

# A Comparative Analysis of Employment Injury benefits for Migrant Workers: Evidence from Selected Developed and Developing Economies

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## ABSTRACT

This paper examines the entitlement of employment injury benefits (EIBs) for migrant workers through a comparative analysis of selected developed economies, namely Germany, Sweden, and the United Kingdom, with reference to Malaysia as a receiving country. The study aims to identify key features of effective social security systems that ensure adequate protection of migrant workers in cases of workplace injury. Adopting a qualitative comparative legal methodology, the research analyses national legal frameworks, institutional arrangements, and benefit structures, drawing on data from international organizations including the International Labour Organization (ILO), the World Bank, and the Mutual Information System on Social Protection (MISSOC). The findings indicate that comprehensive coverage, non-discriminatory access, integrated institutional coordination, and the inclusion of rehabilitation benefits are critical components of effective EIB systems. In contrast, Malaysia's framework demonstrates gaps, particularly in relation to migrant worker coverage and benefit adequacy. The paper further highlights the role of social security agreements (SSAs) in enhancing cross-border protection. It concludes that aligning domestic frameworks with international labour standards and adopting selected best practices can significantly strengthen the protection of migrant workers' right to social security.

**Keywords:** Employment Injury Benefits; Migrant Workers; Social Security; Comparative Law; Labour Rights

## INTRODUCTION

The protection of migrant workers under social security systems remains a critical issue in both developed and developing economies. Employment injury benefits (EIBs), as a core component of social security, play a vital role in safeguarding workers against risks arising from workplace accidents and occupational diseases. International frameworks, particularly the International Labour Organization (ILO) Conventions No. 118 and No. 157, establish principles such as equality of treatment, portability of benefits, and coordination between states. However, the extent to which these principles are implemented varies significantly across jurisdictions.

This study examines the structure and effectiveness of EIB systems in selected developed countries like Germany, Sweden, and the United Kingdom and evaluates their relevance for Malaysia. The objective is to identify key features of effective systems and assess how these can inform improvements in Malaysia's protection of migrant workers.

The two main conventions addressing the social security of migrant workers are C No. 118, which has been ratified by 38 Member States of the ILO and widely adopted in comparison to C No. 157, which has only been adopted by 4 countries. For this research, countries that are sending and receiving migrant workers were selected to find the best practices of social security. For example, C No. 118 has been ratified by Sweden, Germany, the Netherlands, the Philippines and Indonesia. This convention governs issues concerning equality of treatment and the export of social security benefits for migrant workers, while C No. 157 addresses issues concerning the aggregation and overlapping of benefits, and conflicting laws between countries sending and receiving migrant

workers. Both these two conventions address the issue of territoriality in ensuring the protection and enjoyment of the right to social security of migrant workers from their country of origin to their country of destination, where they are working. Thus, this paper will analyse the good practices on employment injury benefits under social security for migrant workers that can be adopted by Malaysia based on those criteria.

A few countries were identified for an analysis of their practices in this paper. The few countries mentioned here are Germany, Sweden and the United Kingdom. These three countries were chosen based on several criteria, as follows:

1. The ranking and rating of the States' compliance with regard to workers' rights by international organizations.
2. The ratification of the main international labor standards relating to equal treatment in employment injury benefits under social security.
3. The coordination of social security through social security agreements either bilaterally or multilaterally with countries sending migrant workers.
4. The selected countries, such as Malaysia, must receive migrant workers

It must be emphasized here, particularly in regard to the selected countries, that a qualitative comparative approach and an interdisciplinary legal research method were adopted due to the nature of this research, which required data to be obtained and analyzed beyond the legal context. For example, legal scholars have often debated that the ratification of an international law cannot be used as a measure of its effectiveness per se. This supports the view that there is no systematic evidence to indicate that the ratification of human rights treaties in the UN system itself enhances human rights practices, but the growing credibility of human rights ideas in international society, which the legal regime helped to create, offers a great deal of power to nongovernmental actors to persuade governments to change their actions.<sup>1</sup> In response to this scenario, an interdisciplinary legal research approach was adopted by expanding the context. How can the context be expanded? Is it necessary?

A 'macroexample' could be that of a legal researcher who is interested in the importance of legal and case law in various countries.<sup>2</sup> Researchers can analyze the traditional distinctions between common and civil law countries to understand the role of different sources of law in different legal systems. However, the researcher may also consider other academic disciplines. For example, it can be studied whether the discrepancies between different legal systems of countries confirm the presence of a variety of social security systems. This makes it important to integrate interdisciplinary studies, including the sociolegal issue of the level of protection in different countries, but in this respect, those selected countries are in the same shoes as Malaysia as a receiving country for migrant workers. Theoretically, a closed sense of legal discipline may be preferred if its only legitimate duty is the representation of the legal system and its internal continuity.

Here, the argument is that interdisciplinary research can lead the researcher into a macrocontext. If the ratification of an international law cannot be used as a measure of the effectiveness of that law at the domestic level, then economic indicators derived from the World Bank Database can be used to justify that Malaysia should provide greater protection of employment injury benefits for migrant workers, even if Malaysia is not a State Party to the particular convention. For example, migrant labor contributes to the Malaysian GDP (World Bank, 2017) through increased productivity and output.<sup>3</sup> Hence, there should be no question of economics or

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<sup>1</sup> Hafner-Burton, Emilie M., and Kiyoteru Tsutsui. "Human Rights in a Globalizing World: The Paradox of Empty Promises." *American Journal of Sociology*, vol. 110, no. 5, 2005, pp. 1373–1411. JSTOR, [www.jstor.org/stable/10.1086/428442](http://www.jstor.org/stable/10.1086/428442). Accessed 19 Oct. 2020.

<sup>2</sup> Mathias M. Siems. *The Taxonomy of Interdisciplinary Legal Research: Finding The Way Out Of The Desert*, 2009, *Journal of Commonwealth Law and Legal Education*, 7:1, 5-17, DOI: [10.1080/14760400903195090](https://doi.org/10.1080/14760400903195090)

<sup>3</sup> Munoz Moreno, Rafael; Del Carpio, Ximena Vanessa; Testaverde, Mauro; Moroz, Harry Edmund; Carmen, Loo; Smith, Rebekah Lee; Ozden, Caglar; Karakurum-Ozdemir, Kamer; Yoong, Pui Shen. 2015. *Malaysia - Economic monitor: immigrant labor* (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/753511468197095162/Malaysia-Economic-monitor-immigrant-labor>

rights in regard to providing equal treatment for migrant workers in terms of employment injury benefits. For States, the ratification of international law should be the means of promoting and complying with international labor standards.

When dealing with the issue of employment injury benefits for migrant workers, private companies or corporations have no choice but to comply with government regulations. The government should promote and increase awareness of employment injury benefits in the workplace. Corporations or private companies must comply with government regulations whether they want to because, by fulfilling their obligations, they can increase their profits. This position should also be taken into consideration by the government to invest in and leverage the hiring of migrant workers for work in Malaysia instead of providing them with limited enjoyment of employment injury benefits under social security, which end up being a burden to the government because of the regulations and coverage of protection.

Continuing the discussion on the qualitative comparative approach, the reliable and recent data for the research were gathered from multiple sources. A qualitative comparative approach was used to summarize the data and to explain the legal provisions in a systematic way by producing a truth table, which, in turn, can be used for the analysis of the synthesized data. It can also be used to check the analytical coherence of a given set of cases with respect to the relevant causal conditions by detecting the logically problematic configurations of the so-called contradictions, thereby leading to the identification of discrepancies in the proposed explanatory statement. Analytical coherency was very important in ensuring that the good practices of the countries could be clearly identified.

Comparative law can be viewed as a field of research with the evolution of certain core topics over time, such as the divide between the legal systems of countries, the search for functional similarities between the laws of different countries, and the occurrence of legal transplants.<sup>4</sup> It is true that comparative law, like any other form of legal study, seeks to make recommendations as to how the law can be changed. The overarching purpose of comparative law is the quest for a 'better law'. The role of comparative law, then, is to establish a critical understanding in two respects, namely, to compare international legal systems and to analyze the researcher's own legal system. Another reason why a qualitative comparative approach was adopted to conduct the analysis in Paper is to ensure that the findings on good practices would be more substantive and would make a more pragmatic contribution.

The data and reports for the analysis in this paper were obtained from the World Bank Database,<sup>5</sup> the reports of the ILO and International Trade Union Confederation (ITUC)<sup>6</sup>, and the Mutual Information System on Social Protection (MISSOC)<sup>7</sup>. The MISSOC is a database that promotes the continuous exchange of information on social protection among EU Member States. The database includes information on social protection systems and their organisations in the 27 member states of the European Union; the three countries of the European Economic Area, namely, Iceland, Liechtenstein and Norway; the UK up to 1st July 2019; and Switzerland. The European Commission coordinates the MISSOC with the assistance of the MISSOC Secretariat.

Each of the countries concerned shall select one or two correspondents from the national ministries or agencies responsible for social security. The correspondents regularly update the comparative tables and guides for the national social security systems.<sup>8</sup> A summary of the qualitative data for this research was derived from here for an in-depth analysis of Germany, Sweden and the United Kingdom. Because international organizations are

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<sup>4</sup> Siems, Mathias. "The Power of Comparative Law: What Types of Units Can Comparative Law Compare." *American Journal of Comparative Law*, vol. 67, no. 4, 2019, p. 861-888. HeinOnline.

<sup>5</sup> See World Bank Open Data, available at <https://data.worldbank.org/> accessed date 05<sup>th</sup> September 2020).

<sup>6</sup> See International Trade Union Confederation, The International Trade Union Confederation (ITUC) is the global voice of the world's working people, available at <https://www.ituc-csi.org/about-us> (accessed date 05<sup>th</sup> September 2020).

<sup>7</sup> See MISSOC, available at <https://www.missoc.org/> (accessed date 05<sup>th</sup> September 2020).

<sup>8</sup> See Social Protection Systems MISSOC, available at <https://ec.europa.eu/social/main.jsp?catId=815&langId=en> (accessed date 05<sup>th</sup> September 2020).

independent and transparent, it is believed that all the qualitative data adopted in this paper were valid for analysis.

To put more emphasis on the situational analysis of the chosen countries, it should be clarified that this research adhered to the relevant international reports and updates pertaining to labor issues from international organizations. For example, the report from the ITUC was adopted to see how the positions of the three chosen countries could justify why they could be examples of good practices. The ITUC provides an annual report in which it ranks countries with violations of workers’ rights.

In addition, the ILO database known as the Information System on International Labor Standards (NORMLEX) was used in this research to follow the progress and updates of the three countries. NORMLEX is an information system that brings together information on international labor standards such as ratification information, reporting criteria, and comments from ILO supervisory bodies as well as national labor and social security legislation.

In addition, this research will present information on the rankings and positions of Germany, Sweden, the United Kingdom and Malaysia through a tabulation of general information, indices and ratifications of international instruments. The international instruments included only international labor standards and international human rights laws that are relevant to employment injury benefits under social security. This would serve to justify why the good practices of these countries were selected.

The researcher is of the view that the ratification of the main international labor standards relating to employment injury benefits was justifiable due to the importance of the track record of the countries in terms of their reporting mechanisms and promotion of international labor standards. The index of compliance and promotion of employment injury benefits could only be determined through a reporting mechanism on the ratification of international instruments. See Tables 1.1, 1.2 and 1.3 below for more information.

Table 1.1 Main Indicators of Countries

Country	Indicators	2017	2018	2019
Malaysia	Population, total	31105028	31528585	31949777
	Net migration	249999	N/A	N/A
	GDP (current US\$)	318.958 billion	358.582 billion	364.702 billion
Germany	Population, total	82657002	82905782	83132799
	Net migration	2719112	N/A	N/A
	GDP (current US\$)	3.666 trillion	3.95 trillion	3.846 trillion
Sweden	Population, total	10057698	10175214	10285453
	Net migration	200000	N/A	N/A
	GDP (current US\$)	541.019 billion	555.455 billion	530.833 billion
United Kingdom	Population, total	66058859	66460344	66834405
	Net migration	1303250	N/A	N/A
	GDP (current US\$)	2.666 trillion	2.861 trillion	2.827 trillion

Source: Data from the World Bank database based on World Development Indicators

The indicators in Table 1.1, namely, total population, net migration and gross domestic product (GDP current US\$), show the positions of Malaysia, Germany, Sweden and the United Kingdom. Based on the data provided above, Germany had the highest numbers for the three indicators, followed by the United Kingdom, Sweden and Malaysia. There does seem to be an enormous discrepancy between Sweden and Malaysia. Although Sweden has a smaller population than Malaysia, Sweden still has a much greater number of migrants and GDP. Germany seems to be more comparable with the United Kingdom with regard to the three indicators.

