

C48 (Shelved) Maintenance of Migrants' Pension Rights Convention, 1935

Convention concerning the Establishment of an International Scheme for the Maintenance of Rights under Invalidity, Old-Age and Widows' and Orphans' Insurance

(Note: Date of coming into force: 10:08:1938.)

Description:(Convention)

Convention:C048

Place:Geneva

Session of the Conference:19

Date of adoption:22:06:1935

Subject classification: Old-age, Invalidity and Survivors Benefit

Status: Outdated instrument (revised in 1982 by the Convention No 157)

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 Nineteenth Session on 4 June 1935, and

Having decided upon the adoption of certain proposals with regard to the maintenance of rights in course of acquisition and acquired rights under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another, which is the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention, adopts the twenty-second day of June of the year one thousand nine hundred and thirty-five, the following Convention, which may be cited as the Maintenance of Migrants' Pension Rights Convention, 1935:

Part I. Establishment of International Scheme

Article 1

1. There is hereby established between Members of the International Labour Organisation a scheme for the maintenance of rights in course of acquisition with and of rights acquired with compulsory invalidity, old-age and widows' and orphans' insurance institutions (hereinafter called insurance institutions).

2. References to Members in Parts II, III, IV and V of this Convention shall be construed as including only Members of the International Labour Organisation bound by this Convention.

Part II. Maintenance of Rights in Course of Acquisition

Article 2

1. The insurance periods spent by persons who have been affiliated to insurance institutions of two or more Members shall, irrespective of the nationality of such persons, be totalised by each such institution in accordance with the following rules.

2. For the maintenance of rights in course of acquisition the periods to be totalised shall be--

(a) contribution periods;

(b) periods in respect of which contributions were not payable but during which rights are maintained under the laws or regulations under which they were spent;

(c) periods during which a cash benefit has been paid under an invalidity or old-age insurance scheme of another Member; and

(d) periods during which a cash benefit has been paid under some other social insurance scheme of another Member, in so far as a corresponding benefit would, under the laws or regulations governing the institution which is totalising, maintain rights in course of acquisition.

3. For the purposes of--

i) determining whether any conditions as to the qualifying period (minimum duration of liability to insurance) or the number of contributions prescribed for entitlement to special advantages (guaranteed minima) have been fulfilled; ii) the recovery of rights;

iii) the right to enter voluntary insurance; and

iv) the right to medical treatment and attendance;

the periods to be totalised shall be--

(a) contribution periods; and

(b) periods in respect of which contributions were not payable but which are counted for the purpose of the qualifying period both under the laws or regulations under which they were spent and under the laws or regulations governing the institution which is totalising.

4. Provided that, where under the laws or regulations of a Member periods spent in an occupation covered by a special scheme are alone to be taken into account for the purpose of determining whether a claimant is entitled to certain advantages, the periods to be totalised for the purpose set forth in paragraphs 2 and 3 shall be restricted to periods spent under the corresponding special insurance schemes of other Members or, in respect of a Member with no special insurance scheme for the occupation concerned, to periods spent in that occupation under the insurance scheme applicable thereto.

5. Contribution periods and assimilated periods spent simultaneously with institutions of two or more Members shall be reckoned once for the purpose of totalisation.

Article 3

1. Each insurance institution from which on the basis of the totalised insurance periods the claimant is entitled to benefit shall calculate the amount of such benefit according to the laws and regulations governing the said institution.

2. Benefits or benefit components which vary with the time spent in insurance and are determined with sole regard to the periods spent under the laws and regulations governing the institution liable shall be payable without reduction.

3. Benefits or benefit components which are determined independently of the time spent in insurance and consist of a fixed sum, a percentage of the remuneration taken into account for insurance purpose, or a multiple of the average contribution, may be reduced in the ratio of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing the institution liable to the total of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing all the institutions concerned.

4. The provisions of paragraphs 2 and 3 shall apply to any subsidy or supplement to or fraction of a pension which is payable out of public funds.

