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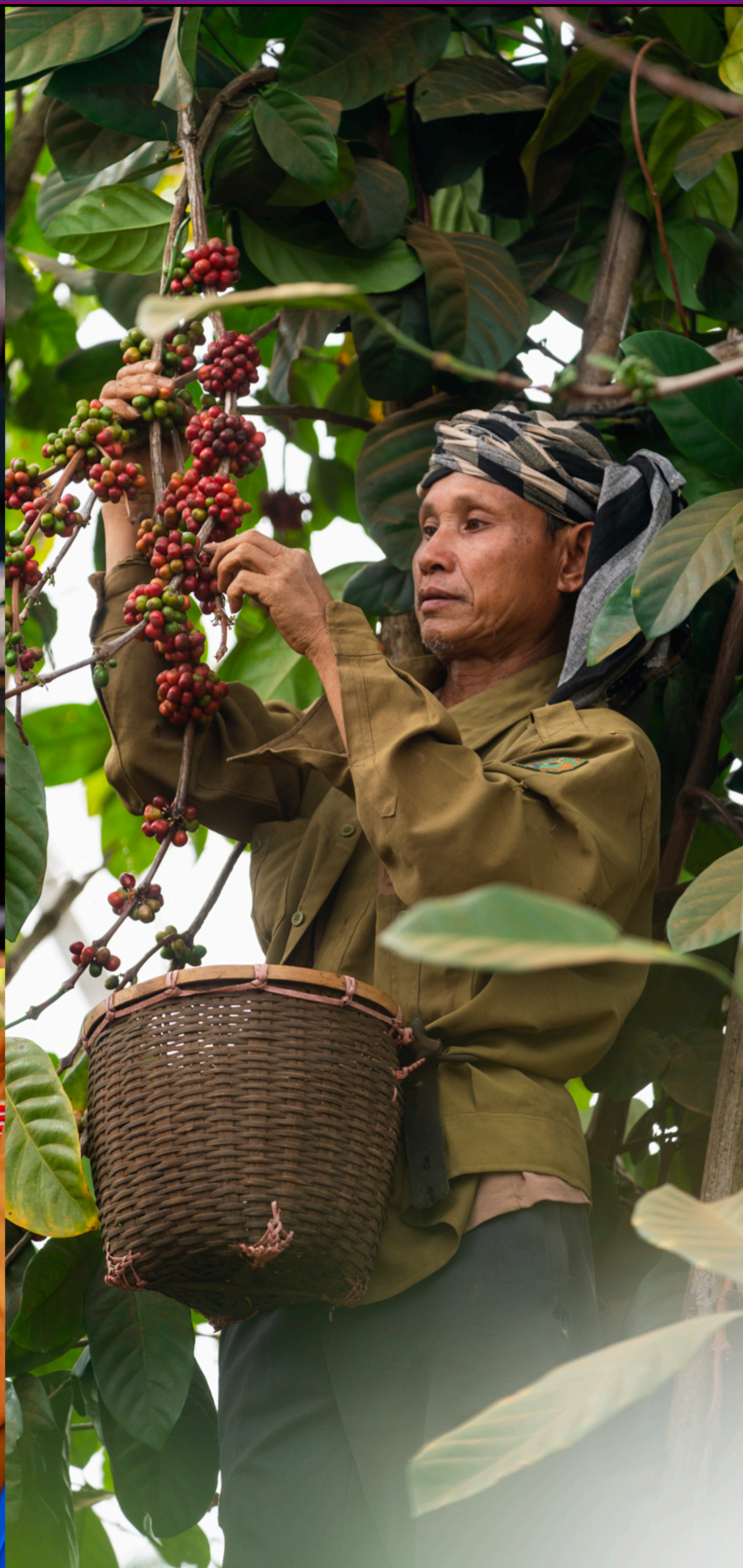
Review of the Social Security Law (amended version) 2018 of the Lao People's Democratic Republic



Review of the Social Security Law (amended version) 2018 of the Lao People’s Democratic Republic

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Contents

Tables

Introduction

This technical note is issued within the context of the Lao Government's ongoing revision of the Social Security Law (amended version 2018), scheduled for 2024–25.

The purpose of this note is to offer general observations and recommendations concerning the current Social Security Law (SSL), with the aim of guiding the formulation of the new draft Law on Social Security. The comments and suggestions herein are based on the principles and quantitative and qualitative benchmarks underpinning the current international labour standards relevant to social security, in particular the:

- Social Security (Minimum Standards) Convention, 1952 (No.102);
- Income Security Recommendation (No. 67);
- Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121);
- Employment Injury Benefits Recommendation, 1964 (No. 121); and
- Social Protection Floors Recommendation, 2012 (No. 202).

Additionally, the contents of these international labour standards are supplemented, where relevant, by further recommendations derived from ILO technical reports, such as the *Actuarial Valuation of the National Social Security Fund of the Lao People's Democratic Republic* submitted to the Lao Government in January 2024, and a forthcoming comparative analysis between the Lao social security system and Convention No. 102.

This note should be considered alongside specific comments on individual provisions of the SSL previously prepared by the ILO[1] and a previous technical note[2] shared with the Lao Social Security Organization (LSSO), as well as a technical note on the Health Insurance Law, which was shared with the National Health Insurance Bureau.[3]

The amendments to the SSL will reflect the Government's decisions on various policy options, including potential changes to the qualifying conditions for specific benefits, benefit calculation rules, and financing. Although the details of these policy reforms are yet to be finalized, this note refers to some of the proposed amendments to specific articles of the SSL based on the information available to the ILO. In this regard, it is important to underline the importance of evaluating the implications of these changes, notably through an actuarial valuation, before including such changes in the law. Indeed, international social security standards provide that the necessary actuarial studies and calculations concerning financial equilibrium should take place, in any event, prior to any changes in benefits, the rate of insurance contributions, or the taxes allocated to social protection.[4] Doing so will ensure the proper implementation of the law as well as the adequacy and sustainability of the system. Care must also be taken to ensure that parametric changes are in alignment with international standards, particularly Convention No. 102 and Recommendation No. 202.

Furthermore, pertinent secondary legislation, such as decrees and ministerial decisions, will also require corresponding amendments.

It is hoped that the comments and recommendations provided herein – and considered in conjunction with previous observations made by the ILO – will assist in guiding the completion of this legislative reform.

1 In November 2023, the ILO shared an article-by-article commentary on the compatibility of the current SSL provisions with international social security standards. This commentary identified areas that could be improved in the amended Law to reduce ambiguities and the risk of legal inconsistencies, as well as improve alignment with international standards and principles and with good country practices.
2 The ILO technical note dated 5 June 2023, includes detailed comments and suggestions on several provisions of the SSL.
3 The ILO prepared this technical note in the context of the ongoing revision of the Health Insurance Law. The note provided concrete recommendations to ensure alignment with international standards and best practices and was shared with the Lao Government in November 2023.
4 Convention No. 102, Art. 71(3).

Translation disclaimer: This note has been prepared based on an unofficial translation of the SSL from Lao into English. Although efforts were made to ensure accuracy through cross-referencing with the original Lao versions, certain nuances may have been lost. Therefore, the interpretation of certain provisions should be subject to discussion and confirmation through national consultations involving relevant stakeholders in the future.

The technical note was prepared by Luisa Fernanda Carmona Llano and Maya Stern Plaza, with inputs from Loveleen De, Marielle Phe Goursat and Thongleck Xiong.

The ILO stands ready to support the Government of the Lao People’s Democratic Republic in revising the proposed amendments to the Social Security Law to ensure their alignment with the principles enshrined in international social security standards.

1

Main comments regarding Part I of the Social Security Law on general provisions

Students playing after classes in Attapeu Province, Lao PDR © Mongkon Duangkhiew/ILO

Interpretation of terms (article 3)

Overall, the definitions provided should be those considered essential to understanding the provisions of the text in its entirety and facilitate the understanding of the SSL both by persons who have to implement it and those directly concerned by it.

It can be noted that the first five terms defined under article 3 (that is, "employer", "labour unit", "civil servant", "employee" and "self-employed") are typically defined in labour legislation, and therefore, consideration should be given to simply refer to the labour code or relevant legislation (for example, the Law on Civil Service). For example, employees are defined as they are in the Labour Code. Such an approach would make the law more adaptable and reduce the risk of introducing inconsistencies between different legal texts by having different definitions for the same term. In this way, if any changes are made to the Labour Code, these will automatically apply to the SSL without need for further amendments.