The researcher is of the view that the three indicators played a greater role in analyzing how good the practices were, in general, for migrant workers. The total population included all the residents in the particular country, while the net migration determined the migration status of the particular country. The GDP was slightly tricky due to the explanatory context of how the GDP was related to the protection of migrant workers on employment injury benefits to find a link with good practices. This was where the importance of basic interdisciplinary research was apparent in finding correlations. To emphasize this, migrants in any country must make decisive contributions to population growth, gross domestic product (GDP), the number of workers, and the productivity of various sectors.<sup>9</sup>

Migration is a feature of the social and economic life of many countries, but the profile of migrant populations varies considerably. This is partly due to the variety of migration sources. In much of Europe, for example, citizens enjoy extensive rights to freedom of movement. The management of labor migration plays an important role in Australia, Canada and New Zealand. Other sources include family migration and humanitarian migration. Regardless of its source, migration has significant consequences for communities, and these consequences can be contentious. The economic effect of migration is no exception. Migration helps to boost both direct and indirect innovation and economic growth.<sup>10</sup>

Thus, it was clear that the three indicators played a greater role in this research analysis in finding their correlation and link to the protection of employment injury benefits for migrant workers. Evidently, a large population and net migration contributed to a higher GDP, and this was very much dependent on the standards of labor protection. Germany and Sweden are countries with high standards of labor protection, mainly for employment injury benefits, compared to Malaysia and the United Kingdom. Malaysia gained significantly from the contributions of migrants to its GDP, but it is important that Malaysia increase its level of protection of migrant workers to match what is being practiced by Sweden and Germany. At this point, the United Kingdom seems to be ineffective for adoption as a model, even though the nation has gained more than Sweden and Malaysia. This is due to the lower ranking of the United Kingdom and its smaller number of ratifications of international labor standards.

This seems to be the position of Malaysia as well, which is intended to have a high GDP but provides less protection to migrant workers. This research was aimed at proving that the three indicators were in line with the standards of protection. The three indicators will not be discussed further in this research, as the aim of adopting an interdisciplinary approach was to understand the macro context, which is beyond a legal understanding. It must be made clear here that this is legal, not economic, research. The discussion will now move to the index of the countries that have been in violation of workers' rights. The detailed information is shown in Table 1.2 below.

Table 1.2 The 2020 Country Ratings on Violations of Workers' Rights

<b>International Trade Union Confederation (ITUC)</b>		
<b>Countries</b>	<b>Rank</b>	<b>Remarks</b>
Germany	1	Sporadic violations of rights

<sup>9</sup> Mihi-Ramírez Antonio & Ojeda-González Sara & Miranda-Martel María José & Agoh Eugene, 2016. "The Contribution of Migration to Economics Growth. Evidence from Spain," Open Economics, De Gruyter, vol. 1(1), pages 124-130, August.

<sup>10</sup> Migration Policy Debates, OECD May 2014.

Sweden	1	
United Kingdom	3	Regular violations of rights
Malaysia	4	Systematic violations of rights

Source: 2020 ITUC Report Global Rights Index the World’s Worst Countries for Workers

According to the ratings, as indexed by the ITUC in its 2020 report illustrated above, the countries that were selected for this research qualified for good practices based on the rating of the ITUC, and the three countries, such as Malaysia, are countries that are receiving migrant workers. Looking at the positions of the three selected countries compared to Malaysia, Sweden and Germany scored an index of 1 with sporadic violations of workers’ rights.

Why was the United States not selected in this research as one of countries with good practices? Even though the United States holds a permanent seat in the governing body of the ILO, it is a party to only 14 of the 189 labor conventions, with particular ratifications of two out of the eight core conventions. The United States Department of Labor declares that US laws meet and even exceed labor standards compared to the ILO conventions.<sup>11</sup> The researcher was doubtful of this, as the ILO conventions are always used as the benchmark for international labor standards.<sup>12</sup>

Despite its obligations to uphold and promote the values and rights laid down in the ILO Constitution and the principle of freedom of association, the United States continues to provide employees with a lower degree of coverage and protection than is provided by the ILO standards. The lower level of security and coverage for U.S. employees remains particularly evident with regard to the rights of noncitizen workers. To reach a higher level of compliance with ILO standards, the United States would have to ratify more conventions, especially the core conventions, and adopt more recommendations.<sup>13</sup>

As mentioned above, it is crucial for States to provide for and protect workers’ rights, which are detailed here as employment injury benefits under social security. According to the two tables above, Sweden and Germany consistently made a significant impact, but it must be borne in mind that these two countries have always maintained a high standard of labor protection through their ratification of international labor standards. Table 1.3 below illustrates the position of Germany, Sweden, the United Kingdom and Malaysia with regard to the main international human rights instruments and international labor standards.

Table 1.3 Ratification of International Human Rights Instruments and International Labor Standards relating to Employment Injury Benefits under Social Security

No	Instruments	Germany	Sweden	United Kingdom	Malaysia	Worldwide ratification
1	ICESCR	√	√	√	X	171
2	ICPMW	X	X	X	X	55
3	Convention No 102	√	√	√	X	59

<sup>11</sup> David Weissbrodt and Matthew Mason, Compliance of the United States with International Labor Law, 98 MINN. L. REV. 1842 (2014), available at [https://scholarship.law.umn.edu/faculty\\_articles/368](https://scholarship.law.umn.edu/faculty_articles/368).

<sup>12</sup> See also Kamal Halili Hassan & Muhammad Faliq Abd Razak & Rohaida Nordin & Rohani Abdul Rahim, 2018. "Malaysia with the Trans-Pacific Partnership Agreement: Aftermath of the United States Withdrawal From the TPPA," International Journal of Asian Social Science, Asian Economic and Social Society, vol. 8(10), pages 868-880, October.

<sup>13</sup> David Weissbrodt and Matthew Mason, Compliance of the United States with International Labor Law, 98 MINN. L. REV. 1842 (2014), available at [https://scholarship.law.umn.edu/faculty\\_articles/368](https://scholarship.law.umn.edu/faculty_articles/368).

4	Convention No 121	√	√	X	X	24
5	Convention No 118	√	√	X	X	38
6	Convention No 019	√	√	√	√	121
7	Convention No 157	X	√	X	X	4
Total No of ratification		6	7	3	1	N/A

Source: OHCHR, Status of Ratification Interactive Dashboard. ILO NORMLEX.

Table 1.3 shows that among the selected countries, Sweden has the highest number of international instrument ratifications, while Malaysia has the lowest number. The international instruments in the table were identified as the main conventions governing employment injury benefits and social security through the lens of human rights and labor standards. As mentioned earlier, the ratification of international instruments plays a greater role in the promotion of and compliance with employment injury benefits.

In almost every paragraph above, the dual perspective of whether to ratify international law was mentioned, compared and justified. It is understood here, after the explanation on the ratification of international labour standards, it is recognized that social security is a right. Social security is recognized as a human right under the governance of the ILO and the UN Treaty Body known as the CESCR. It would be interesting if this issue could be linked to previous studies to prove that the ratification of international labor standards is important, as the term ‘right to social security’ underlies international labor standards. In addition, since 1990,<sup>14</sup> the degree of social security and the desire to protect it have been based on it being an economic human right rather than a labor right. The employment injury benefits of migrant workers as a right to social security can be realized if the right to labor is protected.

It is understood that it is difficult to know whether the trend toward greater protection of human rights is due to the treaty and not to other factors.<sup>15</sup> The force of the Covenant on State Parties and Non-State Parties presumably shifts the norm in the international community, and it is not easy to tease out its actual influence on the behavior of States. Referring to the term used in the previous paragraph, this research found that difficulty arises when social security is viewed as a human right, as it rightly is. Greater protection of employment injury benefits under social security should be viewed from the perspective of a labor right, and the ILO and the UN have acknowledged that labor rights are human rights.

Another previous study was conducted on how a treaty can make a difference. Should international labor standards or international human rights instruments be the focus in the context of the research topic? Understanding the dual existence of human rights treaties will help in providing a better appreciation of the relationship between the ratification of human rights treaties and human rights practices. External pressure is put on countries to show their adherence to human rights principles, and clear incentives are provided for countries to participate in constructive expressive actions by ratifying human rights treaties. Thus, the treaty will affect the views of individual countries as to what constitutes appropriate behavior.<sup>16</sup>

<sup>14</sup> Esping-Andersen, Gosta, *The Three Worlds of Welfare Capitalism*: Princeton, NJ, Princeton University Press; Cambridge, Polity Press, 1990, Pp. Xi + 248 ISBN 0745 606652

<sup>15</sup> Scruggs, Lyle, et al. “Implementation of the Human Right to Social Security around the World: A Preliminary Analysis of National Social Protections Laws.” *The State of Economic and Social Human Rights: A Global Overview*, edited by Lanse Minkler, Cambridge University Press, Cambridge, 2013, pp. 117–134. Scruggs, Lyle, et al concluded their research that civil law countries seems to provide greater protection rather than common law or mixed law systems. At this point, researcher critically analyses to prove novelty of this research is that the difference of researcher’s topic with them is the context. Their context very much focused on how legal tradition and legal systems implement right to social security rather than researcher’s context is by seeing labor right as a human right through international labor standards.

<sup>16</sup> Hathaway, Oona A. “Do Human Rights Treaties Make a Difference?” *The Yale Law Journal*, vol. 111, no. 8, 2002, pp. 1935–2042. *JSTOR*, [www.jstor.org/stable/797642](http://www.jstor.org/stable/797642). Accessed 19 Oct. 2020.

In this regard, labor rights should be viewed as human rights in terms of their practices and ratifications, and the focus should be on the platform of international labor standards. The protection of labor rights is the key factor in ensuring the protection of human rights. This has been done by Sweden,<sup>17</sup> Germany<sup>18</sup> and, to a lesser extent, the United Kingdom<sup>19</sup> compared to Malaysia. Protection of employment injury benefits will be much more efficient for migrant workers if it is viewed as a labor right rather than as the right of an individual.

As illustrated above in Tables 1.1, 1.2 and 1.3, to justify the approach adopted in this research in selecting the countries with good practices, it should be mentioned here that the good practices from the selected countries will be used as tools for a legal transplant to possibly improve the laws of Malaysia. The best practices from the selected countries will be analyzed to determine the possibility of those best practices being adopted through a legal transplant<sup>20</sup>.

The term ‘legal transplant’ is widely used and refers to the dissemination of legal models from the exporting legal order to the receiving one. In a broader context, receipts, transplants or borrowings may refer either to the process or to the outcome of a legal reform project that, in turn, is undertaken by a legal reform plan based on the imitation of laws, doctrines and theories and judicial decisions already in place in various legal orders.<sup>21</sup> The notion of a legal transplant based on the rule of law largely depends on the legal culture, the nature of which, in turn, depends greatly on legal history.

Thus, when attempting a legal transplant of such a divergent and multifaceted thing as the rule of law, the path of the legal evolution of a legal culture defines what the limits of a successful legal transplant are. One way to improve the legal system of a country is for that country to borrow laws and legal institutions from another country. The problem is that the transplanting of foreign laws or legal institutions does not take place in a legal cultural vacuum.<sup>22</sup> Hence, the legal transplantation of good practices in this paper depended very much on their suitability for the Malaysian context, but they could still be viewed as indicators for improvement where possible.

It seems reasonable to argue that it can be useful to learn from other countries. For example, when a nation suffers from equality standards, economic hardship, ethnic conflict or other issues, there is no reason why the experience of another nation that has managed to resolve this problem should not be considered. It has always been believed that countries can benefit from legal transplants to the degree that they can recognize legal laws that have already been successfully adopted abroad. However, it is still necessary to have a critical view of legal transplants.<sup>23</sup> For example, it may be argued that legal transplants frequently do not work well in the country of transplant due to discrepancies in the socioeconomic context, while criticisms may be focused on the uneasy relationship between international law and the domestic legal system, and this can be described as a legal irritant or it can even be said that legal transplants are impossible.<sup>24</sup> Often, criticisms are even aimed at the content of the study.

