

Convention 173

Protection of Workers' Claims (Employer's Insolvency) Convention, 1992

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 79th Session on 3 June 1992, and

Stressing the importance of the protection of workers' claims in the event of the insolvency of their employer and recalling the provisions on this subject in Article 11 of the Protection of Wages Convention, 1949, and Article 11 of the Workmen's Compensation (Accidents) Convention, 1925, and

Noting that, since the adoption of the Protection of Wages Convention, 1949, greater value has been placed on the rehabilitation of insolvent enterprises and that, because of the social and economic consequences of insolvency, efforts should be made where possible to rehabilitate enterprises and safeguard employment, and

Noting that since the adoption of the aforementioned standards, significant developments have taken place in the law and practice of many Members which have improved the protection of workers' claims in the event of insolvency of their employer, and considering that it would be timely for the Conference to adopt new standards on the subject of workers' claims, and

Having decided upon the adoption of certain proposals with regard to the protection of workers' claims in the event of the insolvency of their employer, 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-third day of June of the year one thousand nine hundred and ninety-two the following Convention, which may be cited as the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992.

PART I. GENERAL PROVISIONS

Article 1

1. For the purposes of this Convention, the term "insolvency" refers to situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of its creditors.
2. For the purposes of this Convention, a Member may extend the term "insolvency" to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example where the amount of the employer's assets is recognised as being insufficient to justify the opening of insolvency proceedings.
3. The extent to which an employer's assets are subject to the proceedings referred to in paragraph 1 above shall be determined by national laws, regulations or practice.

Article 2

The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice.

Article 3

1. A Member which ratifies this Convention shall accept either the obligations of Part II, providing for the protection of workers' claims by means of a privilege, or the obligations of Part III, providing for the protection of workers' claims by a guarantee institution, or the obligations of both Parts. This choice shall be indicated in a declaration accompanying its ratification.
2. A Member which has initially accepted only Part II or only Part III of this Convention may thereafter, by a declaration communicated to the Director-General of the International Labour Office, extend its acceptance to the other Part.
3. A Member which accepts the obligations of both Parts of this Convention may, after consulting the most representative organisations of employers and workers, limit the application of Part III to certain categories of workers and to certain branches of economic activity. Such limitations shall be specified in the declaration of acceptance.
4. A Member which has limited its acceptance of the obligations of Part III in accordance with paragraph 3 above shall, in its first report under article 22 of the Constitution of the International Labour Organisation, give the reasons for limiting its acceptance. In subsequent reports it shall provide information on any extension of the protection under Part III of this Convention to other categories of workers or other branches of economic activity.
5. A Member which has accepted the obligations of Parts II and III of this Convention may, after consulting the most representative organisations of employers and workers, exclude from the application of Part II those claims which are protected pursuant to Part III.
6. Acceptance by a Member of the obligations of Part II of this Convention shall ipso jure involve the termination of its obligations under Article 11 of the Protection of Wages Convention, 1949.
7. A Member which has accepted only the obligations of Part III of this Convention may, by a declaration communicated to the Director-General of the International Labour Office, terminate its obligations under Article 11 of the Protection of Wages Convention, 1949, in respect of those claims which are protected pursuant to Part III.

Article 4

1. Subject to the exceptions provided for in paragraph 2 below, and to any limitations specified in accordance with Article 3, paragraph 3, this Convention shall apply to all employees and to all branches of economic activity.
2. The competent authority, after consulting the most representative organisations of employers and workers, may exclude from Part II, Part III or both Parts of this

Convention specific categories of workers, in particular public employees, by reason of the particular nature of their employment relationship, or if there are other types of guarantee affording them protection equivalent to that provided by the Convention.

3. A Member availing itself of the exceptions provided for in paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organisation, provide information on such exceptions, giving the reasons therefor.

PART II. PROTECTION OF WORKERS' CLAIMS BY MEANS OF A PRIVILEGE PROTECTED CLAIMS

Article 5

In the event of an employer's insolvency, workers' claims arising out of their employment shall be protected by a privilege so that they are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share.

Article 6

The privilege shall cover at least:

- (a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
- (b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year;
- (c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
- (d) severance pay due to workers upon termination of their employment.

LIMITATIONS

Article 7

1. National laws or regulations may limit the protection by privilege of workers' claims to a prescribed amount, which shall not be below a socially acceptable level.
2. Where the privilege afforded to workers' claims is so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.

RANK OF PRIVILEGE

Article 8

1. National laws or regulations shall give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system.

2. However, where workers' claims are protected by a guarantee institution in accordance with Part III of this Convention, the claims so protected may be given a lower rank of privilege than those of the State and the social security system.

PART III. PROTECTION OF WORKERS' CLAIMS BY A GUARANTEE INSTITUTION

GENERAL PRINCIPLES

Article 9

The payment of workers' claims against their employer arising out of their employment shall be guaranteed through a guarantee institution when payment cannot be made by the employer because of insolvency.

Article 10

In giving effect to this Part of the Convention, a Member may, after consulting the most representative organisations of employers and workers, adopt appropriate measures for the purpose of preventing possible abuse.

Article 11

1. The organisation, management, operation and financing of wage guarantee institutions shall be determined pursuant to Article 2.

2. The preceding paragraph shall not prevent a Member, in accordance with its particular characteristics and needs, from allowing insurance companies to provide the protection referred to in Article 9, as long as they offer sufficient guarantees.

CLAIMS PROTECTED BY A GUARANTEE INSTITUTION

Article 12

The workers' claims protected pursuant to this Part of the Convention shall include at least:

(a) the workers' claims for wages relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of the employment;

(b) the workers' claims for holiday pay due as a result of work performed during a prescribed period, which shall not be less than six months, prior to the insolvency or prior to the termination of the employment;

(c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of employment;

(d) severance pay due to workers upon termination of their employment.

Article 13

1. Claims protected pursuant to this Part of the Convention may be limited to a prescribed amount, which shall not be below a socially acceptable level.
2. Where the claims protected are so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.

FINAL PROVISIONS

Article 14

This Convention revises the Protection of Wages Convention, 1949, to the extent provided for in Article 3, paragraphs 6 and 7 above, but does not close that Convention to further ratifications.

Article 15

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

Article 16

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 17

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 18

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 19

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 20

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 21

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 17 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 22

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

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organization during its Seventy-ninth Session which was held at Geneva and declared closed the twenty-third day of June 1992.

IN FAITH WHEREOF we have appendid our signatures this twenty-fifth day of June 1992.

The President of the Conference
H. NASCIMENTO RODRIGUES

The Director-General of the International Labour Office
JUAN SOMAVIA