters there is no flexibility, they must be fully integrated into the Constitution. In other areas you have the freedom to choose among various options. Where the Fairtrade standards are applicable and must be followed, reference is made in the standard clause 2.1.4.

You have to assure that the Constitution defines:

- The aims of the FPC;
- The composition of the FPC (who are the members);
- How workers members of the FPC are elected;
- Procedures of the FPC determining at least terms of office, frequency of meetings, how decisions are made, criteria for selection of Fairtrade Premium projects, criteria for classifying major projects, documentation, and which reports should be delivered, what happens to the FPC if the company is decertified or dissolved;

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<sup>7</sup> Different terms are used for the constitutional document, according to the type of organization, such as: organic statute, memorandum of association, trust deed.



- Internal regulations, responsibilities, especially who is responsible for finances;
- That all decisions on Fairtrade Premium use are approved by the annual General Assembly (GA) of all workers;
- The delegate system for the GA where applicable;
- How the interest of migrant and temporary/seasonal workers are taken into account;
- How consensus can be reached for decisions;
- In the case of multi-estates, there must be a system for elected delegates to represent each affiliate plantation.

The elements of a constitution are normally the following:

### 1. Name of the organization and registered office

### 2. Objectives

The basic objective of the organization is to receive and use the Fairtrade Premium *for the empowerment of workers and to support sustainable social and economic development for workers, their families and the community*. It is mandatory to integrate this objective in the constitution.

The organization may elaborate this objective in more detail and add other objectives, as long as they are in line with the basic objective cited above and do not hinder its promotion.

### 3. Membership

Only workers/employees<sup>8</sup> of the company can be members and every worker has the right to become a member from the moment they establish a labour relation with the company. Membership ends when the employment contract terminates. This is a mandatory requirement.

### 4. General Assembly (GA)

This is the meeting of all members<sup>9</sup>. The constitution should regulate:

- The powers of the GA. According to the Fairtrade principles and the relevant Fairtrade standards, the following issues must be decided by the GA:
  - Approval and amendment of the constitution or terms of reference (clause 2.1.4)
  - Election and removal of the workers' representatives in the FPC
  - Election and removal of the members of the Internal Audit Committee (if applicable<sup>10</sup>)
  - Approval of policies to address the interests of migrant and temporary /seasonal workers
  - Approval of the terms of reference of the Internal Audit Committee, which includes internal control mechanisms to verify premium balances, reporting and use, and for large premium sums the procedures commissioning an external audit
  - Approval of projects
  - Reception of the annual report on the activities carried out with Fairtrade Premium money and on the progress of existing projects
  - Approval of Fairtrade Premium Plan, which must contain a reasonable budget based on expected Fairtrade Premium income; reception of the report of the Internal Audit Committee (if applicable)

<sup>8</sup> See definition of 'worker' in the Fairtrade context in Section 2c.

<sup>9</sup> In large companies or on multi-estates the powers of the GA might be conferred to an Assembly of Delegates, see chapter 6 on the Delegates Model.

<sup>10</sup> This is applicable only if the constitution provides for an Internal Audit Committee, nevertheless an Internal Audit Committee is considered best practice (Standards clause 2.1.12).



- Reception of the report of the external audit carried out when there is a significant amount of Fairtrade Premium income
- Approval of criteria for classifying major projects
- Reception of risk assessment for all major projects to minimize risk;
- Dissolution of the organization and application of funds in case of dissolution.
- Frequency of the GA. Distinguish between Ordinary and Extraordinary GAs. The Ordinary GA should take place at least once a year with all the workers with the purpose of reporting about projects and activities, presenting the financial reports, presenting and approving the work plan for the following year. This GA should be held during the time of year when the majority of the workforce is present (see Standard clause 2.1.16). Extraordinary GAs can be held as deemed necessary. Best practice is to have quarterly GAs.
- Procedures of the GA. As best practice you should:
  - Define who convenes the GA. Normally it is the FPC, but it can also be the Internal Audit Committee. Additionally/alternatively it could be convened on written request from a defined number or percentage of members.
  - Define the notice procedure (e.g. written notice on noticeboard) and notice period (e.g. three weeks).
  - Define the chair: Normally the chairperson of the FPC.
  - Define the quorum and the procedure in case of lack of a quorum.

