

Description: Convention concerning Social Security for Seafarers (Revised) (Note: Date of coming into force: 02.07.1992.)

Convention:C165

Place:Geneva

Session of the Conference:74

Date of adoption:05.10.1987

Subject classification: Social Security

Subject: Seafarers

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 Seventy-fourth Session on 24 September 1987, and

Having decided upon the adoption of certain proposals with regard to the social security protection for seafarers including those serving in ships flying flags other than those of their own country, which is the third item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Sickness Insurance (Sea) Convention, 1936, and the Social Security (Seafarers) Convention, 1946,

adopts this ninth day of October of the year one thousand nine hundred and eighty-seven the following Convention, which may be cited as the Social Security (Seafarers) Convention (Revised), 1987.

#### 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 seafarers means persons employed in any capacity on board a seagoing ship which is engaged in the transport of cargo or passengers for the purpose of trade, is utilised for any other commercial purpose or is a seagoing tug, with the exception of persons employed on -

(i) small vessels including those primarily propelled by sail, whether or not they are fitted with auxiliary engines

(ii) vessels such as oil rigs and drilling platforms when not engaged in navigation

the decision as to which vessels and installations are covered by clauses (i) and (ii) being taken by the competent authority of each Member in consultation with the most representative organisations of shipowners and seafarers

(d) the term dependant has the meaning assigned to it by national legislation

(e) the term survivors means persons defined or recognised as such by the legislation under which the benefits are awarded

(f) the term competent Member means the Member under whose legislation the person concerned can claim benefit

(g) the term residence and resident refer to ordinary residence

(h) the term temporarily resident refers to a temporary stay

(i) the term repatriation means transportation to a place to which seafarers are entitled to be returned under laws and regulations or collective agreements applicable to them

(j) 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

(k) 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

(l) 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.

##### Article 2

1. The Convention applies to all seafarers and, where applicable, their dependants and their survivors.

2. To the extent it deems practicable, after consultation with the representative organisations of fishing vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial maritime fishing.

##### Article 3

Members are bound to comply with the provisions of Article 9 or Article 11 in respect of at least three of the following branches of social security:

(a) medical care

(b) sickness benefit

(c) unemployment benefit

(d) old-age benefit

(e) employment injury benefit

(f) family benefit

(g) maternity benefit

(h) invalidity benefit

(i) survivors' benefit

including at least one of the branches specified in subparagraphs (c), (d), (e), (h) and (i).

##### Article 4

Each Member shall specify at the time of its ratification in respect of which of the branches mentioned in Article 3 it accepts the obligations of Article 9 or Article 11, and shall indicate separately in respect of each of the branches specified whether it undertakes to apply the minimum standards of Article 9 or the superior standards of Article 11 to that branch.

##### Article 5

Each Member may subsequently notify the Director-General of the International Labour Office that it accepts, with effect from the date of the notification, the obligations of this Convention in respect of one or more of the branches mentioned in Article 3 not already specified at the time of its ratification, indicating separately in respect of each of these branches whether it undertakes to apply to that branch the minimum standards of Article 9 or the superior standards of Article 11.

##### Article 6

A Member may by a notification to the Director-General of the International Labour Office, which shall take effect as from the date of the notification, subsequently replace the application of the provisions of Article 9 by that of the provisions of Article 11 in respect of any branch accepted.

#### PART II. PROTECTION PROVIDED

##### GENERAL STANDARDS

##### Article 7

The legislation of each Member shall provide for seafarers to whom the legislation of that Member is applicable social security protection not less favourable than that enjoyed by shoreworkers in respect of each of the branches of social security mentioned in Article 3 for which it has legislation in force.

##### Article 8

Arrangements for the maintenance of rights in course of acquisition by a person who, having ceased to be subject to a Member's scheme of compulsory social security for seafarers, becomes subject to an equivalent scheme of that Member for shoreworkers, or vice versa, shall be made between the schemes concerned.