Therefore, it is recommended that some of the definitions included in the SSL should be carefully revised and re-written by the LSSO's legal experts to ensure that the definitions are sufficiently clear, uniform and harmonized with existing labour, social protection and other relevant national legislation.[5]

The current definition of healthcare beneficiaries under article 13(14) of the SSL (tentatively renumbered as article 3(15) in the draft amendment) refers to "insured persons, dependent spouses, and children of insured persons, including persons receiving social security benefits". However, article 20(4–5) of the proposed draft amendment specifies additional categories of healthcare beneficiaries: pensioners; individuals with a loss of working capacity; family members and caretakers of persons with disabilities from armed conflict; individuals who served on the battlefield; and re-pensioners, including their spouses and children. These categories are not reflected in either the current or proposed definition under article 3. To ensure clarity and a smooth application of the SSL, it is recommended to amend the definition of healthcare beneficiaries in article 3(15) of the draft amendment to explicitly include all categories mentioned in articles 20 and 51 of the draft amendment[6].

State policy on social security (article 4)

Article 4 of the SSL stipulates that:

> The State encourages and promotes the development of social security in line with national economic growth and government, employers and insured persons shall contribute to social security in order to ensure the affordability of social security benefits managed by the State. All social security benefits shall be exempted from tax.
>
> The State encourages all citizens participating in social security in order to receive social security benefits as regulated in this law;
>
> The State encourages individual, entity, national and international organizations to contribute financial and technical support for the development of social security.

As previously raised by the ILO, article 4 provides a commendable policy objective; however, in its current form, this provision is not necessarily enforceable. This is because the objectives stated therein are too broad to be implemented.

Should the Government consider maintaining a provision that outlines the state policy on social security within the SSL, such a provision should explicitly recognize **the overall and primary responsibility of the State for the due provision of the benefits and the proper administration of the institutions and**

5 The ILO Commentary on the SSL highlights the potential issues with the definitions included in the current SSL and provides guidance on how they could be addressed. For further information, see that document.
6 This article defined the personal scope of application of healthcare benefits for private sector workers and the voluntarily insured.

services, as enshrined in ILO social security standards, notably Convention No. 102 (Art. 71(3))[7], Convention No. 121 (Arts 24(2) and 25), and Recommendation No. 202 (Para. 3).

In comparative practice[8], the principle of general responsibility of the State is typically operationalized by an explicit recognition of the Government's role in:

- Exercising the direction, regulation, supervision and oversight of the social security system;
- Formulating national social security policies and strategies, including towards the extension of social security; and
- Guaranteeing the financial sustainability and financial viability of the system, including by ensuring that actuarial valuations are carried out periodically and that the results of such studies are duly taken into account in the formulation of parametric and legal reforms.

Basic principles on social security (article 5)

As the ILO previously raised, article 5, as currently drafted, combines a set of broad principles with the social security system's role and mandate.[9] As such, the upcoming amendment of the SSL could be an opportunity to separate the core principles underpinning the social security system governed by this law more clearly from the LSSO's institutional mandate.

In revising and reformulating the pertinent article, it is recommended to specify that: "The social security system established by this Law will be implemented according to the following principles: [...]"

Given that the Lao Government has consistently expressed the objective of progressively extending social security to hard-to-reach groups, the legal drafters may wish to consider including a reference to the principle of progressive realization under this article. In essence, this principle embodies the commitment of the State to close coverage gaps and provide higher levels of protection to as many people as possible, reflecting the economic and fiscal capacities of the State, and as soon as possible. This includes increasing access to healthcare services gradually and continuously, and taking the necessary measures to reduce cultural, economic, geographical, administrative and technological barriers that prevent the effective realization of the human right to health.

In addition, the legal drafters may wish to consider the principles enshrined in international social security standards, notably those enunciated in Recommendation No. 202 (see box 1), when revising this article.

Box 1. Social security principles recognized in ILO Recommendation No. 202

Paragraph 3. Recognizing the overall and primary responsibility of the State in giving effect to this Recommendation, Members should apply the following principles:

(a) universality of protection, based on social solidarity;
(b) entitlement to benefits prescribed by national law;
(c) adequacy and predictability of benefits;
(d) non-discrimination, gender equality and responsiveness to special needs;

7 The tentatively numbered article 51 of the draft amendment is a reworking of article 41 of the current SSL and reads as follows: "The Member 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; it shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question."

8 Comparative practice refers to studying, analysing and comparing how different countries design, regulate, implement and manage their social security systems.

9 For example, article 5(1) – "Comply with the guideline, policies, strategies and management legally centrally and universally across the nation", and article 5(5) "To ensure the availability of reserve fund, risk pooling, mutual assistance and financial sustainability", seem to outline the LSSO's duties or responsibilities. As such, consideration should be given to moving this information to a separate article (in the current version of the SSL, this would be article 89).

(e) social inclusion, including of persons in the informal economy;
(f) respect for the rights and dignity of people covered by the social security guarantees;
(g) progressive realization, including by setting targets and time frames;
(h) solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interests among those who finance and benefit from social security schemes;
(i) consideration of diversity of methods and approaches, including of financing mechanisms and delivery systems;
(j) transparent, accountable and sound financial management and administration;
(k) financial, fiscal and economic sustainability with due regard to social justice and equity;
(l) coherence with social, economic and employment policies;
(m) coherence across institutions responsible for delivery of social protection;
(n) high-quality public services that enhance the delivery of social security systems;
(o) efficiency and accessibility of complaint and appeal procedures;
(p) regular monitoring of implementation, and periodic evaluation;
(q) full respect for collective bargaining and freedom of association for all workers; and
(r) tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.

It can be noted that it is not necessary to group all the principles under one provision; in fact, in comparative practice, some of the principles recognized in international social security and human rights instruments tend to be covered under different articles. In the particular case of the Lao People's Democratic Republic, the right of every person to lodge a complaint, the right to appeal and the principle of due process should be reflected in the section on dispute resolutions.[10]

Obligations of social security (article 6)

It is worth noting that, while the chapeau of article 6 is very broad (as it covers the obligations of social security), the content of this article is rather narrow, as it seems to concern just one aspect of financing social security. Concretely, in its current version, article 6 only provides for the following obligations:

1. The Government has the obligation to allocate the national budget to the National Social Security Fund (NSSF) and guarantees the sustainability of the Fund.
2. Employers have the obligation to join and contribute to the NSSF.
3. Insured persons have the obligation to register with and pay contributions to the NSSF.

As the ILO previously noted, it is paramount that the obligations of all stakeholders in the social security system are listed not only clearly but comprehensively to ensure compliance with social security obligations. In this context, the legal drafters may wish to expand the obligations listed under article 6 to better reflect the realm of obligations of the different stakeholders, for example:

Concerning the Government: see previous comments under article 4.

Concerning employers:

- Registration obligations: Register/affiliate their employees with the NSSF in accordance with the conditions prescribed in the SSL.
- Contribution collection: In addition to contributing to the NSSF, employers shall deduct from the salary of each registered employee the amount of the mandatory contributions due by the employee concerned. Employers shall transfer these employee contributions to the social security institution, together with the employers' own contributions, in the manner prescribed in the SSL.

10 In the current SSL, Part IX, under Chapter 2.

- Recordkeeping obligations in respect of every person employed by the employer in accordance with prescribed rules.[11]
- Notify the social security institution of the start of employment subject to compulsory insurance, the end of employment contracts, and changes in the remuneration of their employees. Secondary legislation could further specify the type of information that employers shall report to the social security organizations as well as the relevant format (for example, the names, ages, civil status, occupations, salaries and dependents of all employees who are subject to compulsory coverage).

Concerning insured persons:

- Provide the information necessary for their registration within the social security system.
- Provide the documentation and information determined by secondary legislation for the purposes of recognition, suspension, termination or resumption of the right to social security benefits.
- Notify the competent authority of any significant change in their circumstances, for example, changes in family composition that might affect the number and type of eligible dependents (such as, births and deaths of family members, marriage, divorce and so on) and changes in place of residence.

11 Typically, social security legislation establishes the obligation of every employer to retain such bookkeeping or recordkeeping related to the payment of contributions at their place of business for 5, 10 or 15 years (or the period considered necessary) commencing from the effective date of the insured person's separation or cessation of employment. These provisions also enunciate that the employer shall make such records or documents available for inspection on demand by an authorized person or the employee concerned.

2
Main comments regarding benefits

A tea farm in Paksong District, Champasak Province, Lao PDR © Mongkon Duangkhiew/ILO

Cross-cutting recommendations

Structure of social security entitlements within the SSL

To enhance clarity and comprehensibility regarding entitlements within the social security system, it is advised to establish separate articles that delineate the following aspects:

1. definition of the contingency
2. qualifying conditions
3. scope of the benefit (level)
4. duration of benefits.

This approach should be systematically implemented for all the benefits provided in the SSL: healthcare benefits, sickness benefits, maternity benefits, loss of working capacity benefits, old-age pensions, survivors' benefits, and employment injury benefits.

Defining the grounds for suspension of benefits

As raised previously by the ILO, the SSL should expressly outline the grounds for suspending benefits. It is crucial to emphasize that Convention No. 102 provides a definitive list of circumstances under which social security benefits can be suspended (see box 2). Defining in the law the situations that can lead to the suspension of benefits with due regard to the situations permitted by international standards can reduce the risk of arbitrary or discretionary benefit suspensions or terminations.

