

LIBYA I

Act No. 58-2970: Labour Code. Dated 1 May 1970.
 ("Al-Jarida al-Rasmiya", 1 May 1970, Special Supplement.)

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March-April 1971

Chapter I. General Provisions

1. The provisions of this Code shall apply to all persons working under a contract of employment: Provided that they shall not apply to the following categories unless otherwise indicated:

- (a) members of the employer's family, who work with him and are directly supported by him;
- (b) domestic employees and persons in a similar category, whose status shall be defined by special orders;
- (c) persons engaged in pastoral occupations and other forms of agriculture whose situation will be regulated by special regulations, except -
 - (i) those employed in agricultural establishments which wholly or partly industrialise their products;
 - (ii) those permanently employed in operating or repairing mechanically-driven machinery and appliances required for agricultural purposes;
- (d) crews of marine vessels, their engineer staff and seamen and the like to whom the ~~Libyan~~ Maritime Code or any other special Act applies;
- (e) established and non-established employees of the Government or public bodies.

This Code shall apply to manual workers employed by Government and public bodies unless their status has been defined by special regulations made by the Council of Ministers.

2. Any provision of a contract of employment which contradicts the provisions of this Code shall be considered null and void, even if it pre-dates the commencement of this Code, unless such provision is more advantageous for the workers.

3. No judicial fees shall be charged at any stage of litigation on law suits filed in accordance with this Code by workers or apprentices, by their heirs or by trade unions. Such suits shall be heard as matters of urgency. The court may not of course give judgments that are immediately enforceable, and need not demand the deposit of guarantee. It may, if it rejects the suit, sentence the claimant to pay all or part of the costs.

Chapter II. Placement Offices.

4. Every person who is able to work and seeks employment may ask to be registered with the placement office located in the area of his residence, indicating his age, occupation, qualifications or skills and previous experience.

The offices shall register applications in numerical sequence immediately upon receipt, and provide the applicant free of charge, on the day of application, with a certificate indicating that the registration has taken place.

An order to be issued by the Minister of Labour and Social Affairs shall determine the information to be included in the certificate. The Minister shall determine the jurisdiction and operational procedure of each of these offices.

5. Every employer shall notify the placement office competent for his place of business, in writing, concerning each vacancy and new post created in his establishment, indicating the type of the post, the qualifications required of the worker, the wage fixed and the date he specifies for filling the post, within seven days of the date on which the post becomes vacant or is created.

6. The placement offices shall assist registered employment seekers to find employment in fields suitable to their age, skills and qualifications, in the sequence of their registration. These offices shall also assist and guide workers to available vocational training which may facilitate their filling the vacant or created posts.

7. It is unlawful to engage a worker in any manner other than through a placement office or unless he has obtained a registration certificate from any such office; exceptions to this rule may be made by order of the Minister of Labour and Social Affairs.

8. The employer shall notify the placement office concerned within seven days from the date on which a vacant or newly created position has been filled, giving the name of the worker appointed to the post, the date on which his employment commenced, the wage allocated to him and the type of post he occupies. The employer shall also return the worker's registration card to the placement office which issued it after noting the number and date of the card in the worker's file and his own staff register.

9. It is unlawful for an employer or employer's representative to engage any worker through a contractor or subcontractor. A contract whereby one party undertakes only to recruit workers for employment by the other party or his representative in return for a fee paid by the employer to the supplier who pays the workers' wages shall be null and void.

10. In the cases referred to in the preceding section the employer shall be deemed to have concluded the contract directly with the workers and he shall be obliged to pay them the same wages as paid to those who are already doing similar work for him, and in all other respects to treat such workers on equal footing with all his other workers.

11. Any contract or act shall be null and void if made in a deceitful manner in order to evade the application of sections 9 and 10 above or to conceal such evasion in any way, particularly in cases which, pursuant to an order made by the Minister of Labour and Social Affairs, are deemed by the Minister, in view of the circumstances surrounding the case, to be obviously intended to infringe the two preceding sections or to conceal an infringement of those sections.