##### MINIMUM STANDARDS

##### Article 9

When a Member has undertaken to apply the provisions of this Article to any branch of social security, seafarers and, where applicable, their dependants and survivors who are protected by the legislation of that Member shall be entitled to social security benefits not less favourable in respect of contingencies covered, conditions of award, level and duration than those specified in the following provisions of the Social Security (Minimum Standards) Convention, 1952, for the branch in question:

(a) for medical care in Articles 8, 10 (paragraphs 1, 2 and 3), 11 and 12 (paragraph 1)

(b) for sickness benefit in Articles 14, 16 (in conjunction with Article 65 or 66 or 67), 17 and 18 (paragraph 1)

(c) for unemployment benefit in Articles 20, 22 (in conjunction with Article 65 or 66 or 67), 23 and 24

(d) for old-age benefit in Articles 26, 28 (in conjunction with Article 65 or 66 or 67), 29 and 30

(e) for employment injury benefit in Articles 32, 34 (paragraphs 1, 2 and 4), 35, 36 (in conjunction with Article 65 or 66) and 38

(f) for family benefit in Articles 40, 42, 43, 44 (in conjunction with Article 66, where applicable) and 45

(g) for maternity benefit in Articles 47, 49 (paragraphs 1, 2 and 3), 50 (in conjunction with Article 65 or 66), 51 and 52

(h) for invalidity benefit in Articles 54, 56 (in conjunction with Article 65 or 66 or 67), 57 and 58

(i) for survivors' benefit in Articles 60, 62 (in conjunction with Article 65 or 66 or 67), 63 and 64.

##### Article 10

For the purpose of compliance with the provisions of subparagraphs (a), (b), (c), (d), (g) (as regards medical care), (h) or (i) of Article 9, a Member may take account of protection effected by means of insurance which is not made compulsory for seafarers by its legislation when this insurance-

(a) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of shipowners and seafarers

(b) covers a substantial proportion of the seafarers whose earnings do not exceed those of a skilled employee

(c) complies, in conjunction with other forms of protection where appropriate, with the relevant provisions of the Social Security (Minimum Standards) Convention, 1952.

##### SUPERIOR STANDARDS

##### Article 11

When a Member has undertaken to apply the provisions of this Article to any branch of social security, seafarers and, where applicable, their dependants and survivors who are protected by the legislation of that Member shall be entitled to social security benefits not less favourable in respect of contingencies covered, conditions of award, level and duration than those specified-

(a) for medical care in Articles 7 (a), 8, 9, 13, 15, 16 and 17 of the Medical Care and Sickness Benefits Convention, 1969

(b) for sickness benefit in Articles 7 (b), 18, 21 (in conjunction with Article 22 or 23 or 24), 25 and 26 (paragraphs 1 and 3) of the Medical Care and Sickness Benefits Convention, 1969

(c) for old-age benefit in Articles 15, 17 (in conjunction with Article 26 or 27 or 28), 18, 19 and 29 (paragraph 1) of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967

(d) for employment injury benefit in Articles 6, 9 (paragraphs 2 and 3 (introductory sentence)), 10, 13 (in conjunction with Article 19 or 20), 14 (in conjunction with Article 19 or 20), 15 (paragraph 1), 16, 17, 18 (paragraphs 1 and 2) (in conjunction with Article 19 or 20) and 21 (paragraph 1) of the Employment Injury Benefits Convention, 1964

(e) for maternity benefit in Articles 3 and 4 of the Maternity Protection Convention (Revised), 1952

(f) for invalidity benefit in Articles 8, 10 (in conjunction with Article 26 or 27 or 28), 11, 12, 13 and 29 (paragraph 1) of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967

(g) for survivors' benefit in Articles 21, 23 (in conjunction with Article 26 or 27 or 28), 24, 25 and 29 (paragraph 1) of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967

(h) for unemployment benefit and family benefit in any future Convention laying down standards superior to those specified in subparagraphs (c) and (f) of Article 9 which the General Conference of the International Labour Organisation has, after its coming into force, recognised as applicable for the purpose of this clause by means of a Protocol adopted in the framework of a special maritime question included in its agenda.

