

C157 - Maintenance of Social Security Rights Convention, 1982 (No. 157)

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 Sixty-eighth Session on 2 June 1982, and

Recalling the principles established by the Equality of Treatment (Social Security) Convention, 1962, which relate not only to equality of treatment but also to the maintenance of acquired rights and of rights in course of acquisition, and

Considering it necessary to provide for the application of the principles of the maintenance of rights in course of acquisition and of acquired rights in respect of all the branches of social security covered by the Social Security (Minimum Standards) Convention, 1952, and

Having decided upon the adoption of certain proposals with regard to maintenance of migrant workers' rights in social security (revision of Convention No. 48), which is the fourth item on the agenda of the session, and

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

adopts this twenty-first day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Maintenance of Social Security Rights Convention, 1982:

PART I. GENERAL PROVISIONS

Article 1

In this Convention-

- (a) the term **Member** means any Member of the International Labour Organisation that is bound by the Convention;
- (b) the term **legislation** includes any social security rules as well as laws and regulations;
- (c) the term **competent Member** means the Member under whose legislation the person concerned can claim benefit;

- (d) the term ***institution*** means the body or authority directly responsible for applying all or part of the legislation of a Member;
- (e) the term ***refugee*** has the meaning assigned to it in Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 and in paragraph 2 of Article 1 of the Protocol relating to the Status of Refugees of 31 January 1967;
- (f) the term ***stateless person*** has the meaning assigned to it in Article 1 of the Convention relating to the Status of Stateless Persons of 28 September 1954;
- (g) the term ***members of the family*** means persons defined or recognised as such or as members of the household by the legislation under which benefits are awarded or provided, as appropriate, or persons determined by mutual agreement between the Members concerned; where persons are defined or recognised as members of the family or as members of the household under the relevant legislation only on the condition that they are living with the person concerned, this condition shall be deemed to be satisfied in respect of persons who obtain their main support from the person concerned;
- (h) the term ***survivors*** means persons defined or recognised as such by the legislation under which benefits are awarded; where persons are defined or recognised as survivors under the relevant legislation only on the condition that they were living with the deceased, this condition shall be deemed to be satisfied in respect of persons who obtained their main support from the deceased;
- (i) the term ***residence*** means ordinary residence;
- (j) the term ***temporary residence*** means a temporary stay;
- (k) the term ***periods of insurance*** means periods of contribution, employment, occupational activity or residence which are defined or recognised as periods of insurance by the legislation under which they were completed, and such other periods as are regarded by that legislation as equivalent to periods of insurance;
- (l) the terms ***periods of employment*** and ***periods of occupational activity*** mean periods defined or recognised as such by the legislation under which they were completed and such other periods as are regarded by that legislation as equivalent to periods of employment or periods of occupational activity respectively;
- (m) the term ***periods of residence*** means periods of residence defined or recognised as such by the legislation under which they were completed;

- (n) the term **non-contributory** applies to benefits the award of which does not depend on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity, and to any scheme which exclusively awards such benefits;
- (o) the term **benefits awarded under transitional arrangements** covers benefits awarded to persons who are over a given age on the date of entry into force of the legislation applicable, as well as benefits awarded, as a transitional measure, in consideration of events that have occurred or periods that have been completed outside the current frontiers of the territory of a Member.

Article 2

- 1. Subject to the provisions of paragraph 1 and of paragraph 3, subparagraph (a), of Article 4, this Convention applies to those of the following branches of social security for which a Member has legislation in force:
 - (a) medical care;
 - (b) sickness benefit;
 - (c) maternity benefit;
 - (d) invalidity benefit;
 - (e) old-age benefit;
 - (f) survivors' benefit;
 - (g) employment injury benefit, namely benefit in respect of occupational injuries and diseases;
 - (h) unemployment benefit; and
 - (i) family benefit.
- 2. This Convention applies to rehabilitation benefits provided by legislation concerning any of the branches of social security referred to in paragraph 1 of this Article.
- 3. This Convention applies to all general and special social security schemes, both contributory and non-contributory, as well as to schemes consisting of obligations imposed on employers by legislation in respect of any branch of social security referred to in paragraph 1 of this Article.
- 4. This Convention does not apply to special schemes for civil servants, to special schemes for war victims or to social or medical assistance schemes.

