



Governing Body

319th Session, Geneva, 16–31 October 2013

GB.319/LILS/2/2

Legal Issues and International Labour Standards Section
Legal Issues Segment

LILS

Date: 22 August 2013

Original: English

SECOND ITEM ON THE AGENDA

Privileges and immunities of the International Labour Organization: Follow-up

Identification document for Employer and Worker members of the Governing Body

Purpose of the document

The present document responds to the request of the Governing Body at its 317th Session (March 2013) to prepare a detailed proposal relating to a possible identification document for Employer and Worker members of the Governing Body.

The Governing Body is invited to consider this proposal.

Relevant strategic objective: Cross-cutting.

Policy implications: None.

Legal implications: Document pursuant to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.

Financial implications: Yes.

Follow-up action required: Production of the identification document if approved by the Governing Body.

Author unit: Office of the Legal Adviser.

Related documents: GB.317/LILS/1(Rev.), paragraphs 12, 13, 14; GB.317/PV, paragraph 495(f) of the decision adopted by the Governing Body.

1. At its 317th Session (March 2013), the Governing Body requested the Office to prepare a more detailed proposal relating to a possible identification document for Employer and Worker members of the Governing Body.
2. Employer and Worker members of the Governing Body are currently entitled to the document “Laissez-passer à l’usage des membres du Conseil d’administration du BIT”, which is signed jointly by the Head of the Host Country Division at the Swiss Permanent Mission in Geneva and by the Director-General. The legal protection referred to in this document is provided for in the ILO Headquarters Agreement with the Swiss Federal Council and this laissez-passer’s validity is limited to Switzerland.

What is the purpose of the new document?

3. The purpose of the proposed document will be to identify its holder as an Employer or Worker member of the Governing Body and to recall the privileges and immunities that Governing Body members enjoy pursuant to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (hereinafter the “1947 Convention”) and its Annex I concerning the ILO.
4. The new document will not affect the rights established by the Headquarters Agreement, but following Switzerland’s recent accession to the 1947 Convention, it is now possible to create an identification document that would be valid not only in Switzerland but also in other States.
5. It is proposed that the new document be entitled “ILO Governing Body member card”.

Who would be entitled to this new document?

6. The new document will be issued to “Employer and Worker members and deputy members of the Governing Body of the International Labour Office and their substitutes” (paragraph 1 of Annex I to the 1947 Convention).

Where would the document be valid?

7. The document would be recognized at least in all member States that have acceded to the 1947 Convention. There are currently 119 such States (see Appendix I for the list of those States). It could also be valid in any other State that agrees, through bilateral treaties with the ILO, to apply the provisions of the 1947 Convention and its Annex I.
8. However, the effect of the document in the State of which the holder is a national may need some further clarification. Under Article V, section 17, of the 1947 Convention (see paragraph 13 below), the privileges and immunities of the Employer and Worker members of the Governing Body would not be “applicable in relation to the authorities of a State of which the person is a national ...”. While this exclusion is justified in relation to Government representatives, it may seriously restrict the freedom of expression of non-governmental members of the Governing Body. For that reason, the Conference adopted on 12 June 1970 the Resolution concerning Freedom of Speech of Non-Governmental Delegates to ILO Meetings, which recognizes that the immunity of Employers’ and Workers’ delegates to the Conference and members of the Governing Body may be necessary even in relation to the authorities of the State of which they are nationals or of which they are or have been representatives (see Appendix II).

For how long would the document be valid?

9. The new document will be valid during the period of office of the Governing Body, which is determined by article 7, paragraph 5, of the ILO Constitution. This period lasts for three years unless elections do not take place on its expiry, in which case it is extended until such elections are held.
10. The new document should have a default validity of three years from the date of appointment to the Governing Body. As the next elections for the Governing Body members will be held in June 2014, the new document should be ready for delivery at that time.
11. If a vacancy occurs during the period of office and a new Governing Body member is elected pursuant to article 54, paragraphs 4 and 5, of the Standing Orders of the International Labour Conference (or, in the case of a substitute member, is appointed in accordance with article 1.6 of the Standing Orders of the Governing Body), the new member would be entitled to such a document. The validity of this document, however, would cover only the period until the following elections of Governing Body members.
12. Once the term expires, or in the event of early termination of the mandate, the document would have to be returned to the ILO. In the event of a member's re-election to the Governing Body, a new document would be issued.

What would be the legal nature of the document?