## 5. Fairtrade Premium Committee (FPC)

The FPC is the governing body of the organization with the purpose of managing the Fairtrade Premium (FP) for the benefit of all workers (Standards clause 2.1.1).

The Constitution must regulate:

- The aims of the FPC.
- The duties and powers of the FPC, according to the Fairtrade standards, particularly 2.1.3, 2.1.5, 2.1.7, 2.1.8, 2.1.14, 2.1.15, 2.1.16, 2.1.17.
- The composition of the FPC, which must reflect the composition of the workforce (Standards clauses 2.1.1 and 2.1.10).
- The term of office of the FPC and the regulation of re-election (re-election voted 'yes' or 'no', and number of terms).
- The election procedure of the FPC (Standards clause 2.1.9), including replacement of FPC members who leave before the end of their term.

With regard to the term of office and election procedure the Fairtrade standards allow flexibility. It is recommended that you find a balance between continuity and renewal of the FPC. A possible solution is a gradual renewal of the FPC by means of a rotational election procedure: for example, in a term of four years, election could be every two years where 50 percent of the workers on the FPC are elected; the other half stays for another two years and steps down in next election, and so on. This has been practiced on some plantations with good results<sup>11</sup>.

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<sup>11</sup> Let's illustrate this procedure with an example: The first FPC is elected in 2007. After two years (half-term), in 2009, 50 percent of the workers on the FPC step down (the FPC or the GA determines who has to step down) to allow the election of new members for a full four-year term, until 2013. After two more years (2011) the other 50 percent of the workers' representatives who have stayed for four years (since 2007) step down and are replaced by new members who are elected for a full four-year term, until 2015. Of course, re-election of resigning members is possible if the Constitution allows re-election. The key to this model is that the FPC is elected for a four-year term, but the term does not end at the same time for all FPC members. It ends every two years for half of the FPC.



- Office bearers: Define office holders (chairperson, secretary, treasurer, etc.), their duties and their appointment. The office bearers should be elected in FPC meetings, but can also be elected by the General Assembly.
- Rules and Regulations: the FPC must establish internal rules and regulations for its operations.
- Sanctions in case of major faults (such as fraud and theft) committed by FPC members (minor faults should be addressed in the internal FPC rules and regulations).

## 6. Internal Audit Committee (IAC)

According to Standards clause 2.1.12, it is best practice to establish an Internal Audit Committee to monitor the financial administration and check the relevant books of the Fairtrade Premium account. The IAC is dealt with in more detail in Chapter 5 of this document.

If you establish an IAC, it must be regulated in the constitution: composition, term of office, election by the GA, duties and power. The constitution can also require that the IAC establishes internal rules and regulations for its functioning.

## 7. Finances

This section contains the basic rules for financial management. Some are mandatory requirements of the Fairtrade standards:

- All expenditures must be supported by decisions of the FPC according to the annual plan and budget approved by the GA
- An annual financial report must be submitted to the GA (Standards clause 2.1.18)
- Information on the Fairtrade Premium must be given regularly to the FPC (Standards clause 2.1.12)
- A separate account must be established for the premium with joint signatories, a worker representative from the FPC and a management representative (Standards clause 2.1.5)

Other requirements are not explicitly stated in the standards but are necessary for transparent financial management as required by Fairtrade:

- Establishment of an adequate accounting system
- Rules for financial reporting (addressees, frequency, type of report)
- Establishment of internal and external control mechanisms of financial management. (For example, the constitution may oblige the FPC to establish financial procedures and control mechanisms in its internal rules and regulations.)

## 8. Use of funds

It is recommended to have a section on the use of the premium and the procedures for premium decisions. It regulates the following matters:

- Premium funds and all other income are applied solely for the promotion of the objectives of the organization. This clause in the constitution is a probable pre-requisite for being registered as a not-for-profit organization and eligible for income tax exemption. As workers have the option to distribute up to 20 percent of Fairtrade Premium money per year, it is important to ensure that the legal body allows this option without affecting its legal status as a not-for-profit organization, the status around tax exemption or put the organization at risk (e.g. money laundering investigation).