12. No charge shall be levied from an unemployed person in return for placing him in employment or facilitating his employment in any type of work.

Chapter III. Employment of Aliens

13. No alien shall be permitted to engage in an employment activity without a permit from the Ministry of Labour and Social Affairs. The word "activity" shall be deemed to include any industrial, commercial, agricultural, financial or other work or occupation, including domestic service.

14. The Minister of Labour and Social Affairs shall make an order respecting the conditions attached to the issue of the permit referred to in the preceding section, the particulars stated therein and on the fee to be charged for it: Provided that such fee shall not exceed £110. The order shall determine the cases of exemption from, or cancellation of, a permit and the exemption from all or part of the fee.

15. An order of the Council of Ministers shall prescribe the minimum proportion of Libyan workers to be employed in particular industries or establishments and/or a minimum percentage of the total wages to be paid to them.

Chapter IV. Vocational Training (Apprenticeship)

16. A worker may enter an employer's service for the purpose of being trained for a particular trade or activity within a specified period according to certain conditions and specifications laid down in an order of the Minister of Labour and Social Affairs.

17. The training or apprenticeship contract shall be written in Arabic, specifying the duration and stages of the training, and the wage to be paid at each stage: Provided that in the final stage it shall not be less than the minimum wage paid in the occupation or trade for which the worker is being trained.

If the worker is a minor his parent or guardian shall enter into the contract on his behalf.

18. The Minister of Labour and Social Affairs may, having regard to the requirements of each occupation or industry, make an order determining the minimum and maximum period of training, the curricula and study programmes, the system of tests, the certificates to be awarded and the particulars to be recorded in such certificates.

19. An employer may terminate a contract of apprenticeship if the apprentice proves to be unfit or inapt to learn the trade or occupation properly. The apprentice may also terminate his contract of apprenticeship. In either case the party wishing to terminate the contract shall give the other party at least five days' notice.

20. The Ministry of Labour and Social Affairs may establish and organise the necessary vocational training centres. Admission to such training centres shall be according to the rules adopted for each centre by the Minister of Labour and Social Affairs.

21. If the Minister of Labour and Social Affairs deems it necessary to have Libyan workers trained in the processes carried on by certain industrial and commercial establishments he may by order require such establishments to accept for training a certain number of workers or graduates and students of technical schools, subject to the conditions laid down in the order.

Trainees to whom this section applies shall not exceed 20 per cent of the total number of workers in the establishment.

PART II. CONTRACTS OF EMPLOYMENT

Chapter I. Individual Contracts of Employment

22. An individual contract of employment is an agreement entered into between an employer and a worker whereby the worker undertakes to work under the employer's direction or supervision in return for wages.

23. Every contract of employment shall be drawn up in writing, in Arabic, in two copies, one for each party. In the absence of a written contract the worker alone shall be permitted to establish his rights by any available means of evidence.

Any worker who is 18 years of age or above may conclude a contract of employment, upon conclusion of which he shall acquire the rights and obligations stipulated in the contract in accordance with the provisions of this Code, in particular the right to have his wages paid directly to him.

The contract of employment shall include the essential facts involved and conditions entered into, and in particular -

- (1) the employer's name and place of business;
- (2) the worker's name and address, skills and trade or occupation;
- (3) an exact description of the type of work to be performed;
- (4) the amount of the wages, when and how they are to be paid, and any other entitlements in cash or in kind.

The employer shall give the worker a receipt for any documents or certificates deposited with him.

24. The probation period shall be stipulated in the contract of employment. No worker shall be recruited on probation for longer than one month or on more than one occasion by the same employer.

25. A contract of employment may be concluded for a fixed term or for a specific piece of work; it may also be concluded for an unspecified period. If the contract is on a fixed-term basis and both parties continue to observe it after the expiry of the initial period without express agreement on its renewal, the contract shall be deemed to be extended for an unspecified period. If a contract is concluded for the performance of a specific job of an extendable nature and both parties continue to observe it after the conclusion of the initial job the contract shall be deemed to be extended for the period required to do the same job again, subject to the same conditions.

