



International
Labour
Organization



Membership in the International Labour Organization

Information Guide

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International Labour Office

Geneva, 2014

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INTRODUCTION

This booklet provides a general overview of the obligations of States which become Members of the International Labour Organization. The booklet is intended as a reference guide for use both by States considering membership in the ILO and by those which are members. It contains only the basic elements of membership under the Constitution of the International Labour Organization.

For further detail, the reader is encouraged to consult www.ilo.org and the Office of the Legal Adviser, International Labour Office, Geneva, Switzerland, jur@ilo.org.

Office of the Legal Adviser
International Labour Office
Geneva, November 2013

MEMBERSHIP IN THE INTERNATIONAL LABOUR ORGANIZATION

INFORMATION GUIDE

I. Procedure for becoming a Member of the International Labour Organization

The procedure for becoming a Member of the ILO differs depending on whether the State is, or is not, a member of the UN:

- › **If the State is a member of the UN:** Pursuant to article 1 § 3 of the Constitution of the ILO, a State which is a member of the UN may become a Member of the ILO by communicating to the Director-General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation.¹
 - A Memorandum on admission and model letter of acceptance for UN member States are found in *Annex 1*.

- › **If the State is not a member of the UN:** Pursuant to article 1 § 4, States who are not members of the UN may be admitted after a vote taken in the International Labour Conference. Two thirds of the delegates attending the Conference must vote in favour, including two-thirds of the Government delegates present and voting. The admission of the new Member takes effect on the communication to the Director-General by the government of its formal acceptance of the obligations of the Constitution.
 - A Memorandum on admission and model letter of acceptance for States that are not members of the UN are found in *Annex 2*.

II. Instruments of Amendment of the ILO Constitution

States wishing to become Members of the ILO should also consider ratifying or accepting the 1986 and 1997 Instruments of Amendment to the Constitution.²

- A model letter of ratification or acceptance on an Instrument of amendment to the Constitution is included at *Annex 3*.

¹ For the current text of the ILO Constitution, see <http://www.ilo.org/public/english/bureau/leg/download/constitution.pdf>

² For further information regarding the Instrument of Amendment to the Constitution, 1986, please see <http://www.ilo.org/public/english/bureau/leg/download/amend1986-en-web.pdf>. For further information regarding the Instrument of Amendment to the Constitution, 1997, please see the Questions and Answers Brochure: <http://www.ilo.org/public/english/bureau/leg/download/amendments.pdf>

- › **The 1986 Amendment to the ILO Constitution** aims to make the membership of the Governing Body of the International Labour Office more representative by providing a means of appointment that takes into account the various geographic, economic and social interests of its constituent groups. It also addresses the procedure for appointment of the Director-General, who would continue to be appointed by the Governing Body, but the appointment would be submitted to the International Labour Conference for approval. The 1986 Amendment proposes changes to article 36 of the Constitution covering future amendments and sets out voting and ratification requirements for amendments related to specific considerations.
- › **The 1997 Amendment to the ILO Constitution** is part of an overall thrust to enhance the relevance, impact and coherence of the body of ILO standards. It would make it possible for the International Labour Conference to abrogate (or “terminate” in the ILO) a Convention that it has declared obsolete.

III. Member States’ Obligations under the ILO Constitution

A. Financial Obligations of member States

Article 13 of the Constitution sets out the financial and budgetary arrangements of the ILO. These provisions are supplemented by the Financial Regulations of the ILO³ which were adopted by the International Labour Conference at its 29th (1946) session and are amended from time to time.

The financial contribution to be made by a new Member to the budget of the Organization is decided by the International Labour Conference upon its review of proposals made by the Governing Body. The proposal is based on the UN rate of contribution. The assessment is expressed in terms of a percentage of the total budget. The amount of cash contribution to be paid annually depends, first, on this percentage assessment, second, on the overall level of the budget which is approved by the Conference and third, on the date at which the new Member becomes a member of the Organization.