Box 2. Convention No. 102: Permitted grounds for the suspension of benefits

Article 69. A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II to X of this Convention may be suspended to such extent as may be prescribed:

(a) as long as the person concerned is absent from the territory of the Member;
(b) as long as the person concerned is maintained at public expense, or at the expense of a social security institution or service, subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary;
(c) as long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, and during any period in respect of which he is indemnified for the contingency by a third party, subject to the part of the benefit which is suspended not exceeding the other benefit or the indemnity by a third party;
(d) where the person concerned has made a fraudulent claim;
(e) where the contingency has been caused by a criminal offence committed by the person concerned;
(f) where the contingency has been caused by the wilful misconduct of the person concerned;
(g) in appropriate cases, where the person concerned neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries;
(h) in the case of unemployment benefit, where the person concerned has failed to make use of the employment services placed at his disposal;
(i) in the case of unemployment benefit, where the person concerned has lost his employment as a direct result of a stoppage of work due to a trade dispute, or has left it voluntarily without just cause; and
(j) in the case of survivors' benefit, as long as the widow is living with a man as his wife.

Based on the proposed draft amendment to the SSL, it would appear that the reasons for the suspension of benefits would be specified only for survivors' benefits – likely under the new articles 50 and 80. The English translation of these draft articles reads as follows:

> Survival benefit shall be terminated based on the following conditions:
>
> 1. The children reach 18 years old, with jobs and regular income;
> 2. Live overseas for more than two years or change of citizenship;
> 3. Death.

The legal drafters may wish to consider the following comments regarding this draft provision:

- Regarding sub-article 1, **clarification is needed to specify whether the listed conditions are cumulative**. For instance, it should be clarified whether a child reaching age 18 who is not gainfully employed would have their survivor benefits suspended. The amendment should clearly articulate the criteria that trigger benefit suspension to avoid misinterpretation and to ensure fairness in benefit administration.

  Furthermore, **to ensure consistency within the SSL this sub-article should specify that the age limit (18 years) does not apply to children with disabilities or mental impairments who are unable to support themselves** (for consistency with articles 41 and 64 of the current SSL, which would likely correspond to articles 48 and 78 of the draft amendment).

- With respect to sub-article 2, while suspension of benefits due to the beneficiary's absence from the country is permissible, **the provision related to a change in citizenship as a ground for benefit suspension does not align with international standards**. It is recommended to revise this aspect of the provision to exclude changes in citizenship as a permissible ground for benefit suspension.

Establishing the mechanism for the adjustment of all long-term benefits

The current SSL establishes the mechanisms for adjusting or indexing the old-age pensions provided to public sector workers and civil servants under article 37 of the law, and those applicable to private sector workers and the voluntarily insured under article 60. These articles provide:

- Article 37. Adjustment of pension benefit is based on the adjustment of salary indexes of the civil servants in any period of time.
- Article 60. Adjustment of pension benefit for the enterprise sector and voluntary insured persons is based on the fluctuation rate of the estimated average earnings of all insured persons in January of every year.

Based on the information made available to the ILO, the proposed draft amendment to the SSL does not include modifications to the above provisions, which would likely be included under articles 43 and 74 of the draft amendment.

However, both the current SSL and the proposed draft amendment lack explicit provisions detailing the mechanism for adjusting other long-term benefits provided under public sector and private sector schemes. In this regard, it can be recalled that international standards require that "the rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living" (Convention No.102, Art. 65(10)).

As such, the current revision of the SSL presents an opportunity to establish the mechanism and frequency for the periodic adjustment of disability benefits (referred to as "loss of working capacity benefits" in the SSL), survivors' benefits, as well as permanent disability and survivors' benefits resulting from employment injuries or occupational diseases. Implementing this recommendation would bring the national legislation and practice further in line with the principles enshrined in international social security standards,[12] which seek to guarantee that the purchasing power of long-term benefits does not erode over time.

▶ Medical care (health insurance benefit[13])

Health insurance benefits (article 10)

The English translation of article 10 provides:

> Health insurance benefit is a provision of **cash** benefit to ensure that insured persons including their spouse and children, survivor beneficiaries, caretaker receive medical care services such as health examination, diagnosis, medical care, rehabilitation, pre- and post-natal services, and medical care for the employment injury or occupational diseases [emphasis added].

It is worth noting that the English translation of article 10 refers to **cash** benefits[14]; however, given that healthcare benefits, for the most part take the form of services and in-kind benefits, it is recommended that the provision specifies that the health insurance benefit is "a **provision of in-kind** and cash benefits".

It can be further noted that neither the current SSL nor the proposed amendment seem to include a definition of the contingency or social risk covered. According to international social security standards, the contingency covered **"shall include any morbid condition (ill health), whatever its cause, and pregnancy and confinement and their consequences"** (Convention No. 102, Art. 8). Therefore, the legal drafters may wish to consider including this definition under article 10 of the SSL.

Qualifying conditions for health insurance benefits (articles 20 and 43)

Articles 20 and 43 of the current SSL provide the qualifying conditions for entitlement to health insurance benefits as well as the conditions for eligible dependents (that is, family coverage through the primary insured affiliation or contributions to the LSSO) under the public sector scheme and the private sector scheme, respectively.

The ILO understands that both articles are currently being revised and that, in the draft amendment (tentatively renumbered as article 20), the personal scope of healthcare benefits would be modified to include:

- children with disability or mentally impaired form birth that cannot support his/herself will be entitled to health insurance benefit for lifetime[15];
- pensioners, loss of working capacity persons, family members and caretakers;
- persons with disability from armed conflict, or those who served on the battlefield, and re-pensioners including spouse and children.

As noted above, the personal scope of coverage established under article 20 is broader than the definition of healthcare beneficiaries currently included under article 3(14) of the SSL, which has been tentatively renumbered as article 3(15) in the draft amendment but kept unchanged. To streamline the law, prevent redundancy and minimize the potential for legal inconsistencies, it is advisable that, instead of defining the personal scope of benefits under the articles that set out the qualifying conditions for entitlement (articles

12 The principle of periodic adjustment of benefits is also recognized in the advanced standards adopted after Convention No. 102, notably in Convention No. 121 (Art. 21(1)) and in the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Art. 29(1).
13 This is the term used in the English translation of the SSL.
14 Similarly, the unofficial translation of article 10 of the draft amendment to the SSL only refers to "subsidies".
15 This provision is also reproduced under article 51(4) of the draft amendment.

20 and 43–51 in the draft amendment), those provisions should be incorporated under the definition of healthcare beneficiaries under article 3.

The legal drafters may wish to revise the wording of the new provision stating that "children with disability or mentally impaired from birth that cannot support themselves will be entitled to health insurance benefits for a lifetime". The current English translation could be interpreted as guaranteeing healthcare benefits for life to children with disabilities, regardless of their parents' insurance status. However, we understand that the intention is to specify that the age limit for healthcare benefits (18 years or 23 years for unmarried, studying children) does not apply to children with disabilities.

Healthcare services covered under the NSSF (new provision, tentatively articles 21 and 52 of the draft amendment)

The preliminary draft amendment to the SSL includes two new articles establishing the benefit package or healthcare services covered by the NSSF for the public sector (tentatively article 21) and for private sector and the voluntarily insured (tentatively article 52).

Based on the unofficial translation of the proposed amendment, articles 21 and 52 would read:

> Healthcare services that are covered include:
>
> 1. Consultations, Hospitalization, Diagnosis and treatments
> 2. Health education for prevention and promotion
> 3. Rehabilitation
> 4. Pregnancy care, and medical care for delivery or abortion
> 5. Other healthcare services as indicated in the Law on Health Insurance, Law on Health Care and other related laws and regulations
>
> Beneficiaries shall be responsible for the co-payment of healthcare services, these include treatment cost, medicines and medical equipment as specified in separate regulations.

The following points can be made in regard to the proposed amendment:

- At the time of writing this note, it is unclear whether a policy decision has been made in regard to the management of medical care. If the intention is that healthcare benefits for LSSO members and their eligible dependents will continue to be provided by the National Health Insurance Bureau, instead of listing the overall services covered, the SSL provisions (tentatively articles 21 and 52) should include a cross-reference to the relevant provisions of the National Health Insurance Law (NHIL), which is currently under revision. For example, the SSL articles should specify:

  > "Persons protected (or eligible for health insurance benefit) are entitled to medical benefits provided by the National Health Insurance Fund in accordance with the Law on Health Insurance, Law on Health Care and other related laws and regulations."

  This approach would reduce the risk of legal inconsistencies between the two pieces of legislation.

  By contrast, if the policy decision is for the LSSO to manage healthcare benefits directly for its members, the SSL will require further adjustments. In this scenario, the legal drafters will need to determine when it is appropriate to refer to the NHIL (for example, when the scope and types of benefits are identical)[16] and when it is preferable to specify services directly in the SSL.