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- Criteria for premium use (what can the premium be used for?)<sup>12</sup>
  - Fairness and equity in the allocation of premium funds for the needs of all groups (e.g. including migrant and temporary workers/seasonal, women and men, etc.) should be taken into account as far as possible (Standards clause 2.1.15)
  - Procedure for decisions on premium use (Standards clause 2.1.15, particularly the requirement of written and approved projects).

#### **9. Amendments to the Constitution**

This section regulates the procedure for amendments to the constitution, particularly the requirement of a qualified majority (for example two-thirds) of the GA necessary for approval.

#### **10. Dissolution**

This section regulates the procedure in case of dissolution, such as:

- Requirements with regard to quorum and qualified majority in the GA that decides on dissolution
- Legal requirements (if applicable)
- Procedure for liquidation of assets and liabilities
- Application of surplus including fixed assets after liquidation

The main reasons for dissolution could be linked to the closing down of the company (which means that there are no longer any employees who can be members of the organization) or the loss of the Fairtrade certification. If it is the GA decision the constitution must ensure that the balance of the Fairtrade Premium account must be used for the on-going and planned Fairtrade Premium projects or be distributed among the workers in accordance with the laws governing the legal body.

If there are reasons why the legal body can continue to operate as an independent organization, then the GA has to change the definition of membership and the definition of beneficiaries in order to continue with current projects. Alternatively, the properties of the dissolved organization may be donated to one or more organizations with similar goals. In any case, the law and the relevant clauses of the constitution have to be followed.

#### **11. Miscellaneous**

To safeguard the company from being made responsible for acts and liabilities of the organization, a clause might state its legal independence from the company and the sole liability of the organization for its debts and liabilities.

## **4. FAIRTRADE PREMIUM COMMITTEE RULES AND REGULATIONS**

While the terms of reference or constitution (Standard clause 2.1.4) establish the more fundamental rules to be followed, the Fairtrade Premium Committee also needs to draw up internal rules and regulations to ensure transparent management. Transparent means that the management of the premium, and decision-making about projects, should be clear and available to all the workers.

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<sup>12</sup> Guidance can be found in the Fairtrade International Explanatory *Document for the Fairtrade Premium Committee in Hired Labour Situations*.



The rules and regulations are the by-laws that govern the operation of the FPC, and complement the constitution. They are distinct from the constitution, which lays down the rules for the whole organization. But the internal rules and regulations must be based on the constitution, i.e. they cannot go against the rules set out in the constitution. The internal rules and regulations are also approved by the GA. All workers have the right to see how decisions are made and how money is spent.

The FPC has a lot of freedom in defining the internal rules and regulations. However, it should take into account the following principles:

- Principles and rules of Fairtrade as expressed in the standards and explanatory documents issued by Fairtrade International e.V.
- The principles and rules laid down in the constitution of the organization
- Equality: each FPC member has equal rights (e.g. one vote in FPC decisions) and equal responsibility for FPC operations. Management advisors must actively and responsibly participate in the FPC and have the right to block<sup>13</sup> expenditure that would violate the rules for premium use, if the proposed use is illegal, or if it has a demonstrably negative structural, financial or social impact on the company (see Standards clause 2.1.13).
- Honesty: The FPC must promote both the empowerment and the sustainable social and economic development of workers, their families and the community and not pursue the personal benefit of FPC members or their relatives and friends. The internal rules and regulations should help to prevent abuse and personal enrichment as much as possible.
- Transparency: internally, all FPC members must be informed about business routinely and have access to all relevant information. Externally, auditors and workers (through the Internal Audit Committee) must be able to check the operations of the FPC, particularly the financial operations.
- Effectiveness: the internal rules and regulations should guide the FPC on how to promote and achieve the objectives of the organization
- Efficiency: the internal rules and regulations should oblige the FPC to use the available resources (funds, time, knowledge, etc.) in the best possible way.