B. Constitutional Obligations – Tripartism

Pursuant to article 3 of the Constitution, Members accept to send tripartite delegations of representatives to meetings of the International Labour Conference. The delegation must include two Government delegates, as well as one representative each of the employers and workers in the country. The government, employer and worker delegates act in full independence of one another and, in particular, vote individually (see article 4 of the Constitution). The employers’ and workers’ delegate must be chosen in agreement with the industrial organizations which are most representative of employers and workers, respectively, in their countries.

³ For the current text of the Financial Regulations, see http://www.ilo.org/pls/zone2/finapps.dochandle?p_file=10

C. Constitutional Obligations – Conventions and Recommendations

Member States of the ILO are strongly encouraged but not required to ratify the Conventions adopted by the International Labour Conference. Article 19 of the Constitution of the ILO requires that when a new Convention or Recommendation is adopted by the Conference, all Members must bring the instrument before the relevant national authorities within one year of the closing session of the Conference during which the Convention was adopted for consideration of ratification and related action.⁴ The Member must then report to the Director-General of the International Labour Office on the measures taken to bring the instrument before the relevant domestic authorities, and of any actions taken by those authorities.

Obligations to report on ratified Conventions

Pursuant to article 22 of the Constitution, each Member is required to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. Since 2012, reports on ratified Conventions are due every three years for fundamental and governance Conventions and every five years for other Conventions.⁵ The reports concern the obligations that Members undertake in ratifying Conventions. Article 19 § 5(d) requires the Member to “*take such action as may be necessary to make effective the provisions*” of the ratified Convention. This includes giving the provisions effect in law and implementing them in practice, including in court decisions, arbitration awards or collective agreements.

Obligations to report on non-ratified Conventions and Recommendations

In the case of a Convention that is not ratified, article 19 § 5(e) of the Constitution requires the non-ratifying Member to report to the Director-General of the International Labour Office on the position of its national law and practice in regard to the matters covered by the Convention when requested. Specifically, the Member must show the extent to which effect has been given, or is proposed to be given, through legislation, administrative action, collective agreement or otherwise, to any of the provisions of the Convention. The Member must also indicate any difficulties that are preventing or delaying its ratification of the Convention.

⁴ For further detail, see the Memorandum concerning the Obligation to submit Conventions and Recommendations to the Competent authorities, adopted as revised by the Governing Body, at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/questionnaire/wcms_087324.pdf. Exceptions may be made for States in which exceptional domestic circumstances made it impossible to bring the Convention to the relevant authorities within one year; even so, the maximum time lapse permitted is 18 months, see article 19 § 5(b) of the Constitution.

⁵ For more detail on reporting, see “*Handbook of procedures relating to international labour Conventions and Recommendations*”, at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_192621.pdf

All Members are required to report on Recommendations under article 19 § 6 (d) of the Constitution of the ILO on the extent to which effect has been or is proposed to be given to the provisions of the Recommendation and any modifications to the provisions found necessary in doing so.

For federal States, special provisions in article 19 §7 of the Constitution address ratification and reporting on unratified Conventions and on Recommendations. The provisions on reporting are laid down in article 19 §§ 7(b)(iv) and (v).

The article 19 reporting obligations are not intended to be onerous: reports are submitted annually on a subject chosen by the Governing Body for the purposes of the annual General Survey.⁶ In order not to overburden national administrations which have to prepare the reports or the ILO's supervisory procedures, only a small number of instruments are selected on a topic of current interest.⁷ The General Survey allows the Committee of Experts to examine the impact of Conventions and Recommendations, to analyse the difficulties indicated by governments as impeding their application, and to identify means of overcoming these obstacles.

D. Commitments of member States under the Declaration on Fundamental Principles and Rights at Work (1998) and the Declaration on Social Justice for a Fair Globalization (2008)

The 1998 Declaration on Fundamental Principles and Rights at Work

The ILO Declaration on Fundamental Principles and Rights at Work⁸, adopted on 19 June 1998 by the International Labour Conference, provides that “all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.”⁹

⁶ For more detail on reporting, see “*Handbook of procedures relating to international labour Conventions and Recommendations*” (see note 5).