16 Should this approach be adopted, the benefits outlined in sub-articles 1, 2, and 3 of the tentatively numbered new articles 21 and 52 of the proposed draft amendment should instead be cross-referenced to the relevant sections of the NHIL, as the provisions are identical.

It is worth noting that the ILO has provided recommendations to the National Health Insurance Bureau in relation to the current revision of the NHIL, including on the minimum benefit package that should be provided. More concretely, the ILO has recommended that the relevant provisions of the NHIL be further aligned with the minimum standard as listed under Article 10 of Convention No. 102, which is reproduced in box 3 below for ease of reference.

Box 3. Minimum benefit package in case of non-work-related ill health

Convention No. 102, Article 10:

1. The benefit shall include at least--

(a) in case of a morbid condition--

(i) general practitioner care, including domiciliary visiting;

(ii) specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals;

(iii) the essential pharmaceutical supplies as prescribed by medical or other qualified practitioners; and

(iv) hospitalisation where necessary; and

(b) in case of pregnancy and confinement and their consequences—

(i) pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives; and

(ii) hospitalisation where necessary.

- Concerning the co-payments envisaged in the last paragraph of the draft provision (that is, “beneficiaries shall be responsible for the co-payment of healthcare services, these include treatment cost, medicines and medical equipment as specified in separate regulations”), the ILO would like to bring the attention of the legal drafters to the following points:

  1. **From the perspective of international social security standards, cost sharing is permitted under specific circumstances.**

     More concretely, Convention No. 102 accepts that healthcare beneficiaries may be required to share in the cost of the medical care received, but only in respect of a morbid condition (ill health). Therefore, it is recommended that the SSL (not secondary legislation) specifies that co-payments are not permitted in case of pregnancy, confinement and their consequences (such as pre-natal and post-natal care, including hospitalization where needed).

     Recognizing that cost-sharing should not be a primary source for financing healthcare systems, Article 10(2) of Convention No. 102 specifies that where “the beneficiary or his breadwinner may be required to share in the cost of the medical care the beneficiary receives in respect of a morbid condition; the rules concerning such cost-sharing shall be so designed as to avoid hardship”.

     Examples of measures to ensure that cost-sharing does not lead to financial hardship include exempting persons with chronic conditions and multiple pathologies from paying co-payments or ensuring that persons of small means can access the minimum benefit package guaranteed by Convention No. 102 without being required to pay user fees.

2. **From a policy perspective, the rationale for introducing co-payments for LSSO members is unclear.** Exemption from co-payments is perceived as one of the primary advantages of contributing to the social security scheme. Therefore, the potential implications of such a policy change should be carefully reviewed.

   While cost-sharing can help limit healthcare expenditures, co-payments may discourage enrolment in social security, potentially undermining coverage extension objectives. Additionally, co-payments could increase out-of-pocket expenses, which are already high in the Lao People's Democratic Republic,[17] thereby limiting effective access to necessary medical care services, particularly for low-income workers and their families, who might delay or forego treatment due to financial concerns. In this regard, the Medical Care and Sickness Benefits Convention, 1969 (No. 130), stipulates that "where the legislation of a Member requires the beneficiary or his breadwinner to share in the cost of the medical care, the rules concerning such cost sharing shall be so designed as to avoid hardship and not to prejudice the effectiveness of medical and social protection" (Art. 17).

   In summary, the introduction of co-payments could compromise the equity and effectiveness of healthcare benefits, potentially leading to adverse outcomes for protected persons and the social security system as a whole.

Other new provisions related to health insurance benefits (tentatively articles 22–28 and 53–59 of the draft amendment)

Based on the English translation of the draft amendment to the SSL, the legal drafters are contemplating the inclusion of several new provisions pertaining to the provision of medical care. It is noteworthy that the NHIL, currently undergoing revision, already encompasses detailed provisions for several proposed new articles to be integrated into the SSL. These new provisions are laid out in the table immediately below.

Table 1. New provisions related to health insurance benefits in the proposed draft amendment of the Social Security Law

Provision	Public sector scheme	Private sector scheme
Healthcare services that are not covered under NSSF[1]	article 22	article 53
Health insurance payment mechanism	article 23	article 54
Healthcare services abroad	article 24	article 55
Healthcare service contract	article 25	article 56
Selection of hospitals	article 26	article 57
List of medicines, medical equipment and medical service costs	article 27	article 27
Quality assessment of hospital care services	article 28	article 59

[1] For example, the draft provisions replicate the wording of the current version of article 22 of the NHIL.

As raised previously, if the policy decision is that the National Health Insurance Bureau will continue administering the healthcare benefits for LSSO members and their eligible dependents, it is recommended that, rather than duplicating certain provisions established in the NHIL, the SSL should just reference these relevant provisions in the NHIL (for example, [...] as defined in the NHIL and related laws and regulations). This approach can reduce the risks of introducing legal inconsistencies between two laws of equal hierarchy,

17 In 2021 out-of-pocket expenditure in Lao People's Democratic Republic corresponded to 30.94 per cent of current health expenditure (World Health Organization, "Out-of-pocket expenditure as percentage of current health expenditure (%)", Global Health Observatory database, accessed 16 June 2024).

enhance coherence and clarity within the SSL, and also ensure alignment with existing provisions under the NHIL, thereby facilitating efficient implementation and compliance.

If the policy decision is to transfer the administration of healthcare benefits for LSSO members and their families to the LSSO, the legal drafters should revise the wording of the new draft provisions to ensure that they are specific enough to allow for the effective implementation of this policy change. The legal drafters may wish to consider the provisions included in the NHIL as a model.

It can be further noted that none of the proposed new articles concerning medical care seem to specify the duration of medical care. Based on the information provided by the LSSO during bilateral meetings held in November 2023, the ILO understands that, in practice, there is no limitation to the duration of medical care, as benefits are provided for as long as they are needed. However, the legal framework does not currently specify that this is the case; so it is recommended to include a provision in this regard for purposes of legal certainty. As stressed previously, the principle in international standards is that medical care shall be provided throughout the contingency (that is, as long as the condition of ill health persists). Nonetheless, Convention No. 102 permits that the benefit provided in case of a morbid condition (ill health) may be limited to 26 weeks in each case of sickness, insofar as the benefit shall not be suspended while a sickness benefit continues to be paid, and provision shall be made to enable the limit to be extended for prescribed diseases recognized as entailing prolonged care.

▶ Employment injury (Chapter 2 under Parts III and IV of the current SSL)

Organization and structure of employment injury benefits within the SSL

Currently, the SSL includes two articles regulating employment injury benefits for public sector workers (arts 22 and 23) and two corresponding articles for workers in the private sector (arts 45 and 46). Articles 22 and 45 lay out the qualifying conditions for employment injury benefits, and articles 23 and 46 specify the “Types and Calculation of Employment Injury and Occupational Diseases Benefits”, including cross-references to the articles concerning sickness benefits, loss of working capacity benefits, death benefits and survivors’ benefits.

Based on the information available to the ILO, the proposed draft amendments to the SSL would maintain the same type of provisions.

The legal drafters may wish to consider that international social security standards view employment injury as an individual contingency that can result in a need for medical care, temporary and permanent disability benefits, and survivors’ benefits. International standards base the protection to be provided in case of work-related injuries and diseases on a number of principles, notably,

1. “no fault”: that is, injured workers, or dependants of a deceased worker, do not have to prove “fault” on the employer’s part in the occurrence of employment injury to be entitled to benefits;
2. collective sharing of liability among employers, so that employers collectively finance the scheme, allowing for risk-pooling among them;
3. neutral governance of administration of the scheme: that is, the right to benefits is established outside the contractual relationship between a worker and their employer;
4. protection that is not contingent on a qualifying period (irrespective of the benefit, be it medical care, temporary and permanent disability benefits, or survivors’ benefits).

As such, to facilitate the application of the SSL, the ILO has recommended that all the benefits and provisions concerning employment injury be regulated through specific chapters dedicated to this contingency. Implementing this recommendation would imply that instead of having cross-references to the articles concerning sickness benefits, loss of working capacity benefits, death benefits and survivors’ benefits, the SSL includes specific articles in Chapter 2 under Parts III and IV that establish the scope, level and duration of medical care, temporary disability benefits, permanent disability benefits, and survivors benefits when these benefits are provided as the result of an employment injury or occupational disease.