The following issues should be covered by the internal rules and regulations:

- Duties of FPC members: attend meetings and training, prepare for meetings and fulfil any tasks assigned by the FPC, maintain communication with their constituencies, etc. This does not refer to the duties of the FPC as a whole (which is set out in the Constitution), but those of each individual FPC member.
- Election and term of office of office holders (unless this is set out in the constitution and/or the election of office holders is in the competence of the GA)
- Duties of office holders (if not set out in the constitution, or elaborated in more detail than the constitution)
- Internal organization of the FPC: e.g. assignment of permanent duties not assigned to office holders. In addition to the formal offices such as chair, treasurer and secretary, the FPC can establish other assignments such as communication, capacity building, file keeping, asset administration, etc.
- Rules for FPC meetings, for example:
  - Frequency of FPC meetings
  - Convening of meetings: who convenes, procedure (e.g. in writing with agenda), notice period (e.g. one week in advance)
  - Agenda of meetings: mandatory agenda items

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<sup>13</sup> The technical feasibility/solution of this requirement will have to be examined in the context of the applicable legal framework in each country.





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- Procedure of meetings, particularly quorum, decision-taking and minutes
  - Procedures for establishing FPC sub-committees
  - Procedures for project management: detailed steps to be followed in the project identification, planning, decision-taking, implementation, evaluation and monitoring
  - Procedures for accountability
  - Financial procedures
  - Procurement procedures
  - Rules for internal (within FPC) communication and information
  - Rules for communication with workers: frequency, means, who is responsible, records. The internal rules and regulations should establish guidelines for communication within the FPC as a group and for individual FPC members with the workers. As well as meetings, other forms of communication should be considered: noticeboard, leaflets, radio spots (some companies have an internal radio facility), etc.
  - Rules for file keeping: File keeper, updating and use of files
  - Sanctions of FPC members who do not comply with their duties (if not contained in the constitution or more detailed than in constitution, particularly for minor faults). Offences would include, for example: unjustified absence from meetings, disregard of internal rules and regulations (particularly of financial procedures), non-fulfilment of tasks assigned to a member).

In establishing the internal rules and regulations, the FPC should be guided by the Fairtrade International Training Manuals, particularly on Fairtrade Premium Committee Processes and Fairtrade Premium Committee Financial Management. These modules give practical advice for the good functioning of the FPC. By incorporating them into the internal rules and regulations the FPC adopts them as its own law and makes their compliance mandatory for FPC members. This enhances effectiveness, efficiency and transparency.

## 5. INTERNAL AUDIT COMMITTEE

### (a) Purpose

The establishment of an Internal Audit Committee (IAC) is not a mandatory requirement. Standard clause 2.1.12 mentions that “*a designated internal auditing committee is a best practice for checking relevant books of the Fairtrade Premium Account.*” Though not mandatory, the establishment of an IAC is highly recommended for medium-sized companies, and it is best practice for organizations with a large number of members (>100) and/or a high premium turnover.

Why have an Internal Audit Committee? The FPC manages significant amounts of money on behalf of the workers and is accountable to them. The workers exercise their control of the FPC by means of the reports submitted to the General Assembly, particularly the annual report and the financial report. However, the GA is not a very effective control instrument for several reasons. It meets only from time to time, often only once or twice or once a year. It is not a very flexible control tool, since it consists of all the members and such a large number of people cannot monitor FPC operations and its financial administration. The GA actually receives only a summary report and does not check the details, such as revising the books and checking compliance with the procedures.

These shortcomings of the GA as a control mechanism are the rationale for the establishment of an Internal Audit Committee. It is a control instrument that is much more



flexible, efficient and effective than the GA itself, but mandated by the GA to supervise the FPC. This mandate can be limited to financial and accounting matters only, or its scope can be wider and include the entire range of operations of the FPC.

One might argue that this control function can also be exercised by an external audit, especially because the external auditors are professionals and can do the job much better than internal auditors chosen among the workers who often lack the necessary professional skills. This argument has some truth when it comes to technicalities, but it does not take into account the social dynamics and underestimates the effectiveness of peer pressure. An IAC is permanently on site and monitors the FPC operations on an ongoing basis, while an external auditor comes only from time to time, usually at the end of the year. Moreover, the IAC can be entrusted with a more extensive mandate than just revising the accounts. The best system is to have both: an internal and external auditing mechanism.