The discussion in this paper was not limited to the good practices of the selected countries but also included the coordination of social security and social security agreements as such. The focus was mainly on employment injury benefits and the protection of the right to social security. The discussion in this section will critically

<sup>17</sup> See The state of application of the provisions for social security of the international treaties on social rights: ILO Technical Note: Sweden/International Labor Office. – Geneva: ILO, 2016

<sup>18</sup> The state of application of the provisions for social security of the international treaties on social rights: ILO Technical Note: Germany/International Labor Office. – Geneva: ILO, 2016

<sup>19</sup> The state of application of the provisions for social security of the international treaties on social rights: ILO Technical Note: United Kingdom/International Labor Office. – Geneva: ILO, 2016

<sup>20</sup> The founding father of legal transplant concept is Alan Watson since 1970s. For more information refer to Watson *Legal Transplants: An Approach to Comparative Law* (Athens, GA: University of Georgia Press, 2nd edn, 1993; 1st edn, 1971). However, see also JW Cairns ‘Watson, Walton and the history of legal transplants’ (2013) 41 *Georgia Journal of International and Comparative Law* 637.

<sup>21</sup> Ajani G. *Legal Transplants*. In: Marciano A., Ramello G.B. (eds) *Encyclopaedia of Law and Economics*. 2019. Springer, New York, NY. [https://doi.org/10.1007/978-1-4614-7753-2\\_731](https://doi.org/10.1007/978-1-4614-7753-2_731)

<sup>22</sup> See Jaakko Husa, *Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law*, *The Chinese Journal of Comparative Law*, Volume 6, Issue 2, December 2018, Pages 129–150, <https://doi.org/10.1093/cjcl/cxy008>

<sup>23</sup> Siems, Mathias. “Malicious Legal Transplants.” *Legal Studies*, vol. 38, no. 1, 2018, pp. 103–119., doi:10.1017/lst.2017.4.

<sup>24</sup> G Teubner ‘Legal irritants: good faith in British law or how unifying law ends up in new divergences’ (1998) 61 *Modern Law Review* 11; P Legrand ‘The impossibility of legal transplants’ (1997) 4 *Maastricht Journal of European and Comparative Law* 111.

analyze whether the identified countries have comprehensive sets of laws to ensure that employment injury benefits are protected under the right to social security. The analysis will begin with Germany, followed by Sweden and the United Kingdom. The details of the countries, based on the criteria listed above, will be assessed in the discussion about each country.

There is a long history of social security intervention in the event of accidents or injuries at work or occupational disease. This is partly because the development of industrial economies has led to unsafe working environments, the need to operate dangerous machines, and the routine exposure of workers to hazardous minerals and chemicals. Accidents, indeed fatalities, at work (or on the way to or from work) were relatively common, but the individual worker was frequently not only vulnerable to injury but could only seek redress directly against his employer. In these circumstances, workers were often left without compensation, and if they were subsequently unable to work, they had no alternative but to rely on assistance from a deficient law.

The principle that emerged was one that took the injury at face value and did not seek to apportion blame to either the employee, the employer or even a third party. The overriding priority was to provide financial support to the injured worker and his/her dependents. The liability to provide compensation was placed upon the employer under statutory regulation. Not all countries have separate systems in place to cover the risk of accidents at work and occupational diseases. Often, this risk will be catered for through other related systems. Indeed, one particularity of the branch of workplace accidents and occupational diseases is that it is linked to several other social security risks, such as healthcare, sickness, cash benefits, invalidity and survivors.

As a general rule, where a specific provision has been made for the risk of accidents at work and occupational diseases, the arrangements are more favorable compared to those for governing compensation in the case of nonoccupational injury (e.g., less stringent conditions, higher benefit amounts). The scope and level of compensation vary from country to country, but it is conventional for there to be five tiers to a fully developed benefits structure:

1. Medical and hospital treatment. In the event that medical treatment is not available for free at the point of access through a national/universal healthcare scheme, there will usually be a prescribed and capped scale of costs;
2. Temporary incapacity. During a period of incapacity, earnings are maintained at a prescribed proportion of previous wages;
3. Total permanent incapacity. This may result in the payment of a pension or a lump sum calculated on the basis of previous earnings, and it may further increase if continuing care is needed;
4. Permanent partial incapacity. This is usually a pro rata share of the full incapacity pension or grant determined according to a prescribed and fixed schedule related to the severity of the injury;
5. Fatal cases. A pension or lump sum calculated on the basis of previous earnings operating within minimum and maximum limits.

Where there is disagreement about the extent or consequences of an injury or a dispute about the level of payment, mechanisms usually exist to provide for arbitration. The majority of countries cover not only accidents sustained at work or while working but also accidents that occur while traveling to or from work. Most countries have a prescribed list of occupational diseases, and this can make the claim for compensation easier than might otherwise have been the case. In countries with a “mixed” system, diseases that are not on the prescribed list may nevertheless result in compensation if the victim can prove the occupational nature of the ailment. Many industrial injury schemes include or are linked to rehabilitation programmes. In addition to providing prosthetics or other orthopedic devices, they may also provide counseling and/or vocational training.

## **EMPLOYMENT INJURY BENEFITS IN GERMANY**

The discussion in this section covers employment injury benefits mainly under the laws and social security system of Germany. Why was it necessary to cover the social security system and laws on employment injury?

As discussed earlier, employment injury benefits are one of the branches of social security systems. Thus, in this research, it was important to generally discuss the social security system in Germany and then narrow the context to employment injury benefits. This discussion will touch on the concept and context of employment injury benefits, specifically for migrant workers, due to the scope of this research.

The benefits of employment injuries in Germany generally cover all workers, regardless of whether they are local workers or migrant workers. This is because the social security system adopted by Germany covers all workers with respect to injury at the workplace. Employment injury benefits under the social security scheme in Germany are covered by a work injury programme. There are two types of social security programmes, namely, a social insurance system and a social assistance system. The work injury programme is covered by a social insurance system.<sup>25</sup> Malaysia has also adopted the social insurance system as a work injury programme in the Malaysian context.<sup>26</sup>

The financing for accidents at work in Germany is mainly contributed by employers and taxes generally.<sup>27</sup> The annual amount of insurance is determined by the Federal Government. The contributions and insurance are borne by employers, and the rates are fixed by the employers' liability insurance association (*Berufsgenossenschaften*) according to the risks in the various occupational sectors. These contributions are paid by the employer since no general insurance is provided by the public authorities. Therefore, there is no participation from the public authorities, except for farmers<sup>28</sup> and the payment of accident insurance for workers in the public sector<sup>29</sup>.

The funds for employment injury benefits in Germany come from employers, who contribute an average of 1.18% (2016) of the payroll, with contributions varying according to the assessed degree of risk<sup>30</sup>. In Malaysia, employers contribute 1.25% of the monthly payroll, based on 45 wage classes, and no minimum monthly earnings are used to calculate contributions; instead, a maximum monthly earning of RM 4,000 is used to calculate contributions.<sup>31</sup> The German system is similar to the one in Malaysia in that no contribution is made to the fund by the insured person, that is, the worker, or to be more specific, the migrant worker.

The government of Germany subsidizes agricultural accident insurance and contributions for students, children in daycare institutions, and persons engaged in specified voluntary activities.<sup>32</sup> Malaysia's position is different in this respect, where there is no source of funds from the government.<sup>33</sup> Self-employed persons also make contributions in Germany, and the contributions vary according to the assessed degree of risk<sup>34</sup>. Meanwhile, self-employed persons in Malaysia contribute between RM13.10 and RM49.40 a month, based on 30 wage classes. A self-employed person may choose to pay his or her contribution annually.<sup>35</sup>

In addition, financing systems for long-term benefits for workplace accidents in Germany are based on special current income financing, which is easily understood by the term "pay as you go", and the creation of a reserve. The following five branches of social insurance exist in Germany<sup>36</sup>:

1. statutory pension insurance (*gesetzliche Rentenversicherung*),

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<sup>25</sup> See Social Security Programs Throughout the World: Europe, 2018, Social Security Association, Social Security Administration Office of Retirement and Disability Policy Office of Research, Evaluation, and Statistics, Washington, DC. See also at <https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/europe/germany.pdf> (accessed date 05th September 2020).

<sup>26</sup> See Social Security Programs Throughout the World: Asia and the Pacific, 2018, Social Security Association, Social Security Administration Office of Retirement and Disability Policy Office of Research, Evaluation, and Statistics, Washington, DC. See also at <https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/asia/malaysia.pdf> (accessed date 05th September 2020).

<sup>27</sup> See MISSOC database. Qualitative data provided by Germany to MISSOC updated as 1<sup>st</sup> January 2020.

<sup>28</sup> Insurance for farmers is provided by the Annual Federal Subsidies.

<sup>29</sup> Accident insurance for workers working in public sectors financed by Federal, known as Länder and local budgets.

<sup>30</sup> See ISSA database available at <https://ww1.issa.int/node/195543?country=860> (accessed date 05<sup>th</sup> September 2020).

<sup>31</sup> See ISSA database available at <https://ww1.issa.int/node/195543?country=910> (accessed date 05<sup>th</sup> September 2020).

<sup>32</sup> See ISSA database available at <https://ww1.issa.int/node/195543?country=860> (accessed date 05<sup>th</sup> September 2020).

<sup>33</sup> See ISSA database available at <https://ww1.issa.int/node/195543?country=910> (accessed date 05<sup>th</sup> September 2020).

<sup>34</sup> See ISSA database available at <https://ww1.issa.int/node/195543?country=860> (accessed date 05<sup>th</sup> September 2020).

<sup>35</sup> See ISSA database available at <https://ww1.issa.int/node/195543?country=910> (accessed date 05<sup>th</sup> September 2020).

<sup>36</sup> Our discussion will mainly focus on statutory accident insurance (*gesetzliche Unfallversicherung*),

2. statutory health insurance (*gesetzliche Krankenversicherung*),
3. social care insurance (*Soziale Pflegeversicherung*),
4. statutory accident insurance (*gesetzliche Unfallversicherung*),
5. statutory unemployment insurance (*gesetzliche Arbeitslosenversicherung*).

### Statutory Accident Insurance

The Employers' Liability Insurance Association (*Berufsgenossenschaften*)<sup>37</sup> and the Accident Insurance Institutions of the Public Sector are related entities of statutory accident insurance (*Gesetzliche Unfallversicherung*). Social insurance for livestock, forestry and horticulture is offered by an agricultural technical association. The groups of persons concerned are employers, certain self-employed persons, pupils and students, children in daycare centers or private daycare centers, homecare staff, certain volunteers, persons seeking recovery and certain other persons. In addition to the social security branches listed above, there are diverse family benefits, social assistance, social compensation benefits, and rehabilitation benefits, which include persons with disabilities and housing benefits.<sup>38</sup> There are also people who are insured on the basis of other regulations, such as civil servants and members of ecclesiastical associations. Self-employed doctors, psychotherapists, healers and pharmacists are also exempted from insurance.

Statutory accident insurance benefits are applicable to insured individuals. These include injuries at work, injuries on the road directly to and from work, and the effects of occupational diseases. Accidents at work are accidents that occur during the performance of an insured activity, which is normally the work specified in the employment contract, and accidents on the way to and from an insured activity (commuting accident). This is similar to the coverage provided by the Malaysian Government through the Employees' Social Security Scheme (ESS) under the Social Security Organization (SOCSO). The beneficiaries of the particular insurance in Germany are employees, some self-employed persons, students, pupils, children in day-care institutions or who are being looked after by qualified day carers, certain volunteers, persons undergoing rehabilitation, home carers and some other persons who are compulsorily insured.

Voluntary insurance is possible for entrepreneurs who are not compulsorily insured, their collaborating spouse or civil partner, persons similar to self-employed entrepreneurs, and certain groups of volunteers who are not compulsorily insured. In principle, they are entitled to the full range of benefits. In its statute, the accident insurance institution can set a qualifying period for the cash benefit for the insured amount, where the assessment basis can be freely chosen up to a fixed amount (maximum annual earnings (*Höchstjahresarbeitsverdienst*)), which will only be determined by the accident insurance institution.<sup>39</sup>

With respect to access to benefits for accidents at work, EU nationals and third-country nationals may have access to benefits under this category as long as they are working and protected against this specific risk. This condition is equally valid for citizens of member states and third-country nationals, and the type of residence permit, whether it is a long-term residence permit or a fixed-term residence permit, does not play a role in obtaining these social security benefits.<sup>40</sup>

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<sup>37</sup> See European Commission, Your social security rights in Germany, 2018, Directorate-General for Employment, Social Affairs and Inclusion. Page 26-29. See also The Federal Health Monitoring System available at [http://www.gbe-bund.de/gbe10/abrechnung.prc Abr test logon?p\\_uid=gast&p\\_aid=0&p\\_knoten=FID&p\\_sprache=E&p\\_suchstring=8630](http://www.gbe-bund.de/gbe10/abrechnung.prc Abr test logon?p_uid=gast&p_aid=0&p_knoten=FID&p_sprache=E&p_suchstring=8630) (accessed date on 05<sup>th</sup> September 2020).