##### Article 12

For the purpose of compliance with the provisions of subparagraphs (a), (b), (c), (e) (as regards medical care), (f), (g) or (h) (unemployment benefit) of Article 11, a Member may take account of protection effected by means of insurance which is not made compulsory for seafarers by its legislation when this insurance-

(a) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of shipowners and seafarers

(b) covers a substantial proportion of seafarers whose earnings do not exceed those of a skilled employee

(c) complies, in conjunction with other forms of protection, where appropriate, with the provisions of the Conventions referred to in the above-mentioned clauses of Article 11.

#### PART III. SHIPOWNER'S LIABILITY

##### Article 13

The shipowner shall be required to provide to seafarers whose condition requires medical care while they are on board or who are left behind by reason of their condition in the territory of a State other than the competent Member-

(a) proper and sufficient medical care until their recovery or until their repatriation, whichever first occurs

(b) board and lodging until they are able to obtain suitable employment or are repatriated, whichever first occurs

(c) repatriation.

##### Article 14

Seafarers who by reason of their condition are left behind in the territory of a State other than the competent Member shall be entitled to be entitled to their full wages (exclusive of bonuses) from the time when they are left behind until they receive an offer of suitable employment, or until they are repatriated, or until the expiry of a period of a length (which shall not be less than 12 weeks) prescribed by the national laws or regulations of that Member or by collective agreement, whichever event first occurs. The shipowner shall cease to be liable for the payment of wages from the time such seafarers are entitled to cash benefits under the legislation of the competent Member.

##### Article 15

Seafarers who by reason of their condition are repatriated or are landed in the territory of the competent Member shall continue to be entitled to their full wages (exclusive of bonuses) from the time when they are repatriated or landed until their recovery, or until the expiry of a period of a length (which shall not be less than 12 weeks) prescribed by the national laws or regulations of that Member or by collective agreement, whichever event first occurs. Any period during which wages were paid by virtue of Article 14 shall be deducted from such period. The shipowner shall cease to be liable for the payment of wages from the time such seafarers are entitled to cash benefits under the legislation of the competent Member.

#### PART IV. PROTECTION OF FOREIGN OR MIGRANT SEAFARERS

##### Article 16

The following rules shall apply to seafarers who are or have been subject to the legislation of one or more Members, as well as, where applicable, to their dependants and their survivors, in respect of any branch of social security specified in Article 3 for which any such Member has legislation applicable to seafarers in force.

##### Article 17

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, the legislation applicable in respect of seafarers shall be determined by the Members concerned in accordance with the following rules:

(a) seafarers shall be subject to the legislation of one Member only

(b) in principle this legislation shall be -

- the legislation of the Member whose flag the ship is flying, or

- the legislation of the Member in whose territory the seafarer is resident

(c) notwithstanding the rules set forth in the preceding subparagraphs, Members concerned may determine, by mutual agreement, other rules concerning the legislation applicable to seafarers, in the interest of the persons concerned.

##### Article 18

Seafarers who are subject to the legislation of a Member and are nationals of another Member, or are refugees or stateless persons resident in the territory of a Member, shall enjoy under that legislation equality of treatment with the nationals of the first Member, both as regards coverage and as regards the right to benefits. They shall enjoy equality of treatment without any condition of residence on the territory of the first Member if its nationals are protected without any such condition. This requirement shall also apply, where appropriate, as regards the right to benefits of seafarers' dependants and survivors irrespective of their nationality.

##### Article 19

Notwithstanding the provisions of Article 18, the award of non-contributory benefits may be made conditional on the beneficiary having resided in the territory of the competent Member or, in the case of survivors' benefit, on the deceased having resided there for a period which may not be set at more than-

(a) six months immediately preceding the lodging of the claim, for unemployment benefit and maternity benefit

(b) five consecutive years immediately preceding the lodging of the claim, for invalidity benefit, or immediately preceding the death, for survivors' benefit

(c) ten years between the age of 18 and the pensionable age, of which it may be required that five years shall immediately precede the lodging of the claim, for old-age benefit.