13. As indicated at the March 2013 session of the Governing Body, the new ILO identification document is not intended to serve as or replace a national identity or travel document. It is not intended to create additional rights for the holders or obligations for the member States. The purpose of the document is to certify that its bearer enjoys, as established by Annex I to the 1947 Convention, the protection under Article V (other than paragraph (c) of section 13) and section 25, paragraphs 1 and 2(I), of Article VII, of the 1947 Convention.
14. The relevant provisions of the 1947 Convention read as follows:

Article V

REPRESENTATIVES OF MEMBERS

Section 13

Representative of Members at meetings convened by a specialised agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) ...;
- (d) exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions;

- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 14

In order to secure for the representatives of Members of the specialised agencies at meetings convened by them complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 15

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members of the specialised agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

Section 16

Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the specialised agencies. Consequently, a Member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the Member, the immunity would impede the course of justice and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 17

The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

Article VII

ABUSE OF PRIVILEGE

Section 25

1. Representatives of Members at meetings convened by specialised agencies, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of the abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the government of that country provided that: –

2. (I) Representatives of Members, or persons who are entitled to diplomatic immunity under section 21, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

- 15.** The creation of the new document would in no way limit or prejudice the privileges and immunities which have been, or may hereafter be accorded by any member State to Employer and Worker members of the Governing Body by virtue of bilateral agreements or national laws. For example, privileges and immunities established by articles 14 and 15 of the Agreement between the Swiss Federal Council and the ILO, of 11 March 1946, remain fully in force.

How would the new document be used?

16. While national passports and, where applicable, an entry or transit visa would still be required, the new identification document could be used when Governing Body members exercise their functions, including when attending a Governing Body session, to attest to the privileges and immunities specified above. The Office may be requested to attest to when the Governing Body members exercise their functions, and to when they are travelling to and from the place where the meeting is held.

What would the new document look like?

17. The document should have a simple format and provide enough space to include all the necessary information (see paragraph 18 below). It is proposed to create a two-sided document, using the credit card format.
18. The front of the document should include:
- (a) the ILO logo and the name of the Organization in English, French and Spanish;
 - (b) the name of the document (i.e. “ILO Governing Body member card”);
 - (c) the name of the holder, which should be identical to the name on their national passport;
 - (d) a photo of the holder;
 - (e) an indication of the group (Employer or Worker) and the status of the member (titular, deputy or substitute);
 - (f) the nationality(ies) of the holder;
 - (g) a serial number enabling the national authorities to verify its authenticity and validity;
 - (h) the period of validity.
19. The back of the document should indicate the scope of the privileges and immunities in question. Given the limited space available, reproducing in full the relevant provisions quoted above would not be possible. Therefore, the following text in English, French and Spanish is proposed: “The holder of this document is a member of the Governing Body of the International Labour Office and enjoys privileges and immunities in accordance with Annex I of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, including immunity of jurisdiction and inviolability of documents”.

What would be the costs involved?

20. Under normal circumstances, the document will be issued to some 120–130 holders every three years. This limited volume makes it difficult to organize commercial production. It is therefore proposed to produce the document within the ILO using available capacity, which would minimize the cost. The cost could be absorbed within existing resources.

How would the documents be kept safe?

21. The Office would ensure that blank numbered documents are contained in a secure facility such as a vault or a safe with access limited to authorized individuals.
22. The Office would create a file for each document, with the record of elections, a copy of the national passport and the contact details of the bearer. The Office would respond to the enquiries of national authorities regarding the authenticity and validity of the document.
23. The document would not belong to the holder. It would remain the property of the ILO, issued to the holders solely for the purpose of performing their duties. Holders should be aware of the importance of this document so that all possible care is taken to prevent its loss or theft, which should be reported immediately to the ILO.
24. If the document were to be reported lost or stolen, it would be declared invalid. No duplicate can exist and a new document would have to be issued under a new serial number.

Draft decision

25. *The Governing Body:*

- (a) decides to create an ILO Governing Body member card under the conditions described in this document and subject to any other changes made during the Governing Body discussion;*
- (b) requests the Office to issue the card to Employer and Worker members of the Governing Body as of their election in June 2014;*
- (c) requests the Office to notify the Secretary-General of the United Nations in his role as depositary of the 1947 Convention, and all States parties to the 1947 Convention, of the existence and the design of the card.*