<sup>38</sup> See Organization Structure of MISSOC member states. Available at [https://www.missoc.org/documents/organisation/2020\\_01/org\\_2001\\_de\\_en.pdf](https://www.missoc.org/documents/organisation/2020_01/org_2001_de_en.pdf) (accessed date 05<sup>th</sup> September 2020).

<sup>39</sup> See MISSOC, comparative tables, Germany, beneficiaries under field of application in respect of accident at workplace. Data updated as of 1<sup>st</sup> January 2020.

<sup>40</sup> See European Commission, 2014, Synthesis Report of Migrant access to social security and healthcare: policies and practice, Migrant access to social security and healthcare: policies and practice, European Migration Network Study.

## Regulatory Framework and Supervision

With respect to monitoring, the Federal Ministry of Health (*Bundesministerium für Gesundheit*) is responsible for the health and long-term care insurance sectors, with the exception of agricultural health insurance, which is under the monitoring of the Federal Ministry of Food and Agriculture (*Bundesministerium für Ernährung und Landwirtschaft*). The Federal Ministry of Labor and Social Affairs (*Bundesministerium für Arbeit und Soziales*) is accountable for old-age, survivor and invalidity pensions; accident and unemployment insurance; and old-age pension insurance for farmers.<sup>41</sup>

The main stakeholders under the supervision of the Federal Ministry of Labor and Social Affairs are the Employers' Insurance Associations, the Accident Insurance Institutions of the Public Sector, and the Social Insurance for Agriculture, Forestry and Horticulture. In regard to labor issues, these are the three main stakeholders involved in providing protection and coverage of employment injury benefits. Everything related to labor is monitored by the Federal Ministry of Labor and Social Affairs, There does not seem to be much difference between Germany and Malaysia, as the latter also has its own stakeholders, such as the MOHR and SOCSO. The only difference is that there is no integrated coordination among the stakeholders in Malaysia. For example, the issuance of visas is by immigration, the quota process is by the MOHA, while the MOH handles the administration of the SPIKPA, and social security is under the SOCSO.

The topic now shifts to the legislation and basic principles governing workplace accidents in Germany. Since Germany is a civil law country, everything must be written in law to enforce and ensure the protection of rights. The regulatory framework for accident insurance and occupational diseases in Germany comprised the first laws of 1884.<sup>42</sup> These were the Accident Insurance Law of 6 July (RGBl. Nr.19 S.69) on work accidents, implemented on 1 October 1885, and the first regulation on the extension of accident insurance to occupational diseases (RGBl. I S.69), which was implemented on 1 July 1925. The current law for accident insurance was enacted in 1996 and implemented in 1997.

The current law is based on the 1996 (Seventh Book of the Social Law - Obligatory Accident Insurance, of 7 August, BGBl. I S.1254)<sup>43</sup>, and it was implemented on 1 January 1997 and amended in 2017 (BGBl. I S.2541, of 17 July). The laws governing issues related to workplace accidents and occupational diseases are stated in the Social Code (*Sozialgesetzbuch*), Book VII of 7 August 1996, and the Social Code (*Sozialgesetzbuch*), Book IX, and amended on 23 December 2016.<sup>44</sup>

## Benefits in The Event of Employment Injury

The statutory accident insurance covers the risks of accidents occurring at work, traveling between home and work, and occupational diseases. To ensure that the accident is covered, the accident injury must occur on the premises of the enterprise and/or in connection with an occupation depending on the enterprise on the basis of a contract of employment or any other insured activity. Another angle that must also be considered is the conditions that are covered by the statutory accident insurance should an accident occur at the workplace. The doctor or employer must be immediately notified to ensure that the insured employee is entitled to the coverage of protection. In Germany, it must be considered that accidents are a result of the nature of employees' work. This feature is exactly the same as that in Malaysia. The qualifying conditions set by Germany are more general

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<sup>41</sup> See Area of responsibility of the Federal Ministry of Labor and Social Affairs available at <https://www.bmas.de/EN/Ministry/geschaeftsbereich.html> (accessed date 05th September 2020).

<sup>42</sup> See Social Security Programs Throughout the World: Germany, 2018, Social Security Association, Social Security Administration Office of Retirement and Disability Policy Office of Research, Evaluation, and Statistics, Washington, DC. See also at <https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/europe/germany.pdf> (accessed date 05th September 2020).

<sup>43</sup> See Federal Ministry of Justice and Consumer Protection, Seventh Book of the Social Code, Statutory Accident Insurance, (Article 1 of the law of August 7, 1996, Federal Law Gazette I p. 1254). Title of the law in German Deutsch (Siebtes Buch Sozialgesetzbuch - Gesetzliche Unfallversicherung - (Artikel 1 des Gesetzes vom 7. August 1996, BGBl. I S. 1254). Also available at [http://www.gesetze-im-internet.de/sgb\\_7/SGB\\_7.pdf](http://www.gesetze-im-internet.de/sgb_7/SGB_7.pdf) (accessed date 05th September 2020).

<sup>44</sup> See MISSOC Comparative Tables, applicable statutory basis for accident at workplace in Germany. Data are updated as at 1<sup>st</sup> January 2020.

in nature than those set by Malaysia. Malaysia has split the qualifying conditions into work injury benefits and disablement benefits, with the same conditions in which the injury must be certified by a doctor.

The next discussion is on the benefits that an employee is entitled to under statutory insurance in case of employment injury at the workplace. The accident might have occurred during working hours at the workplace, resulting in temporary incapacity or permanent incapacity. For temporary incapacity, several benefits are provided by statutory insurance:

- a. Choice of doctor or hospital
- b. Payment of cost and contribution by persons involved
- c. Cash benefits
- d. Duration of benefits
- e. Amount of the benefits

For the first benefit, which is the choice of doctor or hospital, there is actually no free choice in principle, as the patient (injured/insured person) should visit the transition doctor (*Durchgangsarzt*) appointed by the accident insurance institution as soon as possible. Any subsequent medical treatment can be carried out by the general practitioner upon the decision of the transition doctor. In more severe cases, however, the treatment may need to be carried out by specialists approved by the accident insurance institution. The second benefit of temporary incapacity is the payment of cost, which is made by the accident insurance institution from the beginning. In principle, this means that there is no copayment by the beneficiary. Third, for cash benefits, no cash benefits are provided. These benefits are similar to the coverage provided under Malaysian laws.

For the fourth and fifth benefits pertaining to the duration of benefits and amount of benefits, the employer is required to maintain a statutory continuation of salary for up to 6 weeks, which means, in principle, that there is no waiting period, but the continuation of salary is taken into account together with the payment of injury benefits (*Verletztengeld*) during accident-related incapacity for work, as a rule, subject to a maximum of 78 weeks. The injury benefits (*Verletztengeld*) are calculated, in principle, as in statutory sickness insurance and generally amount to 80% of the average gross earnings of the month before the incapacity occurred. The amount must not exceed the net salary. The injury benefit is paid per calendar day. In practice, the payment is made on a weekly or monthly basis, depending on the actual period of incapacity for work.<sup>45</sup>

The continuation of salary in Malaysia in the event of injury at the workplace resulting in temporary incapacity is 80% of the insured's average daily covered earnings in the six months before the disability began and is paid during the employee's medical leave. The minimum daily temporary disability benefit is RM 30,<sup>46</sup> while the maximum daily temporary disability benefit is RM 105.33. Germany provides more extensive coverage because gross income is calculated on a monthly basis, while in Malaysia, it is calculated on a daily basis.

In addition, the statutory insurance in Germany also provides permanent incapacity benefits for fulfilling the following characteristics:

- a. Minimum level of incapacity to provide entitlement to compensation
- b. Possibility of review
- c. Reference earnings or calculation basis

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<sup>45</sup> See MISSOC Comparative Tables, conditions for accident at workplace in Germany. Data are updated as of 1<sup>st</sup> January 2020

<sup>46</sup> See MISSOC Comparative Tables, conditions for accident at workplace in Germany. Data are updated as of 1<sup>st</sup> January 2020 and ISSA Database, focusing on comparing countries between Germany and Malaysia under qualifying conditions for Accidents at Workplace.

- d. Supplements for dependants
- e. Supplements for care by another person
- f. Redemption
- g. Cumulation with earnings from work
- h. Cumulation with other social security benefits

First, for permanent incapacity resulting from injury at the workplace, under Germany's statutory accident insurance, the level of incapacity is measured at the minimum level for entitlement to compensation, with a 20% reduction in incapacity after the 26th week following the employment injury, with an assessment by an expert authorized by the accident insurance institution, and for this benefit, the insured person can choose the expert.<sup>47</sup> A permanent disability pension (*Rente bei Minderung der Erwerbsfähigkeit, MdE*) is paid as a permanent disablement benefit as a result of total disability. Here, the insured worker is entitled to be paid 100% on the assessed loss of earning capacity and 66.7% of the insured's gross annual earnings in the year before the disability began. This is different from Malaysia, where for total (100%) disability, the insured worker will be provided with 90% of the insured's average daily covered earnings in the six months before the disability began. The minimum daily permanent disability benefit is RM30, while the maximum daily permanent disability benefit is RM118.50.<sup>48</sup>

Second, there must be the possibility of review under permanent incapacity. The review must be within the first 3 years after the injury. A review is possible at any time on the condition that it is carried out only after the permanent annuity has been fixed and only at intervals of at least a year if it is to the disadvantage of the insured person. The increase or decrease in the degree of incapacity must be more than 5%.<sup>49</sup> An employee who suffers partial disability (*Teilinvaliditätspension*) in Germany is entitled to an assessed loss of earning capacity of more than 20% but less than 100%. The percentage of the full permanent disability pension is paid according to the assessed loss of earning capacity. With regard to partial disability in Malaysia, a percentage of the full permanent disability pension is paid, depending on the assessed degree of disability. If the assessed degree of disability is less than 20%, the insured can request that the pension be paid as a lump sum. If the assessed degree of disability is at least 20%, the pension is paid monthly, although the insured may request receiving up to 20% of the pension as a lump sum.<sup>50</sup>

Third, reference earnings, or the calculation basis, is one of the important criteria under permanent incapacity with loss of future earnings after the injury. In general, the payment is based on the actual gross salary in the year prior to the contingency annual earnings. In any case, 60% (persons aged over 18) or 40% (persons aged up to 18 years) of the reference amount was in effect at the time when the contingency occurred. The reference amount for 2019 was €37,380 for West Germany and €34,440 for East Germany. The maximum annual earnings limit could be double that of the reference amount if the applicable annual earnings are higher, according to the rules. For children, a fictitious amount of earnings, depending on their age, is fixed. In addition, the calculation method or benefit formula for the monthly pension entitlement due to permanent incapacity from injury at the workplace is based on two criteria, namely, the annual gross salary in the year prior to the insured event and the degree of incapacity

For the fourth and fifth characteristics, supplements for dependants and supplements for care by another person, there is a care allowance known as *Pflegegeld*, with payments, according to individual cases, ranging from €362 to €1,445 (West Germany) and from €341 to €1,369 (East Germany) per month as of 1 July 2018. A constant-

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<sup>47</sup> See MISSOC Comparative Tables, conditions for accident at workplace in Germany. Data are updated as of 1<sup>st</sup> January 2020

<sup>48</sup> ISSA Database, focusing on comparing countries between Germany and Malaysia under qualifying conditions for Accidents at Workplace.

<sup>49</sup> See MISSOC Comparative Tables, conditions for accident at workplace in Germany. Data are updated as of 1<sup>st</sup> January 2020.

<sup>50</sup> ISSA Database, focusing on comparing countries between Germany and Malaysia under qualifying conditions for Accidents at Workplace.

attendance allowance (*Pflegegeld*) of €351 to €1,400 (East Germany - €330 to €1,324) a month is paid if the insured requires the constant attendance of others to perform daily functions. In Malaysia, a constant-attendance allowance of RM500 a month is paid for total permanent disability if the insured requires the constant attendance of others to perform daily functions.<sup>51</sup> At this point, it was quite subjective to assess which country was more adequate, as it was only measurable with specific indicators based on the economic performance of the particular nations.<sup>52</sup>

Sixth, a redemption is possible at the request of the insured person if the degree of incapacity is less than 40%. If the degree of incapacity is 40% or greater, a redemption of up to 50% of the pension is possible for ten years.<sup>53</sup> Seventh, full accumulation is permitted for cumulation with earnings from work, while last, cumulation with other social security benefits is subject to the condition that employment injury pensions are paid at the full rate. If combined with the pensions granted under statutory pension insurance, the latter are suspended if the total of both types of benefits exceeds a certain ceiling. Annual earnings, which form the basis for employment injury pensions, are used as a guide to fix the abovementioned ceiling. When offsetting the pensions, a free allowance is not taken into account, which corresponds to the basic pension granted under the Federal War Victims' Relief Act (*Bundesversorgungsgesetz*) if the degree of incapacity is the same.