5. The apportionment of the cost of medical treatment and attendance is not regulated by this Convention.

Article 4

In cases in which the total of the insurance periods spent with the insurance institutions of a Member does not amount to twenty-six contribution weeks, the institution or institutions with which they were spent may decline to recognise any liability for benefit. Periods in respect of which liability for benefit has been so declined shall not be taken into account by any of the other institutions concerned when making the reduction permitted by Article 3, paragraph 3.

Article 5

1. If a person who is entitled to benefit from the insurance institutions of at least two Members would but for this Convention be entitled to receive from any such institution in respect of periods spent with it a benefit greater than the total of the benefits to which he is entitled under Article 3, he shall be entitled to receive from that institution a complementary benefit equal to the difference.

2. Where such complementary benefits are due from more than one institution, the total amount due to the beneficiary shall be the highest such benefit due from any one of them and the liability for this amount shall be apportioned among them in proportion to the complementary benefit which would have been due from each individually.

Article 6

Provision may be made by agreement between the Members concerned for--

(a) the reckoning of benefits by a method which differs from that prescribed in Article 3 but gives a result which is at least equivalent on the whole to that given by applying the said Article, subject to the total of the benefits payable never being less than the highest benefit payable by any one insurance institution in respect of periods spent with it;

(b) enabling an insurance institution of one Member to discharge its liability to the insured person and his dependants by paying to the insurance institution of another Member to which he has become affiliated the capital representing the right in course of acquisition by him at the date at which he ceased to be affiliated to the institution, subject to the latter institution consenting thereto and undertaking to apply the capital for the purpose of crediting rights;

(c) limiting the total of the benefits granted by the insurance institutions of the Members to the amount due on the basis of the totalised insurance periods from the institution governed by the most favourable laws and regulations.

Article 7

A claimant shall not be required to submit his claim for benefit to more than one of the insurance institutions to which he has been affiliated. This institution shall then inform the other institutions mentioned in the claim.

Article 8

For the purpose of converting sums expressed in the currency of another Member, insurance institutions shall, when dealing with claims for benefit, adopt the relation between the two currencies which, on the first day of the quarter during which the claim was submitted, obtained on the principal foreign exchange market of the Member in the currency of which the sum is expressed: Provided that provision may be made for another method of conversion by agreement between the Members concerned.

Article 9

Any Member may decline to apply the provisions of this Part of this Convention in its relations with a Member the laws and regulations of which do not cover the risk in respect of which a benefit is claimed.

Part III. Maintenance of Acquired Rights

Article 10

1. Persons who have been affiliated to an insurance institution of a Member and their dependants shall be entitled to the entirety of the benefits the right to which has been acquired in virtue of their insurance--

(a) if they are resident in the territory of a Member, irrespective of their nationality;

(b) if they are nationals of a Member, irrespective of their place of residence.

2. Provided that any subsidy or supplement to or fraction of a pension which is payable out of public funds may be withheld from persons who are not nationals of a Member.

3. Provided also that, for a period of five years from the first coming into force of this Convention, a Member may reserve the payment of any subsidy or supplement to or fraction of a pension which is payable out of public funds to the nationals of Members with which it has concluded supplementary agreements to that effect.

Article 11

1. Pensions the right to which is maintained under Article 10 shall not be commuted for lump sums smaller than their capital value.

2. Provided that the insurance institution liable for benefit may commute pensions the monthly

value of which is inconsiderable for lump sums calculated according to the laws and regulations governing the said institution, subject to the said sums not being reduced on the ground of residence abroad.

Article 12

1. The provisions of the laws or regulations of a Member permitting the reduction or suspension of benefit if the person concerned has concurrent rights to other social insurance benefits or is in employment involving compulsory insurance may be applied to beneficiaries under this Convention in respect of benefits payable under an insurance scheme of another Member or in respect of employment in the territory of another Member.

2. Provided that provisions permitting reduction or suspension in the case of concurrent benefits in respect of the same risk shall not apply to benefits the right to which is acquired under Part II of this Convention.

Article 13

An insurance institution liable for benefit in virtue of this Convention may discharge in the currency of its own country its liability to all persons entitled to such benefit.