Article 3

- 1. Subject to the provisions of paragraph 1 and paragraph 3, subparagraph (b), of Article 4 and of paragraph 1 of Article 9, this Convention applies to persons who are or have been subject to the legislation of one or more Members, as well as to the members of their families and to their survivors, in all cases in which the international system for the maintenance of rights established by this Convention requires that account be taken of the legislation of a Member other than the Member in whose territory the persons concerned are resident or temporarily resident.
- 2. This Convention does not require any Member to apply its provisions to persons who, by virtue of international instruments, are exempted from the application of the legislation of that Member.

Article 4

- 1. Members may give effect to their obligations under the terms of Parts II to VI of this Convention by bilateral or multilateral instruments giving effect to these obligations, under conditions to be determined by mutual agreement between the Members concerned.
- 2. Notwithstanding the provisions of paragraph 1 of this Article, the provisions of paragraph 4 of Article 7, of paragraphs 2 and 3 of Article 8, of paragraphs 1 and 4 of Article 9, of Article 11, of Article 12, of Article 14 and of paragraph 3 of Article 18 of this Convention shall be immediately applied by each Member as from the coming into force of this Convention for that Member.
- 3. The instruments referred to in paragraph 1 of this Article shall specify in particular-
 - (a) the branches of social security to which they apply, having regard to the requirement of reciprocity referred to in Articles 6 and 10 of this Convention; these branches shall, where the Members concerned have legislation covering them, comprise at least invalidity benefits, old-age benefits, survivors' benefits and pensions in respect of employment injuries, including death grants, as well as, subject to the provisions of paragraph 1 of Article 10 of this Convention, medical care, sickness benefits, maternity benefits and benefits in respect of employment injuries, other than pensions and death grants;
 - (b) the categories of persons to which they are applicable; these categories shall comprise at least employees (including, as appropriate, frontier workers and seasonal workers), as well as the members of their families and their survivors, who are nationals of one of the Members concerned or who are refugees or stateless persons resident in the territory of one of these Members;

- (c) the arrangements for the reimbursement of the benefits provided and other costs borne by the institution of one Member on behalf of the institution of another Member unless it has been agreed that there shall be no reimbursement;
- (d) the rules to avoid undue plurality of contributions or other liabilities or of benefits.

PART II. APPLICABLE LEGISLATION

Article 5

- 1. The legislation applicable in respect of the persons covered by this Convention shall be determined by mutual agreement between the Members concerned, with a view to avoiding conflicts of laws and the undesirable consequences that might ensue for those concerned either through lack of protection, or as a result of undue plurality of contributions or other liabilities or of benefits, in accordance with the following rules:
 - (a) employees who are normally employed in the territory of a Member shall be subject to the legislation of that Member, even if they are resident in the territory of another Member or if the undertaking which employs them has its registered office, or their employer has his place of residence, in the territory of another Member;
 - (b) self-employed persons who normally engage in their occupation in the territory of a Member shall be subject to the legislation of that Member, even if they are resident in the territory of another Member;
 - (c) employees and self-employed persons sailing on board a ship flying the flag of a Member shall be subject to the legislation of that Member even if they are resident in the territory of another Member or if the undertaking which employs them has its registered office, or their employer has his place of residence, in the territory of another Member;
 - (d) persons who are not part of the economically active population shall be subject to the legislation of the Member in whose territory they are resident, in so far as they are not protected in virtue of subparagraphs (a) to (c) of this paragraph.
- 2. Notwithstanding the provisions of subparagraphs (a) to (c) of paragraph 1 of this Article, Members concerned may agree that certain categories of persons, in particular self-employed persons, shall be subject to the legislation of the Member in whose territory they are resident.
- 3. Members concerned may determine by mutual agreement other exceptions to the rules set forth in paragraph 1 of this Article, in the interest of the persons concerned.