Moreover, a severe disability supplement (*Zulage für Schwerverletzte*) is provided, with 10% of the permanent disability pension being paid for up to two years if the insured has at least a 50% assessed loss of earning capacity and is not working or receiving another pension. An unemployment supplement (*Zulage bei Arbeitslosigkeit*) is paid if the insured is unemployed, and if the combined total disability and unemployment benefits are less than the transition allowance, the difference will be paid.<sup>54</sup> In Malaysia, there is no specific allocation or mechanism addressing unemployment benefits and severe disability supplements.

In addition, if combined with the social assistance benefits for jobseekers (*Grundsicherung für Arbeitsuchende*), the injury pension is considered an income. The adjustment of benefits in Germany is carried out annually in July according to changes in the pension value, and absolute decreases in pension benefits are not permitted.<sup>55</sup> The adjustment formula also takes into account changes in the ratio between the number of pensioners and the number of contributors. Malaysia's position on this is quite general and does not seem to be specific, as adjustments to benefits are based on changes in the cost of living and the finances of the social insurance system.<sup>56</sup>

Germany's statutory accident insurance also provides benefits in the event of death resulting from an accident at the workplace. The death benefits are categorized as follows:

- a. Surviving spouse
- b. Bereaved children/orphans
- c. Dependent parents and other relatives
- d. Maximum for all beneficiaries

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<sup>51</sup> ISSA Database, focusing on comparing countries between Germany and Malaysia under qualifying conditions for Accidents at Workplace.

<sup>52</sup> In response to this, researcher would like to make an example to ILO Convention No 102. Even the Convention No 102 considers that providing social security benefits subject to economic indicators of particular countries. If the State ratify Convention No 102, at least State should recognize to provide three branches out of nine branches. In the case of employment injury benefits, if State may ratify Convention No 102 for minimum standards. Once State ratify Convention No 121 the specific convention for employment injury benefits, Part VI of Convention No 102 is no longer applicable as a result of the ratification of Convention No.

<sup>53</sup> See MISSOC Comparative Tables, conditions for accident at workplace in Germany. Data are updated as of 1<sup>st</sup> January 2020.

<sup>54</sup> ISSA Database, focusing on comparing countries between Germany and Malaysia under qualifying conditions for Accidents at Workplace.

<sup>55</sup> See MISSOC Comparative Tables, conditions for accident at workplace in Germany. Data are updated as at 1<sup>st</sup> January 2020.

<sup>56</sup> ISSA Database, focusing on comparing countries between Germany and Malaysia under adjustment of benefits for permanent disablement in Accidents at Workplace.

#### e. Death grant

Under the category of a surviving spouse, for a widow or widower aged less than 47 years, a monthly pension based on the gross salary in the year prior to the insured event is 30% for a maximum of 24 months. A widow or widower aged over 47 years or occupationally or generally incapacitated or with at least one child will receive an orphan's pension such as a monthly pension based on the gross salary in the year prior to the insured event times 40% divided over 12 months. The personal income earned in excess of a free allowance will be offset against the survivor's pension at 40%.<sup>57</sup> In Malaysia, the surviving spouse receives a benefit for life. The calculation is based on 90% of the assumed average daily wage of the insured person.

In principle, partners in registered civil unions are also entitled to benefits. For bereaved children/orphans, each child up to the age of 18, or 27, who is receiving vocational training or is disabled, is entitled to receive a monthly pension. The monthly pension for orphans who have lost one parent amounts to the gross salary in the year prior to the insured event x 20%/12 months, and the monthly pension for orphans who have lost both parents amounts to the gross salary in the year prior to the insured event x 30%/12 months. For dependent parents and other relatives, under the death benefit, they will be entitled to the pension essentially maintained by the deceased, which is calculated on the gross salary in the year prior to the insured event x 20%/12 months or E x 30% for a couple, while for parents and grandparents, priority is given to the parents.<sup>58</sup>

The coverage also provides a death grant for widows/widowers, orphans, step and foster children, grandchildren, siblings, former spouses, parents and grandparents. The death grant amount is €5,340 for West Germany and €4,920 for East Germany. The death grant will be paid to the person who bears the funeral costs and is 1/7 of the reference amount for 2019 at the date of death.<sup>59</sup> In Malaysia, the death grant is known as a funeral benefit and is similar to the benefit for death resulting from employment injury.

Rehabilitation is provided as part of the permanent incapacity benefit, with functional rehabilitation being part of the medical care on the initiative and at the expense of the competent accident insurance institution. In addition, retraining and vocational guidance for adaptation to a new occupation are also provided where necessary. Wage replacement benefits are paid during vocational rehabilitation. In the event of the risk of an occupational illness arising, existing conditions being aggravated or the employee suffering a relapse, the accident insurance institution should initiate preventive measures at the workplace. Otherwise, they should recommend a change of occupation.

If this leads to a reduction in income, the insurance pays as compensation a one-off allowance up to the amount of the full pension (2/3 of the gross salary in the year prior to the insured event) or a monthly transitional benefit of up to 1/12 of a full pension for a maximum of 5 years.<sup>60</sup> In Malaysia, a rehabilitation benefit under employment injury benefits is only provided for local workers, while migrant workers are subjected to discriminatory treatment under the current laws and scheme provided by the government. Under the administrative laws of Germany, rehabilitation measures are provided for migrant workers, as the insurance requirement is determined by the income and family situation of workers, regardless of their nationality.<sup>61</sup>

Hence, based on this analysis of Germany obtained from multiple reports and databases, the researcher is of the view that the social security system in Germany provides comprehensive coverage, protection and entitlement of benefits for employment injury. As mentioned earlier, the features adopted by Germany are more comprehensive in terms of compensation, with coverage of benefits such as rehabilitation benefits. For example,

<sup>57</sup> See MISSOC Comparative Tables, conditions for accident at work place in Germany. Data are updated as at 1<sup>st</sup> January 2020.

<sup>58</sup> See MISSOC Comparative Tables, conditions for accident at work place in Germany. Data are updated as at 1<sup>st</sup> January 2020.

<sup>59</sup> See MISSOC Comparative Tables, conditions for accident at work place in Germany. Data are updated as at 1<sup>st</sup> January 2020.

<sup>60</sup> See MISSOC Comparative Tables, conditions for accident at work place in Germany. Data are updated as at 1<sup>st</sup> January 2020.

<sup>61</sup> See Andreas Müller, Matthias M. Mayer, Nadine Bauer, Federal Office for Migration and Refugees 2014, Social Security for Third-Country Nationals in Germany, Study by the German National Contact Point for the European Migration Network (EMN). See also European Commission, Your social security rights in Germany, 2018, Directorate-General for Employment, Social Affairs and Inclusion. Page 26-29. See also European Commission, 2014, Synthesis Report of Migrant access to social security and healthcare: policies and practice, Migrant access to social security and healthcare: policies and practice, European Migration Network Study, page 31.

Germany uses gross monthly income as the basis for the calculation of compensation, while Malaysia bases its calculation on daily income.

The major difference is that there is no discrimination against migrant workers, who may be either EU nationals or third-country nationals, in assessing their rehabilitation benefits. This is because as long as the workers are insured, they are entitled to the same benefits as local workers. It must be acknowledged here that no system is perfect, but there is always something to learn from each system or by comparing practices. For example, Germany has a good track record in the ILO under the supervision of the CEACR and CAS, as the country has never been condemned or received any bad remarks from those committees in their annual report at the ILC, when matters arising from concerns about the treatment of migrant workers are discussed.<sup>62</sup> In addition, social security practices in Germany, particularly with regard to employment injury benefits, are coordinated and administered so that benefits are adjusted annually to ensure that workers are protected while conducting their jobs. On the other hand, in Malaysia, benefit adjustments are subject to the cost of living and the financial strength of the social security system.

## EMPLOYMENT INJURY BENEFITS IN SWEDEN

The Swedish social security system, except for unemployment insurance, is under the jurisdiction of the Ministry of Health and Social Affairs (*Socialdepartementet*).<sup>63</sup> The basic insurance provided is sickness insurance (*sjukförsäkring*), parental insurance (*föräldraförsäkring*), old-age pension (*ålderspension*), survivors' pension (*efterlevandepension*), sickness compensation (*sjukersättning*), activity compensation (*aktivitetsersättning*) and accidents at work and occupational disease insurance (*arbetskadeförsäkring*). These are governed by the Social Insurance Division under the supervision of the Swedish Social Insurance Agency. The Swedish Social Insurance Agency provides central administration and supervision in the event of injury at the workplace with regard to employment injury benefits. Both Sweden and Malaysia are similar in this respect, where employment injury benefits are governed by a specific organization, which, in the case of Malaysia, is the SOCSO.<sup>64</sup>

The social security system consists of residence-based insurance, which includes fixed minimum benefits and income-related benefits, including loss of income. The scheme covers anyone who lives or works in Sweden. A person who has his or her real residence in Sweden is considered a resident. The right to benefits from the Swedish social insurance scheme is mainly controlled by the Social Insurance Code (*socialförsäkringsbalken*), which came into force on 1 January 2011. Accordingly, the right to benefits is dependent on either residency in the country or jobs in the country but not on nationality.<sup>65</sup>

Social insurance in Sweden has multiple facets, ranging from parental leave and childcare to sickness and injury insurance, disability support and caring for elderly individuals. It covers all Swedish residents. The Swedish social security system is largely financed by statutory contributions from employers and workers under the national basic pension and insurance scheme. Many employers augment these contributions with payments under work-based arrangements with their workers. Individual workers may also complement their private insurance provision.<sup>66</sup>

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<sup>62</sup> See Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018) on Germany, Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). Remarks raised by the committee only for clarification and updates of recent status and information.

<sup>63</sup> See MISSOC Comparative Tables, organization structure for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020

<sup>64</sup> See ISSA Database, focusing on comparing countries between Sweden and Malaysia under administrative organization for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form\\_build\\_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5l&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form_build_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5l&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

<sup>65</sup> European Migrant Network, 2013, Migrant access to social security: Policies and practice in Sweden Report from EMN Sweden 2013:4, Migrationsverket (Swedish Migration Board), 2014.

<sup>66</sup> The Swedish social security system, establishment guide, Business Sweden, April 2018.

In general, the Swedish Social Insurance Agency provides several benefits for workers who incur work-related injuries or illnesses, such as an annuity (*arbetsskadeföränta*), remuneration for costs (*kostnadsersättning*), and compensation for lost work income (*arbetsskadesjukpenning*). The same applies if the worker becomes physically or mentally ill due to his/her work. This applies to employees, contractors, and self-employed people and, in certain cases, students who are taking courses where they are exposed to particular risks. Employees benefit the most when they lose their income and incur costs due to their injury or illness. Employees may also be entitled to further compensation, as many employers have occupational injury insurance.<sup>67</sup>

Under the Social Insurance Code, social insurance is divided into residence-based insurance, which provides guaranteed amounts and benefits, and work-related insurance, which protects against loss of income.<sup>68</sup> Both categories apply equally to everyone who habitually resides or works in Sweden. Swedish citizenship is not one of the conditions for insurance. The Swedish Social Insurance Agency (*Försäkringskassan*) is responsible for the administration of social security, except for the old-age pension and survivors' pension, which are administered by the Swedish Pensions Agency (*Pensionsmyndigheten*).

Swedish social insurance is financed mainly by employers' contributions. Contributions by insured persons have recently been introduced to finance part of the old-age pension scheme. Contributions cover 75% of all insurance expenditures. The rest is financed by yields from funds and by taxes via the State Budget. Malaysia and Sweden are similar in that both have adopted a social insurance system.<sup>69</sup>

The main laws governing employment injury benefits in the event of an accident at the workplace in Sweden are the 1976 (Work Injury Insurance Act No. 380) laws, which were implemented in 1977, and the 1992 (No. 1698), 2002 (No. 222), and 2005 (No. 335) amendments to the 1991 (Employers' Sick Pay) and 2010 (Social Insurance Code) amendments, which were implemented in 2011. The first law on employment injury benefits was adopted by Sweden in 1901.<sup>70</sup>

Social assistance, which is not considered a part of social insurance in Sweden, comes under the jurisdiction of the Ministry of Health and Social Affairs. It is supervised by the National Board of Health and Welfare (*Socialstyrelsen*). The local administration of social assistance, including care and services for children and families and care for elderly and handicapped people, is the responsibility of municipalities. It is financed mainly through local taxation.<sup>71</sup>

According to the Mutual Information System on Social Protection, the financing for accidents at work and occupational diseases is mainly provided by employers and those who are self-employed. Employees also make a contribution of 0.2%. There is partial participation by the public authorities in regard to the financing of benefits for accidents at the workplace and occupational diseases. The financing of social security in Sweden is partly by

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<sup>67</sup> See European Commission, Your social security rights in Sweden, 2018, Directorate-General for Employment, Social Affairs and Inclusion. Page 30.

