

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Labour Clauses (Public Contracts) Convention, 1949:

Article 1

- 1. This Convention applies to contracts which fulfil the following conditions:
 - (a) that one at least of the parties to the contract is a public authority;
 - (b) that the execution of the contract involves--
 - (i) the expenditure of funds by a public authority; and
 - (ii) the employment of workers by the other party to the contract;
 - (c) that the contract is a contract for--
 - (i) the construction, alteration, repair or demolition of public works;
 - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or
 - (iii) the performance or supply of services; and
 - (d) that the contract is awarded by a central authority of a Member of the International Labour Organisation for which the Convention is in force.

- 2. The competent authority shall determine the extent to which and the manner in which the Convention shall be applied to contracts awarded by authorities other than central authorities.
- 3. This Convention applies to work carried out by subcontractors or assignees of contracts; appropriate measures shall be taken by the competent authority to ensure such application.
- 4. Contracts involving the expenditure of public funds of an amount not exceeding a limit fixed by the competent authority after consultation with the organisations of employers and workers concerned, where such exist, may be exempted from the application of this Convention.
- 5. The competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, exclude from the application of this Convention persons occupying positions of management or of a technical, professional or scientific character, whose conditions of employment are not regulated by national laws or regulations, collective agreement or arbitration award and who do not ordinarily perform manual work.

Article 2

- 1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on--
 - (a) by collective agreement or other recognised machinery of negotiation between organisations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or
 - (b) by arbitration award; or
 - (c) by national laws or regulations.
- 2. Where the conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than--
 - (a) those established by collective agreement or other recognised machinery of negotiation, by arbitration, or by national laws or regulations, for work of the same character in the trade or industry concerned in the nearest appropriate district; or

- (b) the general level observed in the trade or industry in which the contractor is engaged by employers whose general circumstances are similar.
- 3. The terms of the clauses to be included in contracts and any variations thereof shall be determined by the competent authority, in the manner considered most appropriate to the national conditions, after consultation with the organisations of employers and workers concerned, where such exist.
- 4. Appropriate measures shall be taken by the competent authority, by advertising specifications or otherwise, to ensure that persons tendering for contracts are aware of the terms of the clauses.

Article 3

Where appropriate provisions relating to the health, safety and welfare of workers engaged in the execution of contracts are not already applicable in virtue of national laws or regulations, collective agreement or arbitration award, the competent authority shall take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers concerned.

Article 4

The laws, regulations or other instrument giving effect to the provisions of this Convention--

- (a) shall--
 - (i) be brought to the notice of all persons concerned;
 - (ii) define the persons responsible for compliance therewith; and
 - (iii) require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work; and
- (b) shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of--
 - (i) adequate records of the time worked by, and the wages paid to, the workers concerned; and
 - (ii) a system of inspection adequate to ensure effective enforcement.

Article 5

- 1. Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts.

- 2. Appropriate measures shall be taken, by the withholding of payments under the contract or otherwise, for the purpose of enabling the workers concerned to obtain the wages to which they are entitled.

Article 6

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labour Organisation full information concerning the measures by which effect is given to the provisions of this Convention.

Article 7

- 1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may, after consultation with the organisations of employers and workers concerned, where such exist, exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.
- 2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.
- 3. Each Member having recourse to the provisions of this Article shall, at intervals not exceeding three years, reconsider in consultation with the organisations of employers and workers concerned, where such exist, the practicability of extending the application of the Convention to areas exempted in virtue of paragraph 1.
- 4. Each Member having recourse to the provisions of this Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of this Article and any progress which may have been made with a view to the progressive application of the Convention in such areas.

Article 8

The operation of the provisions of this Convention may be temporarily suspended by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, in cases of force majeure or in the event of emergency endangering the national welfare or safety.

Article 9

- 1. This Convention does not apply to contracts entered into before the coming into force of the Convention for the Member concerned.
- 2. The denunciation of this Convention shall not affect the application thereof in respect of contracts entered into while the Convention was in force.

Article 10

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 11

- 1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
- 2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
- 3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 12

- 1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --
 - (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;
 - (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
 - (c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
 - (d) the territories in respect of which it reserves its decision pending further consideration of the position.
- 2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

- 3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.
- 4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 14, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

- 1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.
- 2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.
- 3. The Member, Members or international authority concerned may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 14, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 14

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

- 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
- 2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 17

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 18

- 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides--
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