Part IV. Mutual Assistance in Administration

Article 14

1. The authorities and insurance institutions of each Member shall afford assistance to those of other Members to the same extent as if they were applying their own laws and regulations relating to social insurance, and more particularly shall, at the request of an institution of any Member, carry out the investigations and medical examinations necessary to determine whether the persons in receipt of benefits for which the latter institution is liable satisfy the conditions for entitlement to such benefits.

2. In so far as the Members concerned do not otherwise agree, the expenses to be repaid for assistance so afforded shall be an amount determined according to the scale of charges of the institution or authority which has afforded assistance or, in the absence of such a scale, the expenditure incurred.

Article 15

Any exemption from fees granted by the laws or regulations of a Member in respect of documents furnished to its authorities or insurance institutions shall be extended to the corresponding documents furnished in connection with the application of this Convention to the authorities and insurance institutions of any other Member.

Article 16

With the consent of the competent central authorities of the Members concerned, an insurance institution liable for benefit to a beneficiary resident in the territory of another Member may, on terms agreed between the two institutions, entrust the insurance institution of the place of residence of the beneficiary with the payment of such benefit on its behalf.

Part V. Operation of International Scheme

Article 17

Every Member which at the date of its ratification of this Convention has not established such a scheme undertakes to establish within twelve months from that date either--

- (a) a compulsory insurance scheme under which pensions are payable at an age not later than sixty-five to the majority of persons employed in industrial and commercial undertakings; or
- (b) a compulsory invalidity, old-age and widows' and orphans' insurance scheme covering a substantial proportion of the persons employed in industrial and commercial undertakings.

Article 18

1. Each Member shall treat the nationals of other Members on the same footing as its own nationals for the purpose of liability to compulsory insurance and for the purpose of insurance benefits, including any subsidy or supplement to or fraction of a pension which is payable out of public funds.
2. Provided that any Member may restrict to its own nationals the right to any subsidy or supplement to or fraction of a pension which is payable out of public funds and granted solely to insured persons who have exceeded a prescribed age at the date when the laws or regulations providing for compulsory insurance come into force.

Article 19

The provisions of this Convention may be derogated from by treaties between Members which do not affect the rights and duties of Members not parties to the treaty and which make definite provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favourable on the whole as those provided for in this Convention.

Article 20

1. For the purpose of assisting Members in applying this Convention there is hereby established in connection with the International Labour Office a Commission consisting of one delegate for each Member together with three persons appointed respectively by the government, employers' and workers' representatives upon the Governing Body of the Office. The Commission shall regulate its own procedure.
2. At the request of one or more Members concerned, the Commission, which shall be guided by the principles and purposes of this Convention, shall make recommendations as to the manner in which it shall be applied.

Article 21

1. Where, prior to the coming into force of this Convention, a pension has not been awarded or the payment of a pension has been suspended on account of the residence abroad of the person concerned, the pension shall be awarded or the payment of the pension resumed in pursuance of the Convention as from the date of the coming into force thereof for the Member concerned.

2. In applying this Convention account shall be taken of insurance periods prior to its coming into force if account would have been taken of such periods if this Convention had been in force during these periods.

3. At the request of the person concerned claims settled before the coming into force of this Convention shall, unless they have been settled by the payment of a lump sum, be reviewed. Review shall not involve the payment of arrears of, or the refund of, benefits for the period prior to the coming into force of the Convention for the Member concerned.

Article 22

1. The denunciation of this Convention by a Member shall not affect the liabilities of its insurance institutions in respect of claims which matured before the denunciation took effect.

2. Rights in course of acquisition which are maintained in pursuance of this Convention shall not lapse by reason of the denunciation thereof: their further maintenance during the period subsequent to the date on which the Convention ceases to be in force shall be regulated by the laws and regulations governing the institution concerned.

Part VI. Final Provisions

Article 23

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

Article 24

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 ratifications has been registered.

Article 25

As soon as the ratifications of two Members of the International Labour Organisation have been registered, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 26

1. A Member which has ratified this Convention may denounce it after the expiration of five 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

should 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 five years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

Article 27

At the expiration of each period of five years after the coming into force of this Convention, 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 28

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 26 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 29

The English and French texts of this Convention shall both be authentic.