<sup>68</sup> See MISSOC Comparative Tables, organization structure for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020.

<sup>69</sup> See ISSA Database, focusing on comparing countries between Sweden and Malaysia under regulatory framework. Available at [https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form\\_build\\_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form_build_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

<sup>70</sup> See ISSA Database, focusing on comparing countries between Sweden and Malaysia under regulatory framework. Available at [https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form\\_build\\_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form_build_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020). See also See Social Security Programs Throughout the World: Sweden, 2018, Social Security Association, Social Security Administration Office of Retirement and Disability Policy Office of Research, Evaluation, and Statistics, Washington, DC. See also at <https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/europe/sweden.pdf> (accessed date 05<sup>th</sup> September 2020). See also

<sup>71</sup> See MISSOC Comparative Tables, organization structure for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020.

the State and is not wholly mandated to the social insurance agency. It is a mixed system that is based on the "pay as you go" concept.<sup>72</sup> To explain this further, financing can be categorized as follows:

1. Insured Persons: None
2. Employer: 0.2% of payroll.
3. Government: None; contributes as an employer.
4. Self-employed person: 0.2% of declared earnings.

In comparison, the contributions in Malaysia are as follows:

1. Self-employed person: RM13.10 to RM49.40 a month, based on 30 wage classes.
2. A self-employed person may choose to pay his or her contribution annually.
3. Employer: 1.25% of monthly payroll, based on 45 wage classes.
4. No minimum monthly earnings are used to calculate the contributions.
5. The maximum monthly earning used to calculate the contributions is RM4,000.
6. Government: None.

The applicable statutory basis for workplace accidents and occupational diseases is the Social Insurance Code (*Socialförsäkringsbalken*) of 2010, Section C, Papers 38-42.<sup>73</sup> The basic principles of social security under this statutory code are that the compulsory social insurance scheme is financed mainly by contributions covering employees and self-employed persons and provides mainly earnings-related cash benefits, while notional contributions, financed by taxes, are provided for parents of small children, military duty, university studies and sickness/activity compensation. The beneficiaries under this statutory code are all employees and self-employed persons, and there is no voluntary insurance. No one is excluded or exempted from this compulsory insurance.

This statute covers three risks, namely, accidents at work, traveling between home and work, and occupational diseases.<sup>74</sup> Any accident that occurs during working hours or in relation to the terms of employment is covered, and it defines an accident at work as any injury resulting from an accident at the workplace, including accidents occurring on the necessary journey to and from work.<sup>75</sup> For an injury to be considered to be due to such an accident, there should be stronger grounds for such a presumption than the contrary. In addition, in the event that an accident occurs while traveling between home and work, this risk is covered on the condition that the accident occurred along the normal way to/from work to qualify as an accident at work. Other journeys connected to or as a part of the work are also covered, such as journeys to/from the doctor for medical examinations connected to work or journeys to/from a day care center (to leave or pick up one's children) after or before work. The benefits stated above for accidents that occur while traveling for work-related purposes are also covered under the Malaysian scheme and laws.

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<sup>72</sup> See MISSOC Comparative Tables, financing principles for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020 and ISSA Database, focusing on comparing countries between Sweden and Malaysia under source of funds for Accidents at Workplace.

<sup>73</sup> See Section V Benefits in the event of an occupational injury under Social Insurance Code (2010: 110). Available at [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110\\_sfs-2010-110](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110) (accessed date 05th September 2020).

<sup>74</sup> See AVD. C Benefits in The Event of Illness or Injury at Work under Social Insurance Code (2010: 110). Available at [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110\\_sfs-2010-110](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110) (accessed date 05th September 2020).

<sup>75</sup> See Section 7 accidents while driving under Paper 39 General provisions on occupational injury Contents, Social Insurance Code (2010: 110). Available at [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110\\_sfs-2010-110](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/socialforsakringsbalk-2010110_sfs-2010-110) (accessed date 05th September 2020).

One of the conditions under temporary incapacity that must be met by the insured worker to be eligible for claims in the event of accident or injury at the workplace is that immediate notification must be made by the employer or by the self-employed person. There are no other special conditions.<sup>76</sup> The benefits for the insured person are benefits in kind under each category resulting from the injury, whether it is temporary incapacity<sup>77</sup>, permanent incapacity<sup>78</sup> or death. There is no special provision with regard to the choice of doctor or hospital in the event of injury leading to temporary incapacity. In terms of cash benefits, the insured person is entitled to compensation for a waiting period of one day, according to special rules. There is no formal limitation to the duration of benefits under cash benefits, but the sickness cash benefit (*sjukpenning*) may be converted into an activity compensation (*aktivitetsersättning*) (for persons aged 19 to 29 years) or a sickness compensation (*sjukersättning*) (for persons aged 19 to 64 years) if the illness continues for an extended period of time. The amount and duration of the benefits fall under the category of sickness rather than workplace accidents.

Eighty percent of the insureds' lost covered earnings are paid from day 15 to day 364. If it is a serious illness, then the period could be extended to 550 days for 75% of the insureds to lose their covered earnings. Employers will pay 80% of the insured's earnings from day two until day 14. Pensioners are limited to 180 days after retirement. The minimum annual earnings used to measure the benefits are 10,920 kronor, while the maximum annual earnings used to measure the benefits are 341,250 kronor. Self-employed persons will receive 80% of their missed earnings from day two until day 90 (depending on the waiting period chosen). The maximum regular benefit should be 726 kronor, and the maximum annual benefit should be 332,250 kronor.<sup>79</sup> The benefits for temporary incapacity stated here are adjusted periodically on the basis of market increases, unlike in Malaysia, where adjustments are made according to the finances of the social security system.<sup>80</sup>

Continuing the discussion on permanent incapacity under employment injury benefits in Sweden, for a complete (100 percent) loss of earning ability, 100% of the insured's lost earnings are charged as an annuity. The maximum annual earnings used to measure the benefits are 341,250 kronor. For a partial disability with an assessed loss of earning capacity of 6.7% to 99%, the full pension is compounded by the percentage of the assessed loss of earning capacity. The payment of a lifelong disability pension is coordinated with the payment of a disability pension under the old age, disability and survivors' pensions. Looking into the adjustment of benefits, the benefits are calculated periodically on the basis of adjustments in the combined wage and consumer price index compared to Malaysia, where the benefits are adjusted based on changes in the cost of living and the finances of the social insurance system.<sup>81</sup> The researcher is of the view that if Malaysia, like Sweden, were to adopt a specific indicator that is based on the combined wage and consumer price index, this would have a significant impact on the country. The use of a specific and accurate indicator will result in labor market improvements, but the category, nature and economic income of the countries receiving migrant workers are still subject to debate.

The entitlement to compensation must be according to the minimum level of incapacity, whereby compensation is given with a 1/15 reduction in earning capacity and subject to the assessment of the Social Insurance Agency (*Försäkringskassan*) on the level of incapacity. The right to annuity (*livränta*) is to be reviewed if a significant

<sup>76</sup> See MISSOC Comparative Tables, conditions and temporary incapacity for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020

<sup>77</sup> The benefits in kind are choice of doctor or hospital, payment of cost and contribution by person involved, cash benefits for waiting period, duration of benefits, and amount of the benefits.

<sup>78</sup> Minimum level of incapacity giving entitlement to compensation, Possibility of review, Reference earnings or calculation basis, Calculation method or benefit formula, Supplements for dependants, Supplements for care by another person, Redemption, Cumulation with earnings from work and Cumulation with other social security benefits

<sup>79</sup> See ISSA Database, focusing on comparing countries between Sweden and Malaysia under temporary incapacity benefits for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form\\_build\\_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form_build_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

<sup>80</sup> The same comparison for Malaysia under Germany discussion.

<sup>81</sup> See ISSA Database, focusing on comparing countries between Sweden and Malaysia under permanent incapacity benefits for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form\\_build\\_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=982&country2=910&country3=&op=Compare&form_build_id=form-BPmPih3ON1eGo3bLB5EKIbvqRym8RIEkD22qVXk8v5I&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

change has occurred in circumstances that are relevant to the decision to grant annuity or if the capacity to earn money through gainful work has significantly improved. Reference earnings or the calculation basis is determined by considering the income that is qualified for the sickness cash benefit (*sjukpenninggrundande inkomst*) at the time when the annuity (*livränta*) is to be paid out or the income that should have been such an income if the Social Insurance Agency (*Fjärsäkringskassan*) had known all the facts. This reference earnings/calculation basis is called an annuity basis (*livränteunderlag*).<sup>82</sup>

The minimum entitlement is 24% of the base price amount (*prisbasbelopp*), i.e., SEK 11,160 (€1,148) (46,500 x 0.24) per year, and the maximum entitlement is SEK 348,750 (€35,874) per year. The calculation method or benefit formula provides for 100% of the loss of earnings, and the benefit is paid monthly. With permanent incapacity, there is no redemption and no supplements for dependants and caretakers. Cumulation with earnings from work under the permanent incapacity caused by the injury occurs when the insured person who suffers an income decrease (whether in his/her old work or in a new job) can have the amount of annuity (*livränta*) increased, provided that the decrease can be considered to be an effect of the accident at work or occupational disease.

An increase in income from old or new work can lead to a reduction in the annuity. Other benefits under permanent incapacity can be accumulated with other social security benefits. However, the social security benefits that do not compensate for loss in income due to an accident at work or an occupational disease can still be paid. When combined with a social security pension, the annuity (*livränta*) is paid only to compensate for the loss of earnings not compensated through the pension.

In the event of death, the benefit under this circumstance is provided for the surviving spouse, bereaved children/orphans, dependent parents and other relatives, with the maximum being given for all the beneficiaries and a death grant. The benefit in the event of death resulting from an accident at the workplace for the surviving spouse is an adjusted annuity (*omställningslivränta*) with the same qualifications as in the pension scheme. The amount is calculated based on the annuity of the deceased and is 20% of the annuity if the deceased has surviving children who are entitled to an annuity; otherwise, it is 45%. The annuity is paid until the beneficiary reaches the age of 65. Bereaved children or orphans are entitled to 40% of the annuity of the deceased. If more than one child is entitled to the annuity, the percentage is raised to 20% for each additional child. The amount is divided equally among the children, and it is paid until the age of 18, and if the orphan pursues studies beyond that age, it will be paid until June of the year in which he/she turns 20. There is no death benefit for dependent parents or other relatives, and as mentioned earlier, the maximum for all eligible beneficiaries is 100% of the annuity. A death grant, known as a funeral grant (*begravningshjälp*), is also provided, and it amounts to 30% of the base price amount (*prisbasbelopp*) at the time of death for SEK 13,950 (€1,435), and it is to be paid to the persons administering the estate.

A rehabilitation benefit is also provided for accidents or injuries at the workplace. A rehabilitation benefit (*rehabiliteringsersättning*) is paid after a period of sickness if a person takes part in vocational training or pursues certain studies. The benefit is paid the same amount as the sickness cash benefit (*sjukpenning*). Loss of income as a result of an accident at work or occupational disease is compensated through an annuity (*livränta*) (long-term benefit) or during rehabilitation by a rehabilitation benefit (short- or medium-term benefit). Employees or employers/self-employed people may be entitled to work tools deemed necessary on medical grounds (*arbetshjälpmedel*). Healthcare benefits in kind are provided during rehabilitation, according to the provisions under healthcare benefits, with support from the Swedish Public Employment Service (*Arbetsförmedlingen*), which provides rehabilitation through labor market programmes (*arbetsmarknadspolitiska programme*).<sup>83</sup> As mentioned in the previous discussion on Germany's features, the researcher would like to emphasize again that

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<sup>82</sup> See MISSOC Comparative Tables, permanent incapacity benefits for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020.