## **(b) How to establish an Internal Audit Committee**

If the organization decides to establish an Internal Audit Committee, it must be provided for in the constitution. The constitution should regulate:

- The composition of the IAC: three members should be sufficient, and all of them should be workers as the GA itself consist of workers;
- Profile: the members should be people highly respected for their integrity and reliability. If possible they should have some knowledge of finance and accounting and be familiar with FPC operations. Former FPC members who did their job well would be ideal candidates for this position. If the members of the IAC don't have these skills, they must be trained as soon as possible after election to be able to comply with their duties.
- Election procedure and term of office: the IAC must be elected by the General Assembly (not by the FPC, since the IAC is supposed to monitor and audit the FPC). The term of office should be long enough to gain skills and experience (four to six years); the gradual renewal of the committee is recommended (not all members are replaced at the same time).
- Duties and powers: this is the most important part. The organization must decide whether the IAC's action is limited to the sphere of finance and accounting, or if its competences should go beyond that. To avoid misunderstandings and conflict, the role of the IAC must be clearly defined.

With regard to finance and accounting – the classical field of auditing – the IAC has a duty to monitor and supervise the financial administration of the FPC. In particular, the IAC must check whether:

- the FPC observes the Fairtrade standards, the constitution of the organization and the internal rules and regulations
- the financial management is correct and transparent
- the FPC, and particularly the treasurer, follows the financial procedures (registration of income and expenditure, keeping of original documents, payment procedures, procurement procedures, etc.)
- all expenditures are supported by a decision of the FPC according to the plan and budget approved by the GA
- the financial documents, accounts and financial reports are properly compiled
- workplans, timeframes and budgets are fulfilled and deviations properly corrected or justified
- the flow of information on financial matters complies with the rules (reports to the workers and information flow within the FPC)
- the FPC administers the premium in the best interests of the beneficiaries
- the FPC does not strive for personal gain in the performance of its duty



The constitution may entrust the IAC with other duties beyond the financial sphere. It may mandate it to monitor and supervise the operation of the FPC in general, not only with regard to financial matters. The IAC may, for example, supervise the process of project management (from the identification of projects to their termination and evaluation), the planning and reporting by the FPC, etc. The focus of the auditing is on the formal compliance with the rules (standards, constitution, by-laws) not on the content of the FPC decisions. However, it should also ensure respect for the basic rights of the members, such as non-discrimination. In this sense the IAC becomes a kind of “ombudsperson”, serving as a bridge between the FPC and the workers. It is the addressee of complaints from the workers and other stakeholders if they feel the FPC has not served them well, violated their rights or broken the rules. Then the role of the IAC is conflict prevention and trust building.

The IAC performs its duties pro-actively according to its workplan. In order to perform its functions, the committee must have access to all necessary information. An IAC member should attend FPC meetings. The IAC should periodically check the accounting books and financial documents and visit project sites. In case of allegations or complaints the IAC acts immediately to analyse and verify the accusation. It must file a report on the subject within a defined timeframe.

If the IAC detects minor irregularities, it should immediately call on the FPC to take corrective action. If the fault is not corrected, or in case of major irregularities, the IAC should report to the General Assembly. In case of very serious breaches, the IAC should have the power to call for an extraordinary General Assembly to report and make recommendations. The GA has the final say in case of any conflict between the IAC and the FPC. The meetings of the committee and all cases it dealt with should be documented.

The IAC should report regularly to the General Assembly on its work and the findings, at least once a year to the ordinary GA. More frequent reporting, for example on a quarterly basis, is highly recommended.

- The IAC must develop its own internal rules and regulations (on meetings, records, procedures and timeframes in case of detecting irregularities or in case of complaints, reporting to GA, sanctions, etc.) and a workplan (division of labour among the committee members, form and frequency of checks, etc.).

As already mentioned, training of the IAC is paramount. An incompetent IAC would be worse than no IAC, because it gives a false impression of assurance. It would be unrealistic to expect that it will be easy to find the people with the required profile. Therefore the members should be trained as quickly as possible after they have been elected. Besides a balanced and trustworthy personality, specific technical skills are required. The training has to be defined according to the individual situation of each committee. The IAC members may also be invited to participate in FPC training on leadership and technical matters such as financial management, Fairtrade standards, FPC processes. The Fairtrade training modules on these issues are helpful tools for incoming IACs. However, whenever feasible, a one or two day introductory practical training on all these issues should be offered to new IAC members right from the start.