##### Article 20

The laws and regulations of each Member relating to shipowners' liability provided for in Articles 13 to 15 shall ensure equality of treatment to seafarers irrespective of their place of residence.

##### Article 21

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 specified in Article 3, for which each of these Members has legislation in force, for the benefit of persons who have been subject successively or alternately, in the capacity of seafarers, to the legislation of the said Members.

##### Article 22

The schemes for the maintenance of rights in course of acquisition referred to in Article 21 shall provide for the adding together, to the extent necessary, of periods of insurance, employment or residence, as the case may be, completed under the legislation of the Members concerned for the purposes of acquisition, maintenance or recovery of rights and, as the case may be, calculation of benefits.

##### Article 23

The schemes for the maintenance of rights in course of acquisition referred to in Article 21 shall determine the formula for awarding invalidity, old-age and survivors' benefits, as well as the apportionment, where appropriate, of the costs involved.

##### Article 24

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 being taken, where necessary, by agreement between the Members or with the States concerned.

##### Article 25

Notwithstanding the provisions of Article 24, 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 outside the territory of the competent Member.

##### Article 26

A Member having accepted the obligations of the Equality of Treatment (Social Security) Convention, 1962, for one or more of the branches of social security referred to in Article 24, but not those of the Maintenance of Social Security Rights Convention, 1962, may, in respect of each branch for which it has accepted the obligations of the first-mentioned Convention, derogate from the provisions of Article 24 and apply in its place the provisions of Article 5 of that Convention.

##### Article 27

Members concerned shall endeavour to participate in schemes for the maintenance of rights acquired under their legislation as regards each of the following branches of social security for which each of these Members has legislation applicable to seafarers in force: medical care, sickness benefit, unemployment benefit, employment injury benefits other than pensions and death grants, family benefit and maternity benefit. 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.

##### Article 28

The provisions of this Part do not apply to social and medical assistance.

##### Article 29

Members may derogate from the provisions of Articles 16 to 25 and Article 27 by making special arrangements in the framework of bilateral or multilateral instruments concluded amongst two or more of them, on condition that these do not affect the rights and obligations of other Members and provide for the protection of foreign or migrant seafarers in matters of social security under provisions which, in the aggregate, are at least as favourable as those required under these Articles.

#### PART V. LEGAL AND ADMINISTRATIVE SAFEGUARDS

##### Article 30

Every person concerned shall have a right of appeal in case of refusal of the benefit or complaint as to its nature, level, amount or quality.

##### Article 31

Where a government department responsible to a legislature is entrusted with the administration of medical care, every person concerned shall have a right, in addition to the right of appeal provided for in Article 30, to have a complaint concerning the refusal of medical care or the quality of care received investigated by the appropriate authority.

##### Article 32

Each Member shall make provision for securing the rapid and inexpensive settlement of disputes concerning the shipowner's liability provided for in Articles 13 to 15.

##### Article 33

Members shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose.

##### Article 34

Members shall accept general responsibility for the proper administration of the institutions and services concerned in the application of this Convention.

##### Article 35

Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature-

(a) representatives of the seafarers protected shall participate in the management under conditions prescribed by national legislation

(b) national legislation shall also, where appropriate, provide for the participation of representatives of the shipowners

(c) national legislation may also provide for the participation of representatives of the public authorities.

#### PART VI. FINAL PROVISIONS

##### Article 36

This Convention revises the Sickness Insurance (Sea) Convention, 1936, and the Social Security (Seafarers) Convention, 1946.

##### Article 37

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

##### Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General of the International Labour Office.

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 of the International Labour Office.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

##### Article 39

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories for whose international relations it is responsible in accordance with the provisions of the Constitution of the International Labour Organisation.

##### Article 40

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 41

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 of the International Labour Office shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

##### Article 42

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 43

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 44

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 40 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 remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

##### Article 45

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