⁷ Since 2010, the topic of the General Survey with the Recurrent Discussion held by the Conference under the ILO Declaration on Social Justice for a Fair Globalization (2008), at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_099766.pdf. See also section

⁸ For the text of the Declaration and its follow-up, see <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

⁹ The eight fundamental Conventions refer to the core principles of freedom of association (Conventions Nos. 87 and 98), abolition of forced labour (Conventions Nos. 29 and 105), abolition of child labour (Conventions Nos. 138 and 182), and equality of opportunity and treatment (Conventions Nos. 100 and 111).

The commitment made by the ILO Members at the Conference is supported by a Follow-up procedure set out in an Annex to the Declaration which was revised by the Conference in 2010. The follow-up has two aspects: an annual review of efforts made by Members which have not yet ratified all the fundamental Conventions; and a Global Report on fundamental principles and rights at work which provides a picture of the promotion of fundamental principles and rights at work in all member States.

- The **Annual Review** is based on reports submitted under article 19 § 5(e) of the Constitution compiled by the International Labour Office and examined by the Governing Body. It seeks to gather information from member States that have not ratified one or more of the eight fundamental Conventions and takes into account the submissions of employers' and workers' organizations. The annual review enables the ILO to assess whether the member State made any changes in law or practice that brought it into compliance with provisions of the unratified instruments.
- The **Global Report** is submitted to the International Labour Conference for a recurrent discussion on the strategic objective of fundamental principles and rights at work. The purpose of the Global Report is to provide a dynamic global picture relating to the four categories of fundamental principles and rights at work noted during the preceding period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period. In the case of member States which have not ratified the fundamental Conventions, the Global Report is based in particular on the findings of the annual follow-up set out above. In the case of member States which have ratified the fundamental Conventions, it is based mainly on the reports examined under article 22 of the Constitution.

The ILO Declaration on Social Justice for a Fair Globalization

The ILO Declaration on Social Justice for a Fair Globalization,¹⁰ adopted on 10 June 2008 by the International Labour Conference, applies the constitutional values of the ILO as a compass for the promotion of a fair globalization based on decent work.¹¹ In the Declaration, the Conference recognized that the commitments and efforts of the Members and the Organization to implement the ILO's constitutional mandate should be based on the ILO's four equally important and interdependent strategic objectives:

- promoting employment;
- developing and enhancing measures of social protection;

¹⁰ For the text of the Social Justice Declaration, see http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_099766.pdf

¹¹ The Declaration was the outcome of tripartite consultations that started in the wake of the Report of the World Commission on the Social Dimension of Globalization, entitled *A Fair Globalization: Making It Happen* (2004), available online at <http://www.ilo.org/public/english/wcsdgd/docs/report.pdf>.

- › promoting social dialogue and tripartism; and
- › respecting, promoting and realizing the fundamental principles and rights at work.

The follow-up to the 2008 Declaration includes a recurrent discussion at the Conference whose theme addresses one of the strategic objectives, which is the subject of an overview prepared by the International Labour Office and submitted to the Conference. The annual recurrent discussions at the Conference are aimed at reviewing the trends and needs of the Members relating to each strategic objective in order to mobilize all available means of action, both nationally and internationally, to promote the objectives of the Declaration.