Based on good comparative practice, giving effect to this recommendation would require having an article that first lists all of the benefits available in the event of employment injury or occupational disease, and then having separate provisions detailing the scope, level and duration of each benefit, as per the following example:

> **Article XX. Benefits provided in case of Employment Injury and Occupational Diseases Benefits**
>
> Benefits covered shall include the following where due to an employment injury--
>
> > (a) medical care in case of illness;
> >
> > (b) temporary disability benefits due to an incapacity for work resulting from such a condition and involving suspension of earnings, as defined by this law [or refer to the specific article(s)];
> >
> > (c) permanent disability benefits due to a total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty as set out in this law [or refer to the specific article(s)]; and
> >
> > (d) survivors' benefits following the loss of support suffered as the result of the death of the income earner by prescribed categories of beneficiaries as set out in this law [or refer to the specific article(s)].
>
> **Article XX. Medical care**
>
> **Article XX. Temporary disability benefits**
>
> **Article XX. Permanent disability benefits**
>
> **Article XX. Survivors' benefits**

Medical care in case of employment injury or occupational disease

Neither the current version of the SSL nor the draft amendment made available to the ILO seem to specify that employment injury benefits are a combination of benefits in cash and in kind (medical care and rehabilitation services). As such, it is recommended that the legal drafters revise the definition included under article 11 of the current SSL.

It is worth noting that, as per international standards, the objective of medical care in case of a morbid condition (ill health) due to employment injury is to restore the injured person's health. In addition to the curative function, medical care shall maintain or improve an injured person's ability to work and ability to attend to personal needs where these capacities are diminished, impaired or threatened by ill health.[18] To attain these objectives, it is paramount that the national legislation guarantees that injured workers receive comprehensive and adequate medical care.

In this regard and to ensure alignment with international standards, the national legislation should provide for a benefit package in case of an employment injury or occupational disease that **at least covers all the benefits and services listed under Article 34 of Convention No. 102** (see box 4).

18 Article 34(4) of Convention No. 102 and Article 10(2) of Convention No. 121.

▶ Box 4. Minimum benefit package in case of ill health resulting from an employment injury and occupational diseases

▶ Convention No. 102, Article 34(2):

The medical care shall comprise:

(a) general practitioner and specialist in-patient care and out-patient care, including domiciliary visiting;

(b) dental care;

(c) nursing care at home or in hospital or other medical institutions;

(d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;

(e) dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances, kept in repair, and eyeglasses; and

(f) the care furnished by members of such other professions as may at any time be legally recognised as allied to the medical profession, under the supervision of a medical or dental practitioner.

Given that **international standards do not permit cost-sharing of medical care for this contingency**, the SSL should specify that the above-mentioned medical care and services shall be provided free of charge to the beneficiary (no co-payment, deductible or limit on the reimbursable amount) in case of ill health resulting from an employment injury or occupational disease.

Qualifying period for entitlement to benefits related to employment injury or occupational disease

As raised previously by the ILO, **international standards do not permit the provision of benefits** (both in cash and in kind) resulting from an employment injury or occupational disease **being contingent on a minimum qualifying period**.

However, it appears that the proposed draft amendment would maintain the qualifying periods currently prescribed in the SSL for entitlement to the in-kind and cash benefits available in case of employment injury or occupational disease.[19]

In this context, it is recommended that the legal drafters revise the relevant provisions that specify a minimum qualifying period for members of the private sector scheme entitlement to medical care, sickness benefits, loss of work capacity benefits and survivors' benefits (in the draft amendment tentatively included under articles 51, 60, 64, 66 and 78) as well as the provision requiring a minimum qualifying period for members of the public sector scheme (tentatively under article 48).[20]

19 In the current SSL, articles 45(1), 43(1), 50(1), 52(1), and 64 set the qualifying period for private sector workers' entitlement to medical care, sickness benefits, loss of work capacity benefits and survivors' benefits. Article 41 of the SSL also establishes a minimum qualifying period for entitlement to survivors' benefits under the public sector scheme.
20 One year of contributions is required for entitlement to survivors' benefits in the public sector scheme.

Degree of disability for entitlement to periodical disability benefits resulting from employment injuries or occupational disease

The current SSL establishes the following six levels of disability for persons covered under the public sector scheme (art. 30) or the scheme for private sector workers and the voluntarily insured (art. 54):

Category 1: from 81 per cent to 100 per cent;
Category 2: from 71 per cent to 80 per cent;
Category 3: from 61 per cent to 70 per cent;
Category 4: from 51 per cent to 60 per cent;
Category 5: from 41 per cent to 50 per cent;
Category 6: from 15 per cent to 40 per cent.

These categories apply for entitlement to loss of working capacity benefits resulting from "general cause" (disability) or resulting from an employment injury or occupational disease.

Based on the proposed draft amendment made available to the ILO, the six categories of disabilities would remain unchanged (tentatively under articles 36 and 67 of the draft amendment). As such, persons assessed with a Category 6 disability (that is, loss of working capacity between 15 and 40 per cent) would continue to be entitled to a lump sum.

As raised previously by the ILO, **the national legislation should guarantee that, in cases where, as a result of an employment injury or occupational disease, an insured person experiences a partial loss of working capacity that is likely to be permanent, or a corresponding loss of faculty of 25 per cent or more, the benefit should be a periodical payment.** Indeed, international standards permit the payment of benefits as lump sums when the degree of disability is slight (Convention No. 102, Art. 36(3)(a)). As such, it is recommended that the options for providing a periodical benefit in the event of permanent loss of working capacity between 25 and 40 per cent be assessed in the next actuarial valuation so that the legislation can be amended accordingly.

▶ Sickness benefit for public sector workers (article 27 of the current SSL)

The ILO had previously raised that sickness benefits for civil servants and public sector workers are provided under employer-liability arrangements, as the Government, in its capacity of employer, has a legal obligation – emanating from separate legislation – to continue paying salaries during the initial months of sickness.[21] Employer-liability schemes are not considered to meet international standards since they are not collectively financed by way of contributions, taxes or a combination of both, as required by Convention No. 102 (Art. 71). As such, the ILO has recommended that the Government might consider, in the future, streamlining the public and private sector funds (parameters, rules, administration, financing and so on), provided that the necessary safeguards are in place regarding the financing. In the meantime, it is advisable to limit the scope of the SSL to the social insurance scheme/benefits that are financed by contributions, managed by the fund, and delivered by the LSSO.

In that context, the ILO has recommended that article 27 be revised so that it specifies that civil servants and public sector workers are **only entitled to sickness benefits** (financed by social insurance contributions and paid by the LSSO) **after the exhaustion of the sick leave period regulated by separate legislation** (Law on Civil Servants, No. 74/NA dated 16 December 2015).

21 Based on bilateral discussions with the LSSO held in November 2022, we understand that this is for the first five months of temporary incapacity.

It can be noted that the draft amendment to the SSL provides for sickness benefits for public sector workers under the following terms (tentatively under article 34):

> 1. Civil servants, soldiers and polices who take leave due to employment injury or occupational diseases during the first six month will be entitle to sickness benefit, which is 80 per cent of his/her final salary and 70 per cent for the next six months (in case the illness is not recovered and certified by doctors).
>
> 2. Civil servants, soldiers and polices who take leave due to other diseases during the first six month will be entitle to sickness benefit, which is 70 per cent of his/her final salary and 60 per cent for the next six months (in case the illness is not recovered and certified by doctors).

We acknowledge the Government's consideration of introducing different replacement rates to compensate the temporary suspension of earnings in case of sickness (or temporary incapacity) resulting from an employment injury or occupational disease or resulting from other causes.

However, as currently drafted, the proposed text still does not address the concerns raised previously by the ILO. More concretely, the second paragraph of the draft provision does not specify when sickness benefits that are non-work related become payable by the LSSO. **Would that be after the exhaustion of the period of sick leave guaranteed by the Law on Civil Service or related legislation? Or would this be as of the first day of sickness?** Therefore, it is not clear if the proposed amendment intends to keep the existing employer-liability arrangements, or if it introduces a policy change under which cash sickness benefits are provided to public sector workers financed through social insurance contributions instead of requiring the Government, in its capacity as employer, to continue paying the salary of the person concerned during the initial period of sick leave. If the latter, this would represent a policy change that has financial implications for the social security scheme, and as such, would need to be costed before including these changes in the law.

▶ Maternity benefits for public sector workers (article 24 of the current SSL)

Since this benefit is also provided under employer-liability arrangements, the same considerations raised in the first paragraph of the previous subsection on “sickness benefits for public sector workers” apply.

As raised previously by the ILO, article 24 of the SSL (likely article 31 of the draft amendment) should be revised so that it is clear that female public sector workers are not entitled to periodical cash maternity benefits regulated by the SSL.

▶ Old-age pensions for public sector workers (article 34 of the current SSL)

Under the current rules, civil servants and public sector workers are entitled to periodical old-age benefits only after 25 years of service (art. 34(1) of the SSL). As raised previously by the ILO, compliance with Convention No. 102 would require that, instead of a lump sum (art. 38 of the current SSL), **insured persons should be entitled to a reduced periodical benefit after 15 years of contributions or employment**. As also noted previously by the ILO, while the value of such a benefit is not defined in international standards, it should at least be provided on a periodical basis.