## 6. DELEGATES MODEL

In the case of multi-estates, there must be a system for elected delegates to represent each affiliate plantation if a central FPC exists (Standards clause 2.1.4).



In companies with a very large workforce (>500) communication between the FPC and the workers becomes difficult and the General Assembly becomes unmanageable. In these cases, a delegates' system should be considered. It follows the model of representative democracy: since the assembly of workers is too large to really exercise its function, the workers confer the powers of the General Assembly onto their representatives or delegates. Instead of the General Assembly, the Meeting or Assembly of Delegates is the authority that guides and controls the FPC. The only function of the workers is to elect the delegates.

If you decide to establish a Delegates' system, its duties and powers and its way of operation, must be laid down in the constitution. The Assembly or Meeting of Delegates takes the place of the General Assembly of workers. The constitution should regulate:

- The number of delegates: 50 – 100 is a manageable size, depending on the size of the workforce.
- Term of office: similar to that of the FPC, for example four years with elections every two years where 50 percent of the delegates are replaced by new members, while the other 50 percent remain in office until the next election.
- Election procedure: election by the workers per areas/sections/departments covering all the different sections of the farm and enabling everyone to be represented including migrant and temporary/seasonal workers. Each section sends a number of delegates proportional to the number of workers. Fair representation of gender and all categories of workers. You should take care to ensure that all categories of workers are represented.
- Duties and powers of the delegates. The Assembly of Delegates exercises the powers normally assigned to the General Assembly:
  - To approve and amend the constitution
  - To elect and remove FPC members among the delegates (delegates elected into the FPC must be replaced as soon as possible)
  - To elect and remove the members of the Internal Audit Committee
  - To discuss and approve the annual report including the financial report. In addition to the annual report which is presented once a year, the Delegates Assembly can meet more frequently (e.g. quarterly) and in each meeting receive a progress report from the FPC.
  - To receive the report from the Internal Audit Committee and the external financial auditor
  - To discuss and approve the annual workplan and budget
  - To decide on the dissolution of the organization and the application of funds in case of dissolution
  - An additional, very important duty of the delegates, in contrast to the role of the GA, is to inform the workers about Fairtrade and serve as link between the workers and the FPC. The delegates are accountable to their constituency. They should hold regular meetings with their constituency in the relevant work area or section. The constitution should establish guidelines on this. Best practice is to meet and inform the workers after each meeting of the delegates.
- Frequency of meetings: Minimum once a year (analogous to the Ordinary GA). To establish a regular dialogue between the delegates and the FPC, more frequent meetings are recommended. Best practice is quarterly meetings, where the FPC provides an account of its activities for the last three months (financial, projects, other activities, plans for next quarter). The FPC should always attend Delegate meetings to inform and receive feedback.
- Procedures of meetings:
  - Who convenes the Assembly of Delegates? The chairperson of the delegates on their own, but also on request of the FPC or the Internal Audit Committee, or on written request from a defined number or percentage of delegates.



- Form of notice (e.g. written notification to each delegate) and notice period (e.g. two weeks)
- Quorum and procedure in case of lack of a quorum
- Rules and Regulations: The delegates should establish internal rules and regulations for the operation of the delegates' system. Among others, they define the office holders and their duties (such as chairperson, vice-chairperson, and secretary who is responsible for minutes and files of the delegates). Also sanctions in case of faults committed by delegates (such as unjustified absence from meetings).



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## **APPENDIX:**

### **Proposed text elements for master presentation**

#### **1. LEGAL BODY**

##### **Why a legal body?**

- All workers of a company are the direct beneficiaries of the Fairtrade Premium (FP)
- The FP belongs to the workers as a group, not to each worker individually
- To be able to legally own the premium and assets acquired the group must be legally incorporated
- The members of this legal organization are all workers/employees of the company
- The Fairtrade Premium Committee (FPC) is not the owner of the premium, it manages the premium on the workers' behalf
- It is the governing body (Board) and representative of the legal entity
- There must be a formal legal body representing the workforce that is recognized by law and registered by a public entity