If the contract is for a fixed term, whether this fact is specified in the contract or arises from the nature of work, its validity shall not exceed five years, renewable only once; upon renewal the contract shall be deemed to be for an unspecified period.

26. The worker shall -

- (1) perform personally the work required of him with normal or reasonable efforts or efficiency;
- (2) in the performance of his duties, obey the employer's instructions unless such instructions are against religion, law or decency, or might endanger the worker;
- (3) take proper care of all objects entrusted to him in the course of his work;

- (4) safeguard any trade secret even after the expiry of his contract;
- (5) conduct himself with propriety while at work;
- (6) give every assistance in the event of a catastrophe or danger threatening the safety of the workplace or the persons employed therein, without claiming any benefit in return;
- (7) agree to undergo such medical examinations as may be required by the employer to ensure that he is free from occupational and communicable diseases.

27. The employer shall keep a special file for each of his workers, indicating the worker's name, trade or occupation, marital status, dependants, number of his identity card, date on which he commenced work, remuneration and any changes therein, penalties (if any), annual sick leave, date of and reason for termination of employment. The employer shall retain the worker's file for at least one year after termination of his employment.

28. No worker shall be employed by more than one employer at one time. No employer shall engage a worker if he knows that the worker has a contract of employment with another employer. Exceptions may be made to this rule only in the cases and subject to conditions stipulated in an order of the Minister of Labour and Social Affairs.

29. No employer shall depart from the provisions of the contract or demand other duties from the workers than those agreed upon therein, except in cases of emergency in order to avoid an accident or to deal with the consequences of one, or in cases of force majeure: Provided that such duties shall be temporary only.

The employer may require the worker to perform a job not agreed upon if it does not differ significantly from that specified in the contract.

30. Where an employer entrusts another employer within the same area with the performance of any of his operations or in any part thereof, the second employer shall maintain complete equality of rights as between his own workers and those of the first employer, who shall be jointly liable in this respect.

This rule shall not apply to work which is not of a continuous nature, such as emergency or periodic work, even if it is associated with or complementary to the original work.

31. The employer shall not pay a worker a wage less than the minimum wage fixed according to this Code; an employer shall not discriminate in wages between men and women if the conditions of work and nature of the work are the same.

"Wage" in this context means whatever is given to the worker in return for his work, whether in cash or in kind, which

may be calculated in terms of the equivalent in money, plus all allowances of any kind, and in particular the following:

- (1) commissions given to salesmen and commercial travellers;
- (2) benefits in kind, cost-of-living and family allowances;
- (3) any gratuity by way of supplement to the ordinary wage and any reward for honesty, loyalty, efficiency or the like, if such payment is provided for in individual or collective contracts of employment, or in the rules of employment or is traditionally or customarily paid to workers so that they have come to consider it as part of their payment and not as a gift.

Tips or gifts shall not be considered part of the wage except in the case of an established practice governed by certain rules.

It shall be lawful, subject to the provisions of the first paragraph of this section, to stipulate that in certain jobs such as hotel and bar service the worker shall have no wage other than what he receives in the form of tips and free meals, if such terms are clearly specified in the contract of employment.

32. The worker's wages and other remuneration, wage supplements, etc. due to him shall be paid in Libyan currency on one of the working days, in the workplace, not later than seven days following the date on which such payment becomes due: Provided that -

- (1) workers recruited on a monthly basis shall be paid at least once a month;
- (2) workers employed on piece work shall, if the work they are employed on takes more than two weeks, receive a payment on account once a week. Final settlement of all wages owing shall be made in full during the week following the completion of the work;
- (3) wages for the annual leave period shall be paid before the worker commences his leave;
- (4) on termination of a worker's service his wages and all other entitlements shall be paid promptly to him, unless the worker leaves the service on his own initiative, in which case the employer shall pay his wages and all his entitlements within seven days from the date on which he leaves his employment.

In no case shall an agreement be entered into whereby a worker's wages or part of them, or any other entitlements under the contract of employment, may be paid outside Libya.