Appendix I

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Afghanistan	–	–
Albania	15 December 2003	4 October 2007
Algeria	25 March 1964	25 March 1964
Angola	9 May 2012	9 May 2012
Antigua and Barbuda	14 December 1988	14 December 1988
Argentina	10 October 1963	10 October 1963
Armenia ¹	–	–
Australia	9 May 1986	9 May 1986
Austria	21 July 1950	21 July 1950
Azerbaijan ¹	–	–
Bahamas	17 March 1977	17 March 1977
Bahrain	17 September 1992 ²	17 September 1992
Bangladesh	–	–
Barbados	19 November 1971	19 November 1971
Belarus	18 March 1966 ²	18 March 1966
Belgium	14 March 1962	14 March 1962
Belize	–	–
Benin	–	–
Bolivia, Plurinational State of	–	–
Bosnia and Herzegovina	1 September 1993	1 September 1993
Botswana	5 April 1983	5 April 1983
Brazil	22 March 1963	22 March 1963
Brunei Darussalam	–	–
Bulgaria	13 June 1968 ²	13 June 1968
Burkina Faso	6 April 1962	6 April 1962
Burundi	–	–
Cambodia	15 October 1953	2 July 2007
Cameroon	30 April 1992	30 April 1992
Canada	–	–
Cape Verde	–	–
Central African Republic	15 October 1962	15 October 1962
Chad	–	–
Chile	21 September 1951	21 September 1951
China	11 September 1979 ²	9 November 1984
Colombia ¹	–	–
Comoros	–	–
Congo	–	–

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Costa Rica	–	–
Côte d'Ivoire	8 September 1961	28 December 1961
Croatia	12 October 1992	12 October 1992
Cuba	13 September 1972 ²	13 September 1972
Cyprus	6 May 1964	6 May 1964
Czech Republic	22 February 1993 ²	22 February 1993 ¹
Democratic Republic of the Congo	8 December 1964	8 December 1964
Denmark	25 January 1950	25 January 1950
Djibouti	–	–
Dominica	24 June 1988	24 June 1988
Dominican Republic	–	–
Ecuador	8 June 1951	8 June 1951
Egypt	28 September 1954	28 September 1954
El Salvador ¹	–	–
Equatorial Guinea	–	–
Eritrea	–	–
Estonia	8 October 1997	8 October 1997
Ethiopia	–	–
Fiji	21 June 1971	21 June 1971
Finland	31 July 1958	31 July 1958
France	2 August 2000 ²	2 August 2000
Gabon	29 June 1961 ²	30 November 1982
Gambia	1 August 1966	1 August 1966
Georgia	18 July 2007	18 July 2007
Germany	10 October 1957 ²	10 October 1957
Ghana	9 September 1958	9 September 1958
Greece	21 June 1977	21 June 1977
Grenada	–	–
Guatemala	30 June 1951	30 June 1951
Guinea	1 July 1959	29 March 1968
Guinea-Bissau	–	–
Guyana	13 September 1973	13 September 1973
Haiti	16 April 1952	16 April 1952
Honduras	16 August 2012	16 August 2012
Hungary	2 August 1967 ²	2 August 1967
Iceland	17 January 2006	17 January 2006
India	10 February 1949	10 February 1949
Indonesia	8 March 1972 ²	8 March 1972
Iran, Islamic Republic of	16 May 1974	16 May 1974

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Iraq	9 July 1954	9 July 1954
Ireland	10 May 1967	10 May 1967
Israel	–	–
Italy	30 August 1985 ²	30 August 1985
Jamaica	4 November 1963	4 November 1963
Japan	18 April 1963	18 April 1963
Jordan	12 December 1950	23 August 2007
Kazakhstan	–	–
Kenya	1 July 1965	1 July 1965
Kiribati	–	–
Korea, Republic of	13 May 1977	22 March 2006
Kuwait	13 November 1961	7 February 1963
Kyrgyzstan	–	–
Lao People's Democratic Republic	9 August 1960	9 August 1960
Latvia	19 December 2005	19 December 2005
Lebanon	–	–
Lesotho	26 November 1969	26 November 1969
Liberia	–	–
Libya	30 April 1958	30 April 1958
Lithuania	10 February 1997 ²	10 February 1997
Luxembourg	20 September 1950	20 September 1950
Madagascar	3 January 1966 ²	3 January 1966
Malawi	2 August 1965	2 August 1965
Malaysia	29 March 1962	29 March 1962
Maldives, Republic of	26 May 1969	–
Mali	24 June 1968	24 June 1968
Malta	27 June 1968	27 June 1968
Marshall Islands	–	–
Mauritania	–	–
Mauritius	18 July 1969	18 July 1969
Mexico	–	–
Moldova, Republic of	2 September 2011	2 September 2011
Mongolia	3 March 1970 ²	3 March 1970
Montenegro	23 October 2006	23 October 2006
Morocco	28 April 1958	10 June 1958
Mozambique	6 October 2011	6 October 2011
Myanmar	–	–
Namibia	–	–
Nepal	23 February 1954	11 September 1996