PART III. MAINTENANCE OF RIGHTS IN COURSE OF ACQUISITION

Article 6

Subject to the provisions of paragraph 3, subparagraph (a), of Article 4 of this Convention, each Member shall endeavour to participate with every other Member concerned in schemes for the maintenance of rights in course of acquisition, as regards each branch of social security referred to in paragraph 1 of Article 2 of this Convention and for which every one of these Members has legislation in force, for the benefit of persons who have been subject successively or alternately to the legislation of the said Members.

Article 7

- 1. The schemes for the maintenance of rights in course of acquisition referred to in Article 6 of this Convention shall provide for the adding together, to the extent necessary, of periods of insurance, employment, occupational activity or residence, as the case may be, completed under the legislation of the Members concerned for the purposes of:
 - (a) participation in voluntary insurance or optional continued insurance, where appropriate;
 - (b) acquisition, maintenance or recovery of rights and, as the case may be, calculation of benefits.
- 2. Periods completed concurrently under the legislation of two or more Members shall be reckoned only once.
- 3. The Members concerned shall, where necessary, determine by mutual agreement special arrangements for adding together periods which are different in nature and periods qualifying for right to benefits under special schemes.
- 4. Where a person has completed periods under the legislation of three or more Members which are parties to different bilateral or multilateral instruments, each Member which is concurrently bound by two or more of the instruments in question shall add these periods together, to the extent necessary, in accordance with the provisions of these instruments, for the purposes of acquisition, maintenance or recovery of rights to benefit.

Article 8

- 1. The schemes for the maintenance of rights in course of acquisition referred to in Article 6 of this Convention shall determine the formula of awarding:
 - (a) invalidity, old-age and survivors' benefits, and
 - (b) pensions, in respect of occupational diseases,

as well as the apportionment, where appropriate, of the costs involved.

- 2. In the case referred to in paragraph 4 of Article 7 of this Convention, each Member which is concurrently bound by two or more of the instruments in question shall apply the provisions of these instruments for the purpose of calculating benefits to which there is a right under its legislation, taking into account the periods added together in accordance with the legislation of the Members concerned.
- 3. Where in application of the provisions of paragraph 2 of this Article a Member would have to award benefits of the same nature to the same person in pursuance of two or more bilateral or multilateral instruments, that Member shall be required to award only the benefit most favourable to the person concerned as determined on the initial award of these benefits.
- 4. Notwithstanding the provisions of paragraph 2 of this Article the Members concerned may, where necessary, agree on supplementary provisions for the calculation of the benefits specified in that paragraph.

PART IV. MAINTENANCE OF ACQUIRED RIGHTS AND PROVISION OF BENEFITS ABROAD

Article 9

- 1. Each Member shall guarantee the provision of invalidity, old-age and survivors' cash benefits, pensions in respect of employment injuries and death grants, to which a right is acquired under its legislation, to beneficiaries who are nationals of a Member or refugees or stateless persons, irrespective of their place of residence, subject to measures for this purpose to be taken, where necessary, by agreement between the Members or with the states concerned.
- 2. Notwithstanding the provisions of paragraph 1 of this Article, the Members concerned which participate in the schemes for the maintenance of rights in course of acquisition referred to in Article 6 of this Convention may agree to guarantee the provision of the benefits referred to in the said paragraph to beneficiaries resident in the territory of a Member other than the competent Member, within the framework of the bilateral or multilateral agreements referred to in paragraph 1 of Article 4 of this Convention.
- 3. In addition, notwithstanding the provisions of paragraph 1 of this Article, in the case of non-contributory benefits, the Members concerned shall determine by mutual agreement the conditions under which the provision of these benefits shall be guaranteed to beneficiaries resident in the territory of a Member other than the competent member.
- 4. The provisions of paragraphs 1, 2 and 3 of this Article need not be applied to:
 - (a) special non-contributory benefits awarded as a form of assistance or in cases of need;
 - (b) benefits awarded under transitional schemes.