33. An employer shall not transfer a worker who is paid by the month to the category of workers who are paid by the day, week or hour or at piece rates, without the worker's written consent. Where such consent is given the worker shall retain all the rights he enjoyed as a worker paid by the month during the period preceding his transfer.

34. In no case may more than one-quarter of a worker's wages be attached or assigned in payment of alimony or amounts due for food and clothing which the worker or his dependants have received or of any amounts payable by the worker under this Code.

In the case of two or more debts priority shall be given to alimony, and next to debts payable for food and clothing. The rate of one-quarter referred to in this section shall be calculated on the worker's net remuneration, after deduction of income tax and the worker's contribution under the Social Insurance Act.¹

This section shall apply to the sum total of all emoluments payable to a worker under this Code.

35. An employer shall not deduct more than 10 per cent of a worker's remuneration in settlement of loans made to him by the employer. He shall not charge any interest on such loans. He shall not compel the worker to purchase food or other commodities manufactured by him or from any company store or designated establishment.

36. If by his gross negligence the worker causes the loss, damage or total destruction of plant, machinery, tools, materials or products belonging to the employer or entrusted to his care, he shall be obliged to pay appropriate damages. The damages shall be assessed by a committee to be set up in each labour office by order of the Minister of Labour and Social Affairs.

The employer may deduct the amount assessed by the committee from the worker's wages. Either the employer or the worker may appeal against the committee's decision to the competent court having jurisdiction over the workplace. The decision of the court shall be final. If the court rejects the employer's appeal or reduces the amount fixed by the committee the employer shall refund to the worker the difference within the seven days following the date of the verdict.

The employer may recover the amount due to him under the preceding paragraph by deductions of not more than five days' wages from the worker's remuneration in any one month: Provided that the total amount deducted shall not exceed two months' wages: Provided further that the employer shall be entitled to recover the remainder of the amount due to him by all the legal means of redress open to him for the recovery of debts other than attachment of or deduction from wages.

¹ "Legislative Series", 1957 - Libya 1.

37. The employer shall be discharged from the obligation to pay the worker's wages only by the latter's signature upon a document stating that he has received his wages, which may be a pay register, payroll or special receipt.

38. Every worker who has completed one year's service with the employer shall be entitled to sixteen days' annual leave with full pay; the annual leave shall be increased to twenty-four days in the case of young persons and workers who have completed five years' continuous service with the same employer or employees in senior positions as specified in an order of the Minister of Labour and Social Affairs.

Weekly restdays and statutory public holidays falling within the annual leave period shall not be calculated as part of the leave.

It is unlawful to forgo entitlement to annual leave in return for compensation in cash or in kind.

39. The employer may fix the dates on which the annual leave is to be taken; he may stagger them in view of production requirements. He shall not grant collective leave to his workers without having prior consultation with them and obtaining their agreement and that of the labour office concerned at least one month before the date fixed for the leave unless collective leave is provided for in the works rules.

At the worker's written request any leave left over after the first six consecutive days may be taken at intervals or carried over to the next year: Provided that leave shall not be carried over for more than two years. These provisions shall not apply to the annual leave of young persons.

It is unlawful for the worker to carry out any paid activity during his annual leave; a worker who fails to observe this rule may be ordered to forfeit his wages for the leave period or part of it if this sanction is endorsed by the competent labour office.

40. The worker shall be entitled to receive payment of wages for any days of leave entitlement accrued to him which he has not used up prior to the termination, for any reason whatsoever, of his contract.

If the worker was employed for only part of a year the leave shall be calculated on the period actually worked during the year under consideration.

41. A worker who has been in the continuous service of the same employer for three years shall be entitled to twenty-five days' special pilgrimage leave with pay: Provided that such leave shall be granted once only in the worker's lifetime and that the worker shall furnish the employer with documentary evidence that the pilgrimage has actually been made.

42. A worker suffering from duly certificated sickness or disability shall be entitled to sick leave on half pay during the first 60 days, followed by 120 days at 60 per cent of his wages in any one year. The right to sick leave shall not be transferable from year to year.