Based on the understanding that the amendment to the SSL, if coherent with the recommendations of the actuarial valuation, would revise several parameters related to the calculation of old-age pensions – such as the accrual rate in the benefit formula and the qualifying and benefit calculation rules for early retirement

– the ILO has recommended that public sector workers receive a reduced pension periodically once they have reached 15 years of contributions or employment, in line with international standards.[22]

It can be further noted that the draft amendment to the SSL provides the qualifying conditions for civil servants' entitlement to old-age pensions under article 41. The proposed sub-article (1) reads:

1. "Has reached the age of sixty years old and has at least twenty-five years of public services. In case necessary, members can volunteer to receive early retirement, but the age **shall not be less than fifty years old**" [emphasis added].

The following considerations can be made as regards the proposed revision vis-à-vis the current rules:

- The draft provision does not include the specific option available to female civil servants to receive an early pension as of age 55 (previously under sub-article 1).
- **The draft amendment would seemingly remove the provision that specifies how the early retirement pension will be calculated**. It can be noted that the current version of the law provides a reduction factor of 1 per cent[23] for each year before the standard retirement age. The benefit calculation rules should be specified by the SSL and not by secondary legislation; as such, it is recommended that the proposed amendment be revised accordingly. In this regard, it is also worth noting that one of the recommendations of the ILO actuarial valuation is to increase the early retirement reduction factor from 1 per cent per year before the statutory retirement age to 4 per cent per year.
- The proposed text "**In case necessary,** members can volunteer to receive early retirement, but the age shall not be less than fifty years old" **is too ambiguous and vague**, as it does not specify under which situations early retirement would be considered "necessary". From a legal practice point of view, it would be recommended to name those situations so as to ensure legal certainty and clarity and to facilitate the interpretation of the law. Furthermore, while in principle, the revision of this provision would seem to make the rules for earlier retirement stricter, it reduces the age requirement for early retirement from 55 to 50.

While understanding the complexities of introducing social security reforms, in particular, pension reforms, it is worth noting that according to international standards, the State is to assume general responsibility for the due provision of benefits and shall take all measures required for this purpose; it shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question (Convention No. 102, Art. 71(3)).

In this context, **it is advisable that the legal drafters further revise the relevant provisions establishing the qualifying conditions and benefit calculation rules for public sector and civil servants' entitlement to old-age benefits with due regard to the principles and parameters enshrined in international standards and the results and recommendations provided in the actuarial valuation recently undertaken by the ILO**. As per the actuarial valuation report, "the pay-as-you-go cost rate (the ratio of total expenditures to total insurable earnings in a given year) in the public sector is 12.9 per cent in 2022, which is projected to increase significantly after 2040 to eventually reach 80.2 per cent in 2100". Consequently, the

[22] Up-to-date social security standards require that where the granting of an old-age benefit is subject to the completion of a minimum period of contribution or employment, a reduced benefit must be secured for protected persons who have completed a qualifying period of 15 years of contribution or employment. This requirement is established under Article 29(2)(a) of Convention No. 102 and Article 18(2)(a) of Convention No. 128.

23 In the existing SSL, article 34(1) provides: "Has reached the age of sixty years old and has at least twenty-five years of public services; for females can volunteer to receive early retirement but should reach the age at least fifty-five years old. For those who had thirty years of service and longer but the age is not met the qualifying conditions for three years and younger or a person whose age above sixty years old with the year of service not reach the qualifying conditions for less than two years can be entitled to the pension benefit **but the pension shall be deducted by one per cent (1%) for each year that has not met qualifying period or age**" (emphasis added).

ILO has stressed that significant contribution rate increases and modifications to benefits will be necessary to ensure the long-term financial sustainability of the long-term benefit branch. These general average premium (GAP) rates are very high, particularly for the public sector, and reforms to the benefit structure are recommended to ensure that contribution rates remain within an acceptable range (ILO 2024, 49). In this context, the Government may wish to consider the reform package for the Long-term Benefit Fund included in the ILO's actuarial valuation, which is reproduced in box 5 below.

▶ Box 5. Illustrative reform package for the Long-term Benefit Fund

The improvement of the financial sustainability of the Long-term Benefit Fund may be achieved through the combination of: (1) a revision of certain benefit provisions; and (2) a gradual increase of contribution rates. Here is a series of measures that may achieve that goal.

Revision of benefit provisions

- **Gradual increase of retirement age.** Over the period 2026–2050, gradually increase the statutory retirement age from 60 to 62.
- **Revision of early retirement conditions.** Over the period 2026–2037, gradually increase the early retirement reduction factor from 1 per cent to 4 per cent per year before the statutory retirement age, ultimately allowing early retirement five years before the statutory retirement for both genders.
- **Reduction of the minimum qualifying period.** In the public sector, the qualifying period for pension eligibility could be reduced to 15 years (instead of 25 years). This would bring benefit eligibility more in line with international best practice, ILO standards, and employment and gender equality objectives.
- **Revision of pension formulas.**
    - Public sector: 2 per cent per year of contribution (instead of 60 per cent after 25 years and 1 per cent thereafter) multiplied by final salary.
    - Private sector: 1.8 per cent (instead of 2.0 per cent) of total pension points multiplied by average covered earnings of all insured persons.
- **Elimination of special credits in the private sector scheme.** Eliminate the provision crediting special points to persons aged above 30 at enrolment (calculated as 0.8 points multiplied by number of years above the age of 30 at enrolment, maximum 12 points).
- **Reduction of the death grant.** Modify the death grant formula as follows:
    - Less than one year of contribution: 12 months of salary (instead of 15).
    - one to six years of contribution: 1 month of salary for each additional year.
    - seven years of contribution or more: 0.5 months of salary for each additional year.
- **Indexation of pensions based on the Consumer Price Index (CPI).** Pensions in payment indexed after retirement based on CPI increases (instead of wage index).
- **Elimination of the maximum pension percentage of 75 per cent in the private sector**. This provision (maximum pension equal to 75 per cent of last two years' salary) is inconsistent with the point system (career average formula). It penalizes individuals who experience a decrease in their salary in the years just preceding retirement.

With this reform package, the GAP of the public sector scheme would decrease to 33.7 per cent (compared to 50.4 per cent under the status quo), and the GAP of the private sector scheme would decrease to 14.3 per cent (compared to 21.9 per cent under the status quo).

Increase of contribution rates

It is possible to establish a schedule of contribution rate increases, in the context of the benefit changes described above, such that over the next 80 years the total revenues (contributions and investment income) of the scheme would be sufficient to support all scheme expenditures (benefits and administrative expenses) while also keeping a reserve at least equal to 2.0 times annual expenditures. The contribution rate would be revised every five years, in line with the quinquennial revision of legislations in the Lao People's Democratic Republic.

In addition to the rule described above, the **minimum** contribution rate determined for a given five-year period should be set at the level of the average pay as you go (PAYG) rate projected for that five-year period.

Here is an illustration of such contribution rate schedules for the public and private sectors.

Period	Public sector (%)	Private sector (%)
2025–29	16.00	5.25
2030–34	16.00	5.25
2035–39	17.00	5.25
2040–44	20.00	7.00
2045–49	27.00	9.00
2050–54	36.00	11.00
2055–59	38.00	13.00
2060–64	38.00	13.00
2065–69	38.00	13.00
2070–74	39.00	13.00
2075–79	40.00	13.00

Section 9 of the Actuarial Valuation report combines these contribution rates with those of the other benefit branches.

Source: ILO. 2024. *Actuarial Valuation of the National Social Security Fund of the Lao People's Democratic Republic*.

In light of the above, it is recommended that the Government conduct a thorough assessment of the proposed reform options detailed within the actuarial valuation report to identify and adopt the optimal combination of parametric changes needed to improve the financial sustainability of the Long-term Benefit Fund. In particular, this should be done as regards the provisions applicable to civil servants and public sector workers for the reasons explained in the actuarial valuation report, as quoted above.

Should the Government decide to implement these modifications, it will be imperative to revise corresponding provisions within the SSL. For instance, articles 34–38 in the current law (likely corresponding to articles 42–45 in the drafted amendment) would need adjustments to align with the chosen reform options.

▶ Old-age pensions for private sector workers (articles 58–60 of the current SSL)

Articles 58–60 of the current SSL (likely corresponding to articles 72–75 in the proposed draft amendment) establish the qualifying conditions, benefit calculation rules and mechanisms for adjusting the old-age pension applicable to private sector workers and the voluntarily insured.

The proposed draft amendment would seemingly introduce a parametric change regarding the early retirement under article 72(1). More concretely, it would raise the age for entitlement to early retirement of women from age 55 to age 57.