Article 10

- 1. Members concerned shall endeavour to participate in schemes for the maintenance of rights acquired under their legislation, taking into account the provisions of Part III of this Convention, as regards each of the following branches of social security for which each of these Members has legislation in force: medical care, sickness benefit, maternity benefit and benefit in respect of employment injuries, other than pensions and death grants. These schemes shall guarantee such benefits to persons resident or temporarily resident in the territory of one of these Members other than the competent Member, under conditions and within limits to be determined by mutual agreement between the Members concerned.
- 2. When not assured by existing legislation, the reciprocity required by paragraph 1 of this Article may be assured by measures taken by a Member to guarantee benefits corresponding to the benefits provided under the legislation of another Member, subject to the agreement of that Member.
- 3. Members concerned shall endeavour to participate in schemes for the maintenance of rights acquired under their legislation, taking into account the provisions of Part III of this Convention, as regards each of the following branches of social security for which each of these Members has legislation in force: unemployment benefit, family benefit and, notwithstanding the provisions of paragraph 1 of Article 9 of this Convention and paragraph 1 of this Article, rehabilitation benefit. These schemes shall guarantee such benefits to persons resident in the territory of one of these Members other than the competent Member, under conditions and within limits to be determined by mutual agreement between the Members concerned.

Article 11

The rules for the adjustment of benefits provided for under the legislation of a Member shall be applicable to the benefits payable under that legislation by virtue of the provisions of this Convention.

PART V. ADMINISTRATIVE ASSISTANCE AND ASSISTANCE TO PERSONS COVERED BY THIS CONVENTION

Article 12

- 1. The authorities and institutions of Members shall afford one another assistance with a view to facilitating the application of this Convention and of their respective legislation.
- 2. In principle, the administrative assistance given by these authorities and institutions to one another shall be free of charge. Members may agree to reimburse certain expenses.

- 3. The authorities, institutions and jurisdictions of one Member may not reject claims or other documents submitted to them by reason of the fact that they are written in an official language of another Member.

Article 13

- 1. Where a claimant is resident in the territory of a Member other than the competent Member, he may present his claim validly to the institution of his place of residence, which shall forward it to the institution or institutions referred to in the claim.
- 2. Any claim, declaration or appeal that should have been submitted, under the legislation of a Member, within a specified time to an authority, institution or jurisdiction of that Member, shall be admissible if it is submitted within that time-limit to an authority, institution or jurisdiction of another Member in the territory of which the claimant is resident. In such event, the authority, institution or jurisdiction receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or jurisdiction of the first Member. The date on which any claim, declaration or appeal was submitted to an authority, institution or jurisdiction of the second Member shall be deemed to be the date of its submission to the authority, institution or jurisdiction competent to deal with it.
- 3. Benefits to be provided by a Member to a beneficiary resident or temporarily resident in the territory of another Member may be provided either directly by the institution liable for the payment, or through the intermediary of an institution designated by the latter Member, at the place where the beneficiary is resident or temporarily resident, subject to the agreement of the Members concerned.

Article 14

Each Member shall promote the development of social services to assist persons covered by this Convention, particularly migrant workers, in their dealings with the authorities, institutions and jurisdictions, particularly with respect to the award and receipt of benefits to which they are entitled and the exercise of their right of appeal, as well as in order to promote their personal and family welfare.

PART VI. MISCELLANEOUS PROVISIONS

Article 15

Except for invalidity, old-age and survivors' benefits and benefits in respect of occupational disease, the costs of which are apportioned among two or more Members, this Convention shall not confer or maintain a right to several benefits of the same nature based on the same period of compulsory insurance, employment, occupational activity or residence.

Article 16

- 1. The benefits provided and other costs borne by an institution of a Member on behalf of an institution of another Member shall be reimbursed in accordance with the modalities determined by mutual agreement among these Members, unless they have agreed that there shall be no reimbursement.
- 2. Transfers of sums resulting from the application of this Convention shall be effected, if need be, in accordance with the agreements in force between the Members concerned at the date of transfer. In the absence of such agreements, the necessary arrangements shall be agreed between them.