Sick leave shall be granted on the basis of a medical certificate signed by a physician of the branch of the National Social Insurance Institution competent for the area where the worker is employed; if such a physician is not available or if the worker is not insured, the certificate shall be issued by a medical officer of the Public Health Service, by the industrial medical officer of the undertaking, or the worker's medical practitioner who has treated him; in the latter case the employer may require the worker to be re-examined by a different physician and in the case of contradictory opinions either party may require the labour office to refer the case to a public health officer or a state medical board to examine the worker free of charge, in which case the certificate then issued shall be final.

43. A female employee who has completed six months' continuous service with the same employer shall be entitled to fifty days' maternity leave on half pay (this period to cover the time preceding and following her confinement) on condition that she submits a medical certificate stating the presumed date of her confinement.

She may extend her absence from work on the grounds of illness arising from her pregnancy or confinement, submitting a medical certificate to this effect; her total absence from work shall not exceed three months.

It is unlawful to cause a female employee to work during the thirty days following her confinement.

44. The application of sections 42 and 43 above shall not entail any curtailment of the worker's rights under the Social Insurance Act¹ in case of industrial accident, occupational disease or maternity. Any assistance to which the worker is entitled under the said Act shall not be reduced by the amount of the worker's wages paid under sections 42 and 43 above.

45. The employer shall not dismiss a worker or terminate his contract during any of the leave periods referred to in the foregoing sections. The worker shall not leave the employer's service immediately after any period of authorised leave under the foregoing sections without the employer's consent.

46. A fixed-term contract shall expire at the end of the specified period without the need for prior notice. If the contract is for an unspecified period either of the contracting parties may terminate it if by serving notice on the other party by registered letter thirty days before the date of expiry (in the case of workers paid by the month) and fifteen days in all other cases. When the notice is served on the worker the employer shall release him for at least two hours every day during working hours throughout the period of notice to enable him to look for another job. If the contract is terminated without the period of notice being observed the party terminating it shall be liable to pay the other party compensation equal to the worker's wages for the period of notice or such part of it as still remains to run.

47. On the expiry of a seasonal or similar type of contract, a fixed-term contract, or where a contract for an unspecified period is terminated by the employer, the worker shall be entitled to a leaving indemnity amounting to half a month's pay for each year of service up to five years, and one month's pay for each year of service thereafter.

48. The last wages paid to the worker shall be taken as the basis for calculating the compensation under section 46 and the leaving indemnity under section 47 of this Code in the cases of workers paid monthly, weekly, daily or by the hour. In the case of workers employed on piece work or otherwise, they shall be calculated on the average pay for the days actually worked during the last three months preceding the termination of the contract, or the whole period worked (if less than three months).

49. Without prejudice to sections 46 and 47 above, if a contract is terminated without just cause, the aggrieved party shall have a right to compensation (to be assessed by the court, taking into consideration the nature of work, the damage incurred, the duration of service and local custom, after investigation of the circumstances of the termination).

50. A worker who considers that he has been dismissed without just cause shall be entitled to apply to have the dismissal suspended. The application shall be submitted by registered letter to the director of the labour office within whose area the place of work is situated, within two weeks reckoned from the date on which the employer notifies the worker that he is to be dismissed. The director of the labour office shall take appropriate action to settle the dispute amicably, but if no amicable settlement is reached, he shall refer the application, within one week of its receipt, to the judge of summary proceedings of the court within whose jurisdiction the place of employment is situated. He shall attach a memorandum in quintuplicate, setting forth a summary of the dispute and indicating the opinions of the labour office.

Within three days of receiving the application, the clerk of the court shall fix a date for a hearing, which shall be held not more than two weeks after the receipt of the documents, and shall inform the worker, the employer and the director of the labour office of the date of the hearing. A copy of the director's memorandum shall be attached to the notification, which shall be communicated by registered letter.