<sup>83</sup> See MISSOC Comparative Tables, rehabilitation benefit for accident at workplace in Sweden. Data are updated as of 1<sup>st</sup> January 2020

this is what makes Germany and Sweden distinct from Malaysia, where migrant workers are clearly excluded from rehabilitation benefits under the existing Malaysian scheme and laws.<sup>84</sup>

## EMPLOYMENT INJURY BENEFITS IN THE UNITED KINGDOM

According to the data submitted to MISSOC through its system, the UK has a comprehensive state-administered social security scheme that covers the entire population. It consists of contributory, noncontributory and social assistance benefits. The contributory benefits and their administration are funded by the National Insurance (NI) Fund, which is financed by compulsory contributions from most workers and employers based on current income. The benefits cover old age, bereavement, incapacity, maternity, and unemployment and are paid at a predominantly flat rate.<sup>85</sup>

The noncontributory benefits are financed by general taxation and are dependent on individual circumstances (e.g., disability, children). Social assistance benefits such as housing benefits, income-based jobseekers' allowances, income-based employment and support allowances, income support (for people who are not working), and pension credit are also funded through general taxation and act as a safety net. The National Health Service (NHS) provides universal healthcare, which is financed by taxation and the National Institute of Nature (NI) Fund and is not dependent on the contribution record.

The Department for Work and Pensions (DWP) aims to run an affordable and sustainable welfare system that provides financial security and supports economic growth and improved productivity through the extension of opportunity and promotion of personal responsibility to help people transform their lives.<sup>86</sup> The key objectives are as follows:

1. Support economic growth and improved productivity by ensuring that work always pays
2. The position in Great Britain is described; similar arrangements apply in Northern Ireland. and people are supported to find and progress at work.
3. Help reduce the disadvantages faced by disabled people and people with poor health conditions through the welfare system and labor market
4. Increased savings for and financial security in later life
5. The number of children who benefit from an effective child maintenance arrangement should be maximized, family-based arrangements should be encouraged where appropriate, and parental conflict in families should be reduced.

The work of the main DWP business units is shown below:

1. Jobcenter Plus provides an integrated service to people of working age, helping them move into work and financially supporting those who cannot, including disabled people and their carers. It also helps employers fill job vacancies.
2. The pension service is responsible for pensions and helps people plan for their retirement.

<sup>84</sup> The exclusion came from order under the ESSA as the principal Act in Malaysia conferred by the power of Minister of Ministry of Human Resource.

<sup>85</sup> See MISSOC Comparative Tables, organization structure for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019.

<sup>86</sup> See ISSA Database, focusing on comparing countries between United Kingdom and Malaysia under administrative organization for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form\\_build\\_id=form-uE-iN3JEw5PIeG0Ash3bi3gEIAa3GFwRmtlsZ3wpo1A&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form_build_id=form-uE-iN3JEw5PIeG0Ash3bi3gEIAa3GFwRmtlsZ3wpo1A&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

3. The Child Maintenance Service operates statutory child maintenance schemes to ensure that parents who live apart meet their financial responsibilities with their children.
4. The Health and Safety Executive (HSE) protects people's health and safety by ensuring that the risks at work are properly controlled.

Her Majesty's Revenue and Customs is responsible for the collection and recording of contributions and the assessment and payment of tax credits for families with dependent children and working people with low incomes. It also administers the child benefit and guardian's allowance. Local authorities administer the housing benefit, while the Department for Business, Energy & Industrial Strategy is responsible for developing policies and legislation on parental leave and pay. Employers are responsible for paying statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay.<sup>87</sup>

The National Health Service authorities are funded to secure health services for their local population through contracts with NHS trusts and other service providers and professionals. Social care services are provided or purchased by local authorities within a financial and legislative framework determined by the Health Ministry.<sup>88</sup>

Migrants have access to social security on the basis of contribution benefits that individuals are entitled to through payment of a national insurance (NI) premium. These benefits include sickness, unemployment, injury, death, and maternity and retirement benefits. There are no migrant-specific requirements for eligibility to contribute benefits. Those benefits may be claimed by someone who has met the job requirements and made the requisite contributions.<sup>89</sup>

The industrial injury disability benefit (IIDB) is a noncontributory benefit. Europe, the United Kingdom and Latvia are the only countries where employment injury benefits are noncontributory.<sup>90</sup> The IIDB shall be responsible if people become sick or disabled as a result of an accident at work or if they have a prescribed occupational illness. This benefit is not payable to self-employed individuals. A worker is entitled to claim benefits from workplace accidents if he or she was working when the accident occurred and if the incident occurred in the United Kingdom. The benefits of occupational illness can be claimed if a worker has been working in a job that has induced the illness. Disability compensation is paid if the person is still affected 15 weeks after the date of the accident or onset of the illness. The benefit is payable in addition to illness or injury insurance. Circumstances, including age and impairment severity, can affect the amount of compensation earned, which ranges from £ 32.32 per week for a 20% disability to £161.60 per week for a 100% disability.

The earlier paragraphs generally mentioned the position of the social security system and Industrial Injuries Disablement Benefit (IIDB) in the United Kingdom. The following paragraphs will discuss in detail the coverage, financing, benefits and applicable statutes of the systems in Germany and Sweden, which have already been briefly discussed. The United Kingdom is a common law country in the European Union, and the features of its social security and employment injury benefits are different from those of systems in Sweden and Germany. Workplace accidents and occupational diseases are financed by taxes and not by contributions from employers or employees. In the long term, workplace accidents are financed by taxes from the State. In simple terms, it is a state noncontributory (tax-financed) "no-fault" scheme covering employees with flat-rate benefits.<sup>91</sup> The

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<sup>87</sup> See ISSA Database, focusing on comparing countries between United Kingdom and Malaysia under administrative organization for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form\\_build\\_id=form-uE-iN3JEw5PIeG0Ash3bi3gE1Aa3GFwRmtlsZ3wpo1A&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form_build_id=form-uE-iN3JEw5PIeG0Ash3bi3gE1Aa3GFwRmtlsZ3wpo1A&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

<sup>88</sup> See MISSOC Comparative Tables, organization structure for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019.

<sup>89</sup> See Laura Broomfield, Home Office, 2014, Migrant access to social security: Policies and practice in the United Kingdom National Contribution from the United Kingdom.

<sup>90</sup> See European Commission, Migrant access to social security and healthcare: policies and practice, European Migration Network Study 2014. Page 32.

<sup>91</sup> See MISSOC Comparative Tables, organization structure for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019.

United Kingdom has adopted two types of programs for social security, namely, a social insurance and social assistance system, unlike Malaysia, which only has a social insurance system.<sup>92</sup>

Moving to the applicable statutory basis for workplace accidents, the relevant statutes are the Social Security Contributions and Benefits Act 1992, Social Security Administration Act 1992, Pneumoconiosis, etc. (Workers' Compensation) Act 1979, and the Social Security Act 1998. The first law was enacted in 1897 in the United Kingdom for work injury,<sup>93</sup> and it was known as the Workers' Compensation Act, following a parliamentary proposal in 1893,<sup>94</sup> and it was largely equivalent to the 1884 Prussian law in establishing a "no-fault" doctrine of compensation.<sup>95</sup>

The beneficiaries of workplace accidents are employees, and no voluntary insurance is required as long as they have been working and were paid employees at the time of the accident or when they contracted the industrial disease. It is not payable to any self-employed persons (including nationals) because they have their own insurance schemes. Only two risks are covered under workplace accidents, namely, accidents at work and occupational diseases. Under the United Kingdom system, an 'accident at work' is defined as a personal injury caused while a person is at work or while he or she is working.<sup>96</sup>

For workplace accidents, no qualifying conditions are needed, and there is no time limit for declaring an accident at work, but the benefit is backdated to only three months from the date of claim. There are several benefits of workplace accidents in the United Kingdom system. The benefits are similar to those provided under the systems of Germany and Sweden, namely, temporary incapacity, permanent incapacity, death and rehabilitation benefits. In the event of an accident at the workplace resulting in temporary incapacity, there are no special provisions for accidents at work/occupational diseases, as these are subject to benefits from healthcare and medical treatment. With respect to the payment of costs and contributions by the injured person, no charges are made to the patient for NHS services, and NHS medical costs are funded by the state through taxation.<sup>97</sup> In the United Kingdom, for a work-related injury, the insured must be an employee and assessed by means of a medical examination to have at least a 14% disability compared to Malaysia, where it is more general and flexible, without any degree or percentage, as long as it is authorized by a medical practitioner.<sup>98</sup>

In general, to qualify for IIDB, the general conditions must be met based on the following circumstances: the employee, such as a migrant worker, was in employment or in an approved employment training scheme or course when the accident or event occurred, and the work accident or event that caused the illness or disability occurred in England, Scotland or Wales.<sup>99</sup>

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<sup>92</sup> See ISSA Database, focusing on comparing countries between United Kingdom and Malaysia under type of programme for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form\\_build\\_id=form-uE-iN3JEw5PIeG0Ash3bi3gEIAa3GFwRmtlsZ3wpo1A&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form_build_id=form-uE-iN3JEw5PIeG0Ash3bi3gEIAa3GFwRmtlsZ3wpo1A&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

<sup>93</sup> See Social Security Programs Throughout the World: United Kingdom, 2018, Social Security Association, Social Security Administration Office of Retirement and Disability Policy Office of Research, Evaluation, and Statistics, Washington, DC. See also at <https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/europe/united-kingdom.pdf> (accessed date 05<sup>th</sup> September 2020).

<sup>94</sup> See also in Hansard, Workmen (Compensation for Accidents) Bill. HL Deb 20 July 1897 vol 51 cc515-56, available at <https://api.parliament.uk/historic-hansard/lords/1897/jul/20/workmen-compensation-for-accidents-bill> (accessed date 05<sup>th</sup> September 2020).

<sup>95</sup> See Guyton, G P. "A brief history of workers' compensation." The Iowa orthopedic journal vol. 19 (1999): 106-10.

<sup>96</sup> See MISSOC Comparative Tables, applicable statutory basis for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019.

<sup>97</sup> See MISSOC Comparative Tables, qualifying conditions for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019.

<sup>98</sup> See ISSA Database, focusing on comparing countries between United Kingdom and Malaysia under qualifying conditions for Accidents at Workplace. Available at [https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form\\_build\\_id=form-uE-iN3JEw5PIeG0Ash3bi3gEIAa3GFwRmtlsZ3wpo1A&form\\_id=countries\\_comparison\\_form](https://ww1.issa.int/country-profiles/comparison?country1=1001&country2=910&country3=&op=Compare&form_build_id=form-uE-iN3JEw5PIeG0Ash3bi3gEIAa3GFwRmtlsZ3wpo1A&form_id=countries_comparison_form) (accessed date 05<sup>th</sup> September 2020).

<sup>99</sup> See Hansard European Commission, Your social security rights in United Kingdom, 2018, Directorate-General for Employment, Social Affairs and Inclusion. Page 24.

Moving to temporary incapacity due to injury, a cash benefit is also provided under the Industrial Injuries Disablement Benefit, which is payable weekly from the 91st day after the date of the industrial accident or the onset of the disease, except for mesothelioma, which is payable from the date of the onset of the disease (all subject to a limitation of 3 months on backdating). The cash benefit under temporary incapacity is only payable for the duration of the disablement assessment. Apart from that, the amount of the benefit for temporary incapacity under the Industrial Injuries Disablement Benefit is paid at the same rate, whether the incapacity is temporary or permanent. The rate of the benefit depends on the degree of disablement. Nothing is payable if the degree of disablement ranges from 1%-13%, except for pneumoconiosis, which is treated as 20% for the same range of disablement. The amount of the benefit is paid on a weekly basis in 10% increments, according to the level of disablement (rounded to the nearest 10%), with a 20% level of disablement being paid GBP 34.96 (€39) and a 20% to 100% level of disablement being paid GBP 174.80 (€194).<sup>100</sup>

For permanent incapacity as a result of injury at the workplace, the minimum level of incapacity is 14%, except for occupational diseases, where 1% compensation is provided for pneumoconiosis, diffuse mesothelioma and byssinosis, and 20% compensation is provided for occupational deafness. The assessment of the level of incapacity is usually made by a healthcare professional, and a reconsideration through a review is possible if circumstances change, but normally, there are no reassessments. Reference earnings or calculations for permanent incapacity are not applicable because the Industrial Injuries Disablement Benefit is not based on earnings but is paid at the same rate, whether the incapacity is temporary or permanent. No supplements are provided for the dependents of the injured person with permanent incapacity.<sup>101</sup>

If the injured person is cared for by another person, a constant-attendance allowance (CAA) is payable to persons assessed with 100% disablement who need someone to care for them regularly. This allowance is payable at four rates, according to the level of care needed, as follows:

1. Exceptional rate: GBP 139.80 (€155) per week.
2. Intermediate rate: GBP 104.85 (€116) per week.
3. The normal maximum rate was 69.90 (77€) GBP/week.
4. Part-time rate: GBP 34.95 (€39) per week.