Article 17

- 1. Members may derogate from the provisions of this Convention by special arrangements within the framework of the bilateral or multilateral instruments concluded amongst two or more of them, on condition that they do not affect the rights and obligations of other Members and settle the maintenance of rights on terms which, in the aggregate, are at least as favourable as those of this Convention.
- 2. A Member shall be deemed to satisfy the provisions of paragraph 1 of Article 9 and of Article 11 of this Convention:
 - (a) if it guarantees at the date of its ratification the provision of the relevant benefits in a substantial amount prescribed under its legislation, to all beneficiaries regardless of their nationality and irrespective of their place of residence; and
 - (b) if it gives effect to the provisions of paragraph 1 of Article 9 and of Article 11 of this Convention within the framework of the bilateral or multilateral instruments referred to in paragraph 1 of Article 4 of this Convention.
- 3. Each Member which has taken advantage of the provisions of paragraph 2 of this Article shall indicate in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
 - (a) that its reasons for doing so subsist; or
 - (b) that it renounces its right to avail itself of the provisions of the above-mentioned paragraph of this Article as from a stated date.

PART VII. TRANSITIONAL AND FINAL PROVISIONS

Article 18

- 1. This Convention does not confer any right to benefit in respect of a period prior to its coming into force for the Members concerned.

- 2. For the application of the provisions of this Convention, all periods of insurance, employment, occupational activity or residence completed under the legislation of a Member before the date on which a scheme for the maintenance of rights in course of acquisition referred to in Article 6 of this Convention enters into force for the Member concerned shall be taken into account for the purpose of determining whether rights arise under that scheme as from the date of its entry into force, subject to specific provisions to be agreed upon, if necessary, between the Members concerned.
- 3. Any benefit referred to in paragraph 1 of Article 9 of this Convention, which has not been awarded or which has been suspended on account of the residence of the claimant in the territory of a State other than the competent Member, shall be awarded or resumed, at the request of the person concerned, as from the date on which this Convention enters into force for the latter Member or from the date of its entry into force for the Member of which he is a national, whichever is the later, unless the person concerned has previously obtained a lumpsum settlement in place of this benefit. The provisions of the legislation of the competent Member concerning the extinction of rights shall not be invoked against the person concerned if he submits his request within two years following this date or the date of the coming into effect of the measures provided for in paragraph 1 of Article 9, as the case may be.
- 4. Members concerned shall determine by mutual agreement the extent to which a scheme for the maintenance of rights in course of acquisition referred to in Article 6 of this Convention applies to a contingency arising before the entry into force of the scheme for these Members.

Article 19

- 1. The denunciation of this Convention by a Member shall not affect the Member's obligations with respect to contingencies arising before the date on which denunciation has taken effect.
- 2. Rights in course of acquisition which are maintained by virtue of this Convention shall not lapse by reason of its denunciation by a Member; their further maintenance during the period subsequent to the date on which this Convention ceased to be in force shall be determined by the bilateral or multilateral social security instruments concluded by the Member, or, in the absence of such instruments, by the legislation of the said Member.

Article 20

- 1. This Convention, revises, on the terms set forth in the following paragraphs of this Article, the Maintenance of Migrants' Pension Rights Convention, 1935.
- 2. The coming into force of this Convention for any Member bound by the obligations of the Maintenance of Migrants' Pension Rights Convention, 1935, shall not, ipso jure, involve the immediate denunciation of that Convention.

- 3. The Maintenance of Migrants' Pension Rights Convention, 1935, shall cease to have effect in the relations between any Members parties thereto as and when a scheme for the maintenance of rights in course of acquisition in pursuance of Article 6 of this Convention has become applicable in these relations.

Article 21

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

Article 22

- 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 23

- 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 24

- 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications 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 25

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 and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 26

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 27

- 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 23 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 28

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