The judge shall take a decision on the application for suspension not more than two weeks after the date of the first sitting; his decision shall not be subject to appeal. If he upholds the application the employer shall thereupon be compelled to pay the worker his wages from the date of his dismissal. The judge shall then refer the matter to the competent court for the area in which the place of work is situated, and this court shall hear the case and fix the compensation, if any, to be paid. Its decision shall be given promptly, and in any event within one month from the date of the first sitting.

If judgment is not given on the fundamental facts at issue of the dispute within the time limit referred to in the preceding paragraph the employer may, instead of paying the wages to the worker, pay into court an amount equal to such wages until the dispute is settled by the court.

Any amounts received by the worker in pursuance of the judge's decision or paid into court shall be deducted from the compensation awarded to him or from any other amounts which may be due to him.

The court may order reinstatement of the worker upon request or in the cases provided for by law.

Actions brought to ascertain liability in the case of unjustified dismissal shall be deemed to arise out of the contract of employment, with all subsequent effects as regards the court competent to hear the dispute, the prescriptive period and the application of the provisions of the Civil and Commercial Procedure Act concerning appeals. Appeals shall be lodged within ten days and the court shall give a decision as soon as possible and in any case not later than within one month following the first hearing.

No provision of this Code shall be construed so as to infringe a worker's right to file a suit directly in accordance with the rules, time and procedures stipulated in the Civil and Commercial Procedure Act.

51. No employer shall terminate a contract without compensation or notice except where the worker -

- (1) has assumed a false identity or submitted false certificates or recommendations;
- (2) has been engaged on probation;
- (3) has committed any act which has caused serious material damage or loss to the employer: Provided that the latter shall report the matter to the labour office concerned within three days of its coming to his knowledge;
- (4) fails, in spite of a written warning, to observe the written instructions issued for the safety of the workers or the establishment: Provided that such instructions must have been posted up in a prominent place in the workplace and the employer has sent a copy of the written warning addressed to the worker to the labour office concerned;
- (5) has been absent from work without a valid reason for more than twenty days in any one year or for more than ten consecutive days: Provided that the employer must have given him a written warning after ten days' absence in the first case and five days' absence in the second case, and that a copy of such warning has been forwarded to the labour office;
- (6) has not discharged his essential duties under the contract of employment;

- (7) has revealed any secret relating to his employment;
- (8) has been convicted of a crime or a misdemeanour involving dishonesty, infamy or immorality, and an executory sentence has been imposed (i.e. not persons put on probation);
- (9) has been found drunk during working hours;
- (10) has assaulted the employer or responsible manager or has seriously assaulted any of his supervisors or fellow workers during or in connection with his work.

52. The employer may terminate the contract after giving notice in accordance with section 46 above, in the following two cases:

- (1) if all or part of the undertaking is closed down finally or for a period of two consecutive months;
- (2) if the work covered by the contract is temporary.

The employer shall notify the Director-General of Labour, two months prior to exercising his right to terminate the contract in the first case mentioned above, of his intention to do so, and the Director-General of Labour shall ensure that the reasons given are valid.

A worker whose contract of employment has been terminated under this section shall be entitled to the leaving indemnity referred to in section 47, without prejudice to his right, if any, to the compensation provided for in section 46.

53. The worker may leave his employment without notice before the expiry of the contract if -

- (1) he was misled by the employer or his representative as to the terms and conditions of employment at the time of entering into the contract;
- (2) the employer does not fulfil his obligations to the worker under this Code;
- (3) the employer or his representative is guilty of an immoral act towards the worker;
- (4) the employer or his representative has assaulted the worker;
- (5) grave danger threatens the worker's safety or health and the employer, although aware of the existence of such danger, fails to adopt the safety measures prescribed by statute or by the competent authorities within the proper time.

If a worker leaves his employment for any of the reasons mentioned in the preceding section, the employer shall pay him the leaving indemnity prescribed in section 47, without prejudice to any damages that may be ordered by a court.

54. A worker may, on giving notice to his employer in accordance with section 46, resign from his employment; in such case he shall only be entitled to the leaving indemnity prescribed in section 47 if he has served for more than five years, and to one-half of the leaving indemnity if he has served for less than five years.