An exceptionally severe disablement allowance is payable at GBP 69.90 (€77) per week if there is entitlement to a constant-attendance allowance at the two higher rates, and the need for care is likely to be permanent. Another important matter under permanent incapacity in the United Kingdom is that no redemption is applicable, and full accumulation is permitted for cumulation with earnings from work. A full cumulation is possible with contributory benefits for cumulation with other social security benefits, but it has to be taken into account in full for certain income-related benefits.

Injury at the workplace resulting in death is covered under the system of the United Kingdom as a workplace accident benefit, but there are no special provisions relating to benefits for the surviving spouse, bereaved children/orphans, dependent parents or death grant. The benefits are not addressed under workplace accidents but are placed under survivors' benefits<sup>102</sup>. Rehabilitation has not been placed under injury benefits, and the system in the United Kingdom has categorized rehabilitation benefits under invalidity and return to active life.<sup>103</sup>

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<sup>100</sup> See MISSOC Comparative Tables, benefits for temporary incapacity under accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019

<sup>101</sup> See MISSOC Comparative Tables, permanent temporary incapacity for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019

<sup>102</sup> Survivors' benefits as right to social security is not part of discussion under this paper.

<sup>103</sup> See MISSOC Comparative Tables, death benefits for accident at workplace in United Kingdom. Data are updated as of 14<sup>th</sup> January 2019

## SOCIAL SECURITY AGREEMENT BETWEEN MIGRANT WORKERS IN SENDING AND RECEIVING COUNTRIES

There are various forms and mechanisms to protect the right to social security of migrant workers. One of the most crucial and effective mechanisms is social security agreements. Social security agreements (SSAs) between sending and receiving countries will ensure that both parties benefit in several ways<sup>104</sup>. Social security agreements can be either bilateral or multilateral. Some states opt to have a Memorandum of Understanding (MOU) rather than an agreement to avoid being legally bound to that agreement. One example is the case of Malaysia. Malaysia is one of the receiving countries for migrant workers in the ASEAN, and the approach of the Government of Malaysia is to only have MOUs, which have no effective impact or outcome in protecting the right to social security.<sup>105</sup> Before discussing the social importance of SSAs in protecting the right to social security of migrant workers in this section, it is necessary to discuss the principles, types, and role of SSAs. Then, the discussion will cover the positions and practices of sending and receiving countries in taking care of the social security of migrant workers, who contribute greatly to the economies of the host states.

Malaysia signed bilateral MOUs for handling labor migration in 1984. Among the countries sending migrant workers to Malaysia are the Philippines, Indonesia, Myanmar, Nepal, Bangladesh, Pakistan, India, Vietnam, Cambodia and others. Currently, the Government of Malaysia has MOUs<sup>106</sup> with selected sending countries for migrant workers, the most recent being the MOUs signed by Sri Lanka, China, Thailand, Bangladesh, Pakistan, India, Vietnam and Indonesia.<sup>107</sup>

Therefore, the importance of SSAs being legally binding documents between the sending and receiving countries of migrant workers is important. To date, the government of Malaysia has signed bilateral MOUs only with countries sending migrant workers. At this point, the researcher is of the view that this is to avoid being legally committed to the sending countries in protecting their workers. The reason why Malaysia is not signing or embarking into SSAs is because the country has no reciprocity laws, and the SSA must be reciprocal between both countries.<sup>108</sup> The question of reciprocity should not be raised from a fundamental aspect in regard to Malaysia's position for not having any reciprocity law. Rather, the matter should be effectively addressed through the principle of reciprocity adopted by the ILO on the ratification of its conventions. For example, Malaysia is a State Party to Convention No. 19, and thus, the reciprocity principle is applicable to States Parties to the same convention. For example, the Philippines is a sending country for migrant workers, and they send their workers across the globe. Sweden, Germany and the United Kingdom have SSAs with the Philippines<sup>109</sup> to ensure the importance to both parties of decent work and labor migration.

The researcher would like to emphasize this here to clarify the importance of an SSA by analyzing the salient features adopted by Germany and Sweden in their SSAs with the Philippines. The agreement on Social Security between the Republic of the Philippines and the Kingdom of Sweden was signed on 15 October 2015 in duplicate in Stockholm in both the English and Swedish languages, with each text being equally authentic. The agreement entered into effect on 1 November 2019. The rights of both parties are protected under the agreement, with both parties making a legal commitment through the SSA. Article 3 of the agreement provides that it shall apply to any person who is subject to the legislations of the Philippines and Sweden. Article 4 provides that all persons subject to the legislation of the Philippines and Sweden receive equal treatment in social security. Article 2 of

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<sup>104</sup> The benefit could be equal treatment, applicable legislation, commitment and facilitation on procedural matters of social security between sending and receiving countries.

<sup>105</sup> Researcher will discuss how importance is the social security agreements between sending and receiving countries.

<sup>106</sup> . In certain cases, however, despite the presence of a structured labor migration mechanism, issues of violence and deception have persisted, leading to political tensions and even moratoriums on the placement of workers. This is based on Review of labor migration policy in Malaysia conducted by ILO in 2016. See note below.

<sup>107</sup> Review of labor migration policy in Malaysia/Tripartite Action to Enhance the Contribution of Labor Migration to Growth and Development in ASEAN (TRIANGLE II Project), ILO Regional Office for Asia and the Pacific. - Bangkok: ILO, 2016.

<sup>108</sup> Data gathered from interview with authority of social security.

<sup>109</sup> See 14 list of SSAs of Philippines with receiving countries of migrant workers. Available at <https://www.sss.gov.ph/sss/appmanager/pages.jsp?page=SocSecAgreement#:~:text=Overview,countries%20that%20host%20Filipino%20migrants.&text=157%20on%20the%20Maintenance%20of,residing%20outside%20their%20own%20country.> (accessed date 05<sup>th</sup> September 2020).

the agreement provides that both parties cover employment injury benefits, as stated under the relevant legislation of the contracting States. The same approach to equal treatment has been adopted by Germany through Article 4 of the SSA between Germany and the Philippines. Thus, the researcher believes that in regard to Malaysia's position with MOUs at the moment, Malaysia should take further steps to protect labor rights as a human right, mainly in terms of employment injury benefits under social security. Malaysia will not lose or be indiscreet if it is to have SSAs with the sending countries of migrant workers, as Malaysia can maintain its own position through negotiations.

The ILO has established the main principles governing SSAs either bilaterally or multilaterally. The established principles are laid down in treaties, and at the ILO, the legal instruments are Convention No. 118 and Convention No. 157, which provide specific guidance to Member States on how to effectively coordinate and protect the social security of migrant workers. On the basis of the principles of C No. 118 and C No. 157, SSAs usually cover the following aspects:

- a. Equality of treatment, addressing restrictions on the ground of nationality;
- b. Export of benefits, addressing the issue of portability of coverage of social security from the state of origin to the host state;
- c. Dealing with double coverage or dual tax;
- d. Administrative assistance for facilitating claims and verification of eligibility to address procedural matters;
- e. "Totalization", or the combination of periods of contribution or affiliation in all the countries that are parties to the agreement to allow the migrant worker to meet the qualifying period.

However, the practices of SSAs do not cover all the principles because the recommended features of SSAs are to idealize the realization of the principles<sup>110</sup>. Countries might cover only some aspects of their SSAs, for example, administrative assistance and verification of eligibility, to facilitate claims on social security<sup>111</sup>. The only systems of social security that have implemented and made great efforts to realize SSAs with those principles are those of the European Union, as discussed above.

### **Unilateral Social Security Agreements**

The host states where migrant workers are working may ensure that they are given equal treatment with nationals as their right to social security through unilateral social security agreements. This approach can ensure the protection of social security by providing extensions and portability of benefits abroad from sending to receiving countries<sup>112</sup>.

- a. Such agreements are advantageous for countries that are sending a large number of their nationals to work abroad. There are fewer administrative issues, and it is easier to handle unilateral agreements because no coordination is needed with other countries.
- b. However, the problem with this type of agreement is that its scope for the entitlement of benefits and schemes is limited.

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<sup>110</sup> Pasadilla, Gloria O. (2013): Social security for migrant labor in the Greater Mekong Subregion, ARTNeT Working Paper Series, No. 122, Asia-Pacific Research and Training Network on Trade (ARTNeT), Bangkok.

<sup>111</sup> Mercosur is the example of this practice when it only facilitates for request of workers' pension who worked in the four Member States (Argentina, Brazil, Paraguay, and Uruguay).

<sup>112</sup> Social Protection Department, International Labor Office.

## Bilateral Social Security Agreements

There are many examples of bilateral social security agreements ensuring protection for the most basic to the most extended social security entitlement to benefits and schemes<sup>113</sup>. An agreement will be reached between two countries after negotiations on the benefits for both parties. Usually, the agreement includes the procedures and forms as well as the persons and benefits covered, particularly by the individual agreement only<sup>114</sup>.

- a. The advantage of being a party to this type of agreement is that the parties are flexible in choosing the kinds of benefits they want to offer and are willing to cover based on their interests and needs. The administrative burden under this type of agreement is usually limited due to the nature of the agreement, which involves only two countries.
- b. However, the greatest problem with this type of agreement is that states might hinder or avoid protecting the right of migrant workers to social security, based on principles of equal treatment, on the basis of nationality.

## Multilateral Social Security Agreements

Most states approach social security for migrant workers through bilateral social security agreements involving only two countries. Notably, multilateral social security agreements are often adopted by many countries. Examples of good practices in coordinating multilateral social security agreements can be found in all four corners of the world, in the EU as well as in the Caribbean, the Gulf Region, Latin America and West Africa.

- a. The advantage of adopting social security agreements multilaterally is that member states are allowed to coordinate the standards, rules, benefits covered, and requirements for nonnationals at one time. The main challenges in realizing multilateral social security agreements are administrative complexities and economic interests.

## Role of Social Security Agreements

Bilateral social security agreements between sending and receiving countries can be significant in providing minimum standards to ensure protection of the right to social security of migrant workers. The countries sending migrant workers can negotiate for greater rights and the well-being of their nationals working in the receiving countries through compliance and the obligations of the agreement.

Less-skilled workers, in particular, those coming from sending countries, are mostly vulnerable and have less and inadequate social security protection than skilled workers. For example, the instruments in ASEAN countries do not provide adequate protection for less-skilled workers. The ASEAN Agreement on the Movement of Natural Persons, which supplements the ASEAN Framework Agreement on Services under Mode 4 of Services in Trade, only provides protection to businesses and people who are skilled workers.

In addition, less skilled workers are protected only through the declarations and recommendations of the ASEAN in promoting the rights of migrant workers, which had no effect since before and after the post-2015 ASEAN Vision on Social Protection<sup>115</sup>. Clearly, in regard to the right to social security for migrant workers, there are no legally binding instruments and no effective integration at the level of domestic agencies in coordinating migrant workers, for example, in Malaysia and Singapore, as receiving countries of migrant workers in ASEAN

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<sup>113</sup> The 3 selected EU Countries in this paper are the most effective and best practice on social security through Bilateral Social Security Agreement with Third Country (Non-EU Member States). In practice, sending countries of migrant workers willing to have bilateral social security agreement with receiving countries. For example, Philippines.

<sup>114</sup> Social Protection Department, International Labor Office. Available at [https://www.social-protection.org/gimi/gess/ShowWiki.action;jsessionid=kot-cE0sg-oiqgP\\_hy0S0L0fPsmnOOeUmvMq4dJUIFBncJHig26Q!445242879?wiki.wikiId=953&lang=EN](https://www.social-protection.org/gimi/gess/ShowWiki.action;jsessionid=kot-cE0sg-oiqgP_hy0S0L0fPsmnOOeUmvMq4dJUIFBncJHig26Q!445242879?wiki.wikiId=953&lang=EN) (accessed date 05<sup>th</sup> September 2020).

<sup>115</sup> Mukul G. ASHER, Fauziah ZEN, Social Protection in ASEAN: Challenges and Initiatives for Post-2015 Vision, ERIA Discussion Paper Series, February 2015.

countries. This is due to the lack of coordination and an integration system in Malaysia under the responsible agencies managing migrant workers<sup>116</sup>.

Looking into Singapore's position, the Singapore government has put the entire burden on employers to be responsible for the social security benefits of migrant workers<sup>117</