In this regard, the following points can be raised for the consideration of the legal drafters:

- The draft provision does not specify that age 57 only applies to women. As such, it is presumed that, in line with the recommendations of the actuarial valuation, the amendment intends to standardize the age for entitlement to early retirement for both men and women.
- The draft sub-article 1 provides, "In case necessary, members can volunteer to receive early retirement". To facilitate the application of the SSL, this sub-article should define and clarify the circumstances under which early retirement would be considered "necessary", and thereby eliminating ambiguity in application.
- This sub-article does not specify the minimum qualifying period for entitlement to early retirement. Is it 15 years of contributions?
- **The draft amendment would seemingly remove the provision that specified how the early retirement pension will be calculated**. In the current version of the SSL, article 58(4) establishes a reduction factor of 1 per cent for each year before the standard retirement age.[24] As such, it is recommended that the proposed amendment be revised to include the benefit calculation rules for early retirement pensions. Furthermore, the legal drafters should evaluate the possibility of adopting the ILO actuarial valuation recommendation to increase the early retirement reduction factor from 1 per cent per year before the statutory retirement age to 4 per cent per year.

Regarding the benefit calculation rules, it can be noted that the draft amendment of the SSL would appear to introduce minor modifications to the calculation of pension points related to temporary suspension of contributions due to sickness and maternity benefits and of the special points provided to persons aged above 30 at time of enrolment. Regarding the latter, the draft amendment would maintain the special pension points for persons aged above 30 at enrolment (calculated as 0.8 points multiplied by the number of years above age 30 at enrolment, maximum of 12 points). Still, it would modify the calculation rules for those who enroll with the LSSO after the enforcement of the SSL (calculated as 0.4 points multiplied by the number of years above age 30 at enrolment, capped at 6 points). These modifications are tentatively included under article 73.

The ILO acknowledges the Government's consideration of the above-mentioned modifications, which would respond to some of the recommendation of the actuarial valuation. Nonetheless, it needs to be noted that to ensure the long-term financial sustainability of the Social Security System, the Government should carefully assess the possibility of enacting and implementing further reforms in the near future, as outlined in the actuarial valuation (see box 5 above).

▶ Unemployment benefits (Chapter 9 under Parts IV of the current SSL)

Situations covered by the SSL (article 66 of the current SSL)

The current SSL establishes the legally prescribed reasons for entitlement to unemployment benefits under article 66, as follows:

2. Unemployment caused by the bankruptcy, termination of business or termination of official development assistance project;
3. Unemployment caused by temporary suspension business due to the affected of natural disaster;
4. Unemployment due to the need to reduce the number of labourers or having been laid off;
5. Unemployment with an official certification from concerned agencies.

[24] In the existing SSL, article 58(4) provides: "Has completed a qualifying period of contributions but not met the qualifying conditions of age that is three-years younger can be entitled to a pension benefit, **but the pension shall be deducted by one per cent (1%) for each year that has not reached the qualifying age**" (emphasis added).

Based on the information made available to the ILO, the proposed draft amendment to the SSL would seemingly maintain the same reasons that give entitlement to unemployment benefits (that is the definition of the protected contingency), tentatively under article 81. The same article would set the qualifying period for entitlement to unemployment benefits. As raised repeatedly by the ILO, in order to facilitate the application of the SSL, it is recommended that each parameter – that is, the definition of the contingency, the qualifying period, the benefit level and the benefit duration – be defined by separate articles.

Furthermore, as stressed previously by the ILO, the contingency covered by Convention No. 102 includes "**suspension of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work**" (Art. 20). As such, nothing precludes covering a suspension of earnings due to a fixed-term or temporary contract not being renewed. **As such, to increase alignment with international standards, the situations covered by the SSL in relation to unemployment benefits should be revised, at least to ensure that the non-renewal of a fixed-term contract (also referred to as the end of a closed-ended contract) is covered.**

In this regard, is worth noting that, as per the actuarial valuation, the present contribution rate for the Unemployment Benefit Fund – 2.0 per cent shared between the employer and employee – should be maintained if entitlements are expanded, for example, by covering voluntary resignation (ILO 2024, 78). As such, there is scope within the system to revise the SSL such that the non-renewal of a fixed-term contract is a covered, providing an opportunity to better align the law with international standards.

Qualifying period, level of benefits and waiting period (articles 66–67 of the current SSL)

Since the LSSO had expressed their intention to revise the situations covered by the SSL, to revise the qualifying period, and to set different replacement rates and benefit durations depending on the reason for unemployment, the ILO has stressed the importance of ensuring that these different considered scenarios comply, at a minimum, with the minimum benchmarks set out in Convention No. 102.

Regarding the qualifying period, the draft amendment would seemingly increase the qualifying period from 12 months of contributions within the last 24 months before unemployment (art. 66(1) of the current SSL) **to 24 months of contributions within the last 36 months before unemployment** (tentatively under article 81(1)).

It can be noted that the proposed modification is overly restrictive, significantly higher than what is typically observed in the comparative practice for this contingency, and would not be in line with international standards, which allow for a qualifying period only insofar as it is necessary to preclude abuse. **Therefore, it is recommended that the legal drafters reconsider this provision.** This recommendation is further supported by the fact that, as per the actuarial valuation, "the present contribution rate of 2.0 per cent is more than sufficient, for the moment, to support the fund's expenditures and to maintain an appropriate contingency reserve" (ILO 2024, 78).

Concerning the level of benefits, the current version of the SSL provides that benefit payments correspond to 60 per cent of the average insurable earnings in the six months before job loss (art. 67(1)), which is in line with the requirements of Convention No. 102, which sets the minimum level of benefits at 45 per cent of the reference wage.

However, the proposed draft amendment seeks to establish different replacement rates depending on the reason that motivated the contingency (tentatively under article 82). As per the draft amendment:

- The benefit would correspond to 60 per cent of average insurable earnings in case of unemployment due to the reasons listed under article 81(2–3), that is enterprise bankruptcy, termination of business and interruption of operations due to disasters.
- The benefit would correspond to **30 per cent** of average insurable earnings in case of unemployment due to the reasons listed under article 81(4), that is unemployment due to the

employer legally terminating the contract and unemployment with an official certification from concerned agencies.

In light of the above, **international standards require that, at a minimum, unemployment benefits correspond to at least 45 per cent of previous earnings**. Convention No. 102 requires that protected persons be protected for the contingency in question – that is, the suspension of earnings, as defined by national laws, due to an inability to obtain suitable employment in case of a person protected who is capable of, and available for, work. **Therefore, the amendment should ensure that the minimum levels of protection guaranteed by the Convention (that is, the minimum replacement rate and maximum qualifying period) are met regardless of the reason for the cessation of employment, and not only in cases of bankruptcy and redundancy (also referred to as termination in case of force majeure).**

Concerning the waiting period, under the current provisions of the SSL, an insured person must be registered as unemployed for at least 30 days to qualify for unemployment benefits (art. 66(6)). The proposed draft amendment would seemingly maintain this waiting period under article 81(6).

It can be further noted that the current SSL also specifies that the claim process by the LSSO is 30 days, without specifying if unemployment benefits are to be paid retroactively (art. 95).

The ILO has previously highlighted that the waiting period exceeds what is permitted by international standards – namely, a maximum of seven days – and exceeds what is observed in comparative practice. As such, it is recommended that the next actuarial valuation assess the financial implications of a parametric change that would bring the waiting period in line with international standards.

3
Main comments regarding the financing and governance of the scheme

A farmer who made the decision to sign up for social security, Sekong Province, Lao PDR © Mongkon Duangkhiew/ILO

▶ Financing (Part V, Chapter 1 of the current SSL)

Separation of funds (articles 71–72 of the current SSL)

In light of the recommendations of the actuarial valuation, "The ILO recommends that the law provides for a clear separation of social security funds between the public and the private sector." In the commentary on the SSL, the ILO provided further information on how financial management principles can be translated into legal terms, including through examples of provisions found in other country contexts. In addition to specifying that the different funds enunciated under article 72 should be kept separate, it is recommended that the SSL stipulates that said funds shall not be used for benefits different from those for which they were created and that they shall be administered and maintained separately from the assets of the LSSO.

Contribution rates (article 74 of the current SSL)

The ILO has previously recommended that article 74 of the SSL specify that the distribution of the contribution rates is to be determined by branch and prescribed by law in secondary legislation. It is generally recommended that the contribution rate allocated to each branch should cover the cost of benefits in cash and in kind, as well as the branch's administrative expenses, while also funding reserves, working capital and any special funds, and that the law should regulate these funds and their use accordingly. The law should specify under what conditions contribution rates can be adjusted and ensure that actuarial valuations take place prior to any change in contribution rates.

In the proposed draft amendment, the contribution rates would likely be established under article 90. Based on the information available to the ILO, this provision maintains the same contribution rates currently in place, but includes a sentence in article 90(1)(1) specifying that "in case revenue is less than expenditure, government will subsidize". This would only apply in the case that the Government's contributions – in its capacity as an employer of civil servants and public sector workers – are insufficient to cover the expenditure.