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Netherlands	2 December 1948 ²	2 December 1948
New Zealand	25 November 1960 ²	25 November 1960
Nicaragua	6 April 1959	6 April 1959
Niger	15 May 1968	15 May 1968
Nigeria	26 June 1961	26 June 1961
Norway	25 January 1950 ²	25 January 1950
Oman	–	–
Pakistan	23 July 1951 ²	15 September 1961
Palau	–	–
Panama	–	–
Papua New Guinea	–	–
Paraguay	13 January 2006	13 January 2006
Peru	–	–
Philippines	20 March 1950	20 March 1950
Poland	19 June 1969 ²	19 June 1969
Portugal	8 November 2012	8 November 2012
Qatar ¹	–	–
Romania	15 September 1970 ²	15 September 1970
Russian Federation	10 January 1966 ²	10 January 1966
Rwanda	15 April 1964	15 April 1964
Saint Kitts and Nevis	–	–
Saint Lucia	2 September 1986	–
Saint Vincent and the Grenadines	–	–
Samoa	–	–
San Marino	21 February 2013	21 February 2013
Sao Tome and Principe	–	–
Saudi Arabia ¹	–	–
Senegal	2 March 1966	2 March 1966
Serbia	12 March 2001	12 March 2001
Seychelles	24 July 1985	24 July 1985
Sierra Leone	13 March 1962	13 March 1962
Singapore	18 March 1966	18 March 1966
Slovakia	28 May 1993 ²	28 May 1993
Slovenia	6 July 1992	6 July 1992
Solomon Islands	–	–
Somalia	–	–
South Africa	30 August 2002 ²	30 August 2002
South Sudan	–	–
Spain	26 September 1974	26 September 1974

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Sri Lanka	–	–
Sudan	–	–
Suriname	–	–
Swaziland	–	–
Sweden	12 September 1951	12 September 1951
Switzerland	25 September 2012	25 September 2012
Syrian Arab Republic	–	–
Tajikistan	–	–
Tanzania, United Republic of	29 October 1962	29 October 1962
Thailand	30 March 1956	19 June 1961
The former Yugoslav Republic of Macedonia	11 March 1996	11 March 1996
Timor-Leste	–	–
Togo	15 July 1960	–
Trinidad and Tobago	19 October 1965	19 October 1965
Tunisia	3 December 1957	3 December 1957
Turkey	–	–
Turkmenistan	–	–
Tuvalu	–	–
Uganda	11 August 1983	11 August 1983
Ukraine	13 April 1966 ²	13 April 1966
United Arab Emirates	11 December 2003	11 December 2003
United Kingdom	16 August 1949 ²	16 August 1949
United States	–	–
Uruguay	29 December 1977	29 December 1977
Uzbekistan	18 February 1997	18 February 1997
Vanuatu	2 January 2008	2 January 2008
Venezuela, Bolivarian Republic of	–	–
Viet Nam	–	–
Yemen	–	–
Zambia	16 June 1975	16 June 1975
Zimbabwe	5 March 1991	5 March 1991

¹ Accession pending owing to reservations that have not been accepted. ² Declarations or reservations accepted as compatible with the Convention.

Appendix II

Resolution concerning freedom of speech of non-governmental delegates to ILO meetings ¹

The General Conference of the International Labour Organisation,

Noting the terms of article 40 of the Constitution of the Organisation, which provides that “delegates to the Conference, members of the Governing Body and the Director-General and officials of the Office shall ... enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation”,

Considering that it is of fundamental importance to the International Labour Organisation and to the performance of the work of the ILO that Employers’ and Workers’ delegates to the Conference and members of the Governing Body may freely express their views, the views of their groups, and the views of their organisations, on questions within the competence of the International Labour Organisation, and may freely keep members of their organisations in their countries informed of the views so expressed,

Considering further that it is accepted that the free and independent exercise of these functions requires immunity from legal process in respect of words spoken or written and acts performed in the official capacity of delegates to the Conference or members of the Governing Body, both during and subsequent to the discharge of their duties,

Recognising that in the case of Employers’ and Workers’ delegates to the Conference and members of the Governing Body such immunity may be necessary even in relation to the authorities of a State of which they are nationals or of which they are or have been representatives;

Affirms the importance it attaches to the application of article 40 of the Constitution of the International Labour Organisation in such manner that the right of Employers’ and Workers’ delegates to the Conference and members of the Governing Body to express themselves freely on questions within the competence of the International Labour Organisation is completely safeguarded.

¹ Adopted on 12 June 1970.