55. A woman worker who leaves her employment on her marriage or on the birth of her first child shall, if she gives notice to the employer during the six months following the date of her marriage (in the first case) or the three months following the date of her confinement (in the second case) be entitled to the leaving indemnity referred to in section 47, on condition that she has completed three years' continuous service with the same employer. She shall be entitled to 50 per cent of the leaving indemnity if she was employed for a shorter period.

56. Without prejudice to the provisions governing workmen's compensation, a contract shall be terminated by the worker's death, by his incapacity for work or by illness causing his uninterrupted absence from work for 120 days or more or his absence for non-consecutive periods exceeding 200 days in any one year. The incapacity or illness shall be certified by medical certificate issued by the National Social Insurance Institution or, if the worker is not insured, by the public health officer for the region.

The employer shall not exercise his right to terminate the contract under section 46 during the worker's incapacity or sickness covered by this section or during the period in which the worker is receiving pecuniary assistance payable in the case of occupational disease or industrial accidents under the Social Insurance Act¹; neither shall he terminate the contract after the above-mentioned periods have expired and the worker has returned to work.

An employer who has terminated the contract for any of the reasons enumerated in the first paragraph of this section shall pay the leaving indemnity referred to in section 47 to the worker or his dependants.

57. If an establishment has a provident fund for its workers and the regulations of the fund provide that the amount contributed by the employer to such fund on behalf of the worker is in substitution for his legal obligation to pay a leaving indemnity on the termination of the employment, and if such amount is equal to or exceeds the indemnity payable to the worker under this Chapter, the amount of these contributions shall be paid to the worker in substitution for the indemnity; if not, the indemnity shall be payable. If the rules of the provident fund do not stipulate that the employer's contributions are in substitution for his legal obligation to pay a leaving indemnity on termination of the employment, the worker shall be entitled to receive the amount standing to him in the fund in accordance with the rules, in addition to the statutory indemnity prescribed in this Code.

If an establishment has a pension scheme, the worker shall be entitled to choose between the pension and the statutory indemnity. If his employment is terminated before he becomes entitled to a pension he shall be entitled to the statutory indemnity or the amount payable to him by the pension fund, whichever is the greater.

Any person who sets up a provident, assistance or pension fund in an undertaking shall, prior to its registration, deposit the rules of the fund with the Ministry of Labour and Social Affairs for approval. If the Ministry does not oppose the regulations within ninety days of their deposit they shall be deemed to be approved.

The Minister of Labour and Social Affairs may by order compel certain commercial or industrial establishments to establish provident or pension funds for their workers, in which case the provisions of this section shall apply thereto.

58. On the termination of a contract, the employer shall furnish him free of charge with a certificate recording no more than the dates of his engagement and discharge and the nature of the work he performed. If the worker so requests, the certificate may also record the wages earned, the allowances paid and any advantages enjoyed, in addition to any information he wishes to incorporate in the certificate.

The employer shall also return any papers, certificates and objects that the worker has deposited with him.

59. The dissolution of an undertaking, its liquidation, closure, bankruptcy, amalgamation with another undertaking, devolution by inheritance, bequest, gift, sale, assignment or otherwise shall not constitute a bar to the execution of any of its obligations under this Chapter.

Save in the event of liquidation, bankruptcy or authorised final closure, the contracts of employment of the workers employed in an establishment shall remain in force. The successor shall be jointly liable with the previous employer for all the above-mentioned obligations. Such liability shall continue for one year in cases not covered by enforceable contracts.

60. Amounts owing to a worker or his heirs or beneficiaries in accordance with this Chapter shall constitute a prior charge on the employer's movable and immovable property and shall be paid immediately after legal fees and sums due to the public exchequer. In the event of the employer's bankruptcy or the liquidation of the establishment, all such amounts shall be recorded against the assets as privileged debts; an immediate advance equal to one month's wages shall be paid to the workers prior to any other outlay, including legal fees and bankruptcy or liquidation costs. If the assets are insufficient to pay the workers' claims in full, it shall be divided among them according to the rules for sharing among creditors.