It can be further noted that, based on the results of the latest actuarial valuation, in addition to the reform options costed therein, which are reproduced above (see box 5), it would be necessary to adjust the contribution rate for public sector workers. According to the actuarial valuation, over the period 2025–29, the total contribution rate allocated to long-term benefits for the public sector would have to gradually increase from 12.25 per cent to 17 per cent.

Adjustment of social insurance contributions (article 77)

The current SSL specifies that "adjustment of the contribution rates is a review of contribution rates according to actuarial assessment every five years in order to be consistent with the country's socio-economic dynamics".

This provision could be further strengthened by specifying that if the actuarial analysis reveals a risk of financial imbalance in a given branch, the relevant technical parameters required to remedy the situation shall be readjusted in accordance with procedures defined by national legislation.

Such an approach would be in line with international standards, as per the following recommendation included in the actuarial valuation (page 55) in regard to long-term benefits:

> The ILO recommends that a financing rule be introduced in the law for ensuring a gradual and timely increase of the contribution rates of the Long-term Benefit Fund in both the public and the private sectors, the objective being to gradually reduce the difference between the present contribution rates and the general average premium calculated for each sector. Such a financing rule should be based on certain sustainability indicators arising from the actuarial analysis which

can be recommended by the ILO. It is important that decisions are made in a timely manner once the current and future financial situation of the scheme is identified. The improvement of the financial sustainability of the long-term benefit branch may also be achieved through the revision of certain benefit provisions that may be considered too generous at present, namely the relatively generous retirement conditions applicable in both sectors (low statutory retirement age and generous early retirement conditions), and the indexation mechanism based on wage increases.[25]

▶ Governance and administration (Part VI of the current SSL)

The ILO had previously recommended that Part VI of the current SSL be revised to address some vagueness in the text, for example, being more specific in regard to when and under what circumstances the composition of the Board of Directors should be revised (art. 84) or in relation to the statement that the Board is to "gradually become an autonomous body" (art. 87). If the institution responsible for the administration of the system and the schemes has financial and administrative independence, the SSL should specify this. Otherwise, article 87 should specify that the LSSO is “placed under the supervision of the Ministry of Labour and Social Welfare”.

The ILO has also recommended that the provision establishing the rights and duties of the Board of Directors be revised to specify that the Board is responsible for monitoring and analysing the financial situation of the system and proposing adjustments to ensure its sustainability, with due regard to the results of actuarial valuations.

At the time of writing this technical note, it was unclear if the proposed draft amendment would take those considerations into account.

25 It can be recalled that the principle enshrined in international standards is that that pensions in payment should be adjusted regularly following substantial changes in the general level of earnings that result from substantial changes in the cost of living. The objective is that the purchasing power of pensions should not erode over time due to substantial increases in the cost of living, and that whenever wages have evolved to catch up with inflation, the consequent additional contributions provide the financial means to also adjust pensions without compromising the sustainability of the scheme.

4

Main comments regarding other substantive provisions

Pineapple farmer from an ethnic minority group in northern Lao PDR © Adri Berger/ILO

Prohibitions (articles 95–98 of the current SSL)

Articles 95–98 of the current SSL establish general prohibitions for social security staff, prohibitions for insured persons and family members, and prohibitions for individuals and organizations; however, none of these provisions specify the applicable sanctions. As such, the legal drafters may wish to add under each of these articles a cross-reference to the relevant section of the SSL that establishes the general framework of sanctions (in the current SSL this is Part XI, arts 116–121).

Sanctions (articles 116–121 of the current SSL)

Articles 116–121 of the current SSL provide a general overview of the types of sanctions that can be applied in case of violation of the provisions of the SSL, which include education measures (unclear exactly what these entail), disciplinary sanctions, fine measures, civil measures and criminal measures.

ILO comments and suggestions:

- **Establish a clear sanction schedule:** For sanctions to be operational, it would be necessary to establish a clear schedule of sanctions proportional to the severity of the offences. Such a schedule can be provided for directly in the SSL or regulated in secondary legislation. The latter approach is more practical in case penalties are established as flat rate amounts, as these will need to be periodically adjusted to account for inflation. Moreover, this would be in line with the recommendations made by the ILO in relation to the social security inspection procedure, as well as the ILO’s suggestion to harmonize the labour and social security inspection systems in a single legal instrument. If a regime of sanctions is regulated under another law or decree, the SSL should refer to the relevant legal instrument.
- **Ensure a mix of pedagogical and disciplinary measures:** While the regime of sanctions should include pedagogical measures to be applied in case of minor offences, as defined in the national legislation, it is essential to ensure that the legal framework also provides for disciplinary sanctions and penalties that are dissuasive and effectively deter non-compliance with the obligations established in the SSL. As such, it is recommended that a scale of sanctions be designed for different categories of offences (for example, minor, serious, severe) that takes into consideration:
    - the prejudice caused by the violation;
    - the previous behaviour of the offender (such as, negligence, intent, failure to comply with previous warnings); and
    - circumstances aggravating or mitigating the infringement (such as, impact on affected parties, number of persons affected by the offence).
- **Defining a comprehensive schedule of sanctions** will facilitate a consistent enforcement and adherence to legal obligations under the SSL and reduce discretionary power, thereby promoting due process and procedural fairness.

Resolution of disputes (articles 99–104 of the current SSL)

The current SSL provides the general framework for complaint and appeals mechanism under articles 99–104.

ILO comments and recommendations:

The current provisions of the SSL relating to mediation or arbitration and the available mechanisms for dispute settlement would benefit from further defining certain elements, such as specifying the concrete situations in which the parties can avail themselves of the different mechanisms in place and the general processes for each mechanism.

In particular, the SSL should include a provision that explicitly recognizes the right of insured persons and their eligible family members to appeal in case of benefit refusal or of complaints regarding the quality or quantity of benefits, as mandated by Convention No. 102 (Art. 70(1)). International standards further specify that national laws should provide for effective and accessible complaint and appeal procedures. Such procedures should be impartial, transparent, simple, rapid, accessible, inexpensive and free of charge to the applicant.[26]

In this regard, the legal drafters may wish to consider the following considerations to ensure that the available mechanisms are defined in a sufficiently clear and unambiguous manner so as to facilitate better access to effective complaint and appeals mechanisms:

1. **Definition and specification of mediation and dispute settlement mechanisms:**
    - Clarify the specific situations and processes under which parties can utilize mediation or compromise mechanisms within the SSL.
    - Define the general procedures for mediation or compromise to ensure clarity and to facilitate effective dispute resolution.

2. **Enhancement of administrative settlement procedures:** Provide further clarification on the administrative settlement procedure outlined in article 101 of the current SSL.

3. **Define the types of disputes eligible for resolution through the Economic Dispute Resolution Authority:** Specify whether eligibility applies after unsuccessful mediation attempts and outline any required administrative formalities for accessing this mechanism.

4. **Clarification of recourse to the court system versus administrative resolution:** Define whether recourse to the court system under article 103 of the current SSL can be accessed before exhausting certain administrative procedures. For example, can recourse be made to the courts after an administrative resolution (art. 101) or while seeking resolution through the Economic Dispute Resolution Authority (art. 102), or do the options involved depend on the nature of the dispute.

Complex, inaccessible, ineffective or inefficient administrative procedures can hinder people's access to social security benefits and, therefore, diminish their willingness to contribute to their financing. In this regard, the SSL could be strengthened by including provisions that provide for facilitated access to complaint and appeal mechanisms, especially for vulnerable parts of the population.

Examples and related good practices: In Mexico, national law incorporates a citizen services mechanism that considers various mediums to facilitate the lodging of complaints, including by mail, drop boxes, email, telephone, fax, in person and on the internet.[27] In addition, national law provides that beneficiaries and their families have a right to receive timely attention to their requests, complaints and suggestions.[28] Particular consideration can also be given to addressing the difficulties certain groups of workers may have accessing complaint and appeal mechanisms specifically, but also in relation to understanding and accessing social protection systems generally. Access, therefore, also implies making the social protection programme and schemes easy for people to reach, understand and use, irrespective of age, literacy, disability, ethnicity, geographical location or other factors. The national legal framework should provide for this general principle. For example, in South Africa, the Social Assistance Act provides that “the Agency must offer all reasonable assistance to a person, who, due to his or her age, a disability or an inability to read or write, is

[26] Recommendation No. 202, Paras 3(o) and 7.
[27] Ministerial Agreement No. 512 of 4 July 2003, art. 13.
[28] Ministerial Agreement No. 512 of 4 July 2003, art. 3.6.1.

unable to understand, appreciate or exercise his or her rights, duties or obligations in terms of this Act, in the official language of the Republic which he or she is likely to understand".[29]

In conclusion, the ILO stands ready to support the Government of the Lao People's Democratic Republic in revising the proposed amendments to the Social Security Law to ensure their alignment with the principles enshrined in international social security standards.

[29] Social Assistance Act (Law No. 13 of 2004) of South Africa, section 2(3).

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