##### **The principles governing the establishment of the legal body**

The legal form that is chosen must be the one that is most appropriate to the following principles. It must combine the Fairtrade requirements with the national legislation governing the legal form. The basic principles are:

- Private, non-governmental
- Not-for-profit, but not excluding the possibility of investing in profitable business projects with social, economic development orientation
- Development and empowerment oriented; objective is socio-economic development of workers, their families and communities
- Fairtrade Premium is main source of income
- All income must always be applied to the objectives of the organization
- No claim of members on the property of the organization
- Membership restricted to employees of company and all employees entitled to be members, without any other pre-requisite
- Principles of democratic participation, transparency, cooperation and equality; one person one vote
- Fairtrade Premium Committee is the managing body and must conform to and be elected according to Fairtrade standards
- The FPC is accountable to workers and must consult them before taking decisions
- Tax exemption should be sought
- Limited liability, neither members nor company are liable for debts of organization



## **How to involve temporary/seasonal workers in membership and benefits**

Difficult, since their working relation with company is not stable

Advisable to distinguish between benefits and membership

Membership possible if there is a stable relationship with company:

- Seasonal workers who work at least six months a year and come back year after year
- Part-time and casual workers who work regularly and the whole year round
- These groups should have a representative in the FPC

Benefits for those workers who have no stable employment relationship with company:

- Should be invited by FPC to express their problems and needs
- Should be able to propose projects for their groups and communities
- Should be able to benefit from premium projects while working on the farm

## **Procedure for establishing legal body**

- Consultation with legal expert on adequate legal form and requirements
- With help of legal advisor draft constitution, explain and discuss with workers
- Workers in General Assembly (GA) must approve constitution
- Register organization before competent government authority
- Register all property under name of organization
- Apply for tax exemption and comply with other legal requirements

## **2. CONSTITUTION**

### **Purpose**

- Founding document necessary for legalization
- Lays down principles and rules by which organization is governed

### **Content**

- Name and registered office
- Objectives
- Membership
- General Assembly, its powers and how it operates
- Fairtrade Premium Committee as governing and managing body, its powers, composition and election and how it operates
- Internal Audit Committee (recommended as best practice)
  
- Financial management according to Fairtrade standards and principles
- Use of funds according to Fairtrade standards and principles
- Procedures for amendments of constitution and dissolution of organization



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### 3. FAIRTRADE PREMIUM COMMITTEE RULES AND REGULATIONS

Difference between

- **Constitution:** primary document, regulates objectives, membership and governance of organization as a whole; approved by GA
- **Rules and Regulations :** secondary document, regulates internal operation and procedures of FPC; approved by GA

In developing internal rules and regulations, FPC should be guided by Fairtrade principles and standards and of good governance, particularly of equality, honesty, transparency, effectiveness and efficiency.

#### Content of Rules and Regulations

- Duties of FPC members
- Election and duties of office holders (if not already laid down in constitution)
- Internal organization of FPC including possibility for sub-committees
- Rules for FPC meetings
- Procedures for project management
- Financial procedures
- Procurement procedures
- Rules for internal communication (among FPC members)
- Rules for communication with workers
- Rules for file-keeping
- Sanctions for non-compliance of FPC members

### 4. INTERNAL AUDIT COMMITTEE (IAC)

Not mandatory, but recommended as best practice

Purpose is to have a body monitoring and controlling the FPC that is more flexible than the GA

Establishment of IAC must be provided for in constitution

Profile of IAC members is very demanding: skills and integrity

Training is crucial to avoid inaction and frustration

Election by GA and reporting to GA

Function can be limited to financial matters: checking accounts and observance of financial procedures

Can also be extended to a general overview of FPC operations: observance of Fairtrade standards and constitution in all FPC operations

Role of ombudsperson, receiving complaints from workers and mediating between workers and FPC; conflict prevention and trust building





## 5. DELEGATES MODEL

Mandatory for multi-estates

Recommended for companies with very large workforce (>500)

Must be established by the constitution

Delegates are elected by their sections, proportional to number of workers

Delegates are intermediaries between FPC and workers to whom they are accountable

Delegates Assembly replaces and has the function of the GA

Besides annual meeting with same agenda as GA delegates should have more frequent meetings with FPC (best practice: quarterly) to receive reports from FPC