E. Constitutional Obligations - Legal protection of the Organization

Like other international organisations, the ILO operates in each of its member States by a framework of legal protection that recognizes the Organization as a legal person with the capacity to perform legal acts, such as executing contracts, acquiring property and pursuing its legal rights. In addition, the Organization's operations require privileges and immunities and other legal protection in the domestic legal system as a set of special rights, benefits, and exemptions. Privileges and immunities serve the functional purpose of securing the Organization's independence and its ability to perform its services, and of encouraging efficient operations and stable relations with its member States.¹²

- › **Article 39 of the Constitution** requires Members to recognize that the ILO has full juridical personality, including the capacity to contract, to acquire and dispose of property and to institute legal proceedings.
- › **Article 40 of the Constitution** requires each Member of the ILO to grant privileges and immunities within its territory to the ILO and its staff, insofar as necessary for the fulfilment of ILO purposes. These privileges and immunities are defined in a separate agreement, approved by the International Labour Conference,¹³ which Members are expected to accept and implement. Article 40 also bestows privileges and immunities to individuals from member States who serve as delegates to the Conference and members of the Governing Body, insofar as necessary for the independent exercise of their ILO-related functions.

¹² For further information, see *“Legal protection of the International Labour Organization in its member States: An introductory guide”* at <http://www.ilo.org/public/english/bureau/leg/download/legal-protection-en.pdf>

¹³ By the Resolution relating to the privileges and immunities of the ILO, adopted by the International Labour Conference at its 31st session (1948), the Conference accepted on behalf of the ILO the standard clauses of the 1947 Convention on the privileges and immunities of the specialised agencies and its Annex I relating to the ILO, for the purpose of defining the privileges and immunities of the Organization within the meaning of article 40 of the Constitution.

ANNEX 1

MEMORANDUM ON THE ADMISSION TO THE INTERNATIONAL LABOUR ORGANISATION OF STATES MEMBERS OF THE UNITED NATIONS

Procedure for becoming a Member of the ILO

Article 1, paragraph 3, of the Constitution of the International Labour Organization lays down the procedure for the admission to the Organization of States Members of the United Nations. This provision reads as follows:

- “3. Any original member of the United Nations and any State admitted to membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter may become a Member of the International Labour Organisation by communicating to the Director-General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation.”

Article 27 of the Standing Orders of the International Labour Conference adds the following:

- “1. The acceptance of membership of the International Labour Organization in pursuance of paragraph 3 of article 1 of the Constitution of the Organization by a Member of the United Nations shall take effect on receipt by the Director-General of the International Labour Office of a formal and unconditional acceptance of the obligations of the Constitution of the Organization.
2. The Director-General shall inform the Members of the Organization and the International Labour Conference of the acceptance of membership of the International Labour Organization by a Member of the United Nations.”

There is attached a model letter accepting the obligations of the Constitution on the basis of paragraph 3 of article 1 of the Constitution of the International Labour Organization. This letter should be signed by a person entitled to assume binding obligations on behalf of the State. The formal acceptance of the obligations of the ILO Constitution on behalf of a new Member is customarily signed by the Head of State or by an authorised minister of the Government, such as the Prime Minister, the Minister of External Affairs or the Minister of Labour.

Financial contribution to the ILO

The financial contribution to be made by a new Member to the budget of the Organization is determined by the International Labour Conference. Under established practice, scales of assessment for determining the contributions of member States of the ILO are based on the United Nations scales of assessment, adjusted for differences in membership between the two organizations. The assessment is expressed in terms of a percentage of the total budget; the amount of cash contribution to be paid annually depends, first, on this percentage assessment and, second, on the over all level of the budget which is approved by the Conference.

**MODEL LETTER BY WHICH A STATE MEMBER OF THE UNITED NATIONS
MAY BECOME A MEMBER OF THE ILO**

Dear Sir/Madam,

I have the honour to inform you on behalf of the Government of [country] that [country] hereby formally accepts the obligations of the Constitution of the International Labour Organization in accordance with paragraph 3 of article 1 of the Constitution of the Organization, and solemnly undertakes fully and faithfully to perform each of the provisions thereof.

The Government of [country] will bear its share of the expenses of the International Labour Organization in accordance with the provisions of the Constitution of the Organization and will make the necessary arrangements concerning its financial contribution.

Yours faithfully,

ANNEX 2

MEMORANDUM ON THE ADMISSION TO THE INTERNATIONAL LABOUR ORGANISATION OF STATES WHICH ARE NOT MEMBERS OF THE UNITED NATIONS

Procedure for becoming a Member of the ILO

Article 1, paragraph 4, of the Constitution of the International Labour Organisation lays down the procedure for the admission to the Organisation of States which are not Members of the United Nations. This provision reads as follows:

“4. The General Conference of the International Labour Organisation may also admit Members to the Organisation by a vote concurred in by two-thirds of the delegates attending the session, including two thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director-General of the International Labour Office by the government of the new Member of its formal acceptance of the obligations of the Constitution of the Organisation.»

Article 28 of the Standing Orders of the International Labour Conference adds the following:

- “1. The admission of new Members to the International Labour Organization by the General Conference, in accordance with article 1, paragraph 4, of the Constitution of the Organization, shall be governed by the provisions of the present article.
2. Each application for admission made to the Conference shall be referred in the first instance to the Selection Committee.
3. Unless the Selection Committee is of the opinion that no immediate action should be taken on the application, it shall refer the application to a subcommittee for examination.
4. Before submitting its report to the Selection Committee the subcommittee may consult any representative accredited to the Conference by the applicant.
5. The Selection Committee, after considering the report of the subcommittee, shall report on the question to the Conference.
6. In accordance with article 1, paragraph 4, of the Constitution of the Organization:
 - (a) a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting, shall be necessary for the admission of a new Member by the Conference;
 - (b) the admission shall take effect on the communication to the Director-General of the International Labour Office by the Government of the new Member of its formal acceptance of the obligations of the Constitution of the Organization.”

It is customary that a State applying for admission nominates a tripartite delegation which may be consulted by the subcommittee of the Selection Committee in accordance with Article 28, paragraph 4, and which may become the delegation of that State Member as soon as admission becomes effective.

There is attached a model letter accepting the obligations of the Constitution on the basis of paragraph 4 of article 1 of the Constitution of the International Labour Organisation. This letter should be signed by a person entitled to assume binding obligations on behalf of the State. The formal acceptance of the obligations of the ILO Constitution on behalf of a new member is customarily signed by the Head of State or by an authorised minister of the Government, such as the Prime Minister, the Minister of External Affairs or the Minister of Labour.

Financial contribution to the ILO

The financial contribution to be made by a new Member to the budget of the Organisation is determined by the International Labour Conference. The assessment as agreed is expressed in terms of a percentage of the total budget; the amount of cash contribution to be paid annually depends, first, on this percentage assessment and, second, on the over-all level of the budget which is approved by the Conference.

MODEL LETTER BY WHICH A STATE WHICH IS NOT A MEMBER OF THE UNITED NATIONS MAY BECOME A MEMBER OF THE ILO

Dear Sir/Madam,

I have the honour to apply, on behalf of the Government of[country]....., for membership of the International Labour Organisation under paragraph 4 of article 1 of the Constitution of the International Labour Organisation and request that this application be laid before the General Conference of the International Labour Organisation.

The Government of[country]..... hereby formally accepts the obligations of the Constitution of the International Labour Organisation and solemnly undertakes fully and faithfully to perform each of the provisions thereof.

The Government of[country]..... will bear its share of the expenses of the International Labour Organisation in accordance with the provisions of the Constitution of the Organisation.

Yours faithfully,

ANNEX 3

MODEL INSTRUMENT OF RATIFICATION/ACCEPTANCE OF THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANIZATION INSTRUMENT OF AMENDMENT 1997

Whereas the Constitution of the International Labour Organization Instrument of Amendment, 1997 was adopted by the International Labour Conference at its 85th Session in Geneva on 19 June 1997,

The Government of, having considered the aforesaid Instrument of Amendment, hereby confirms and ratifies/accepts the same.

In WITNESS WHEREOF, we have signed these presents at on the day of 20

Head of State

and/or

Minister of Foreign Affairs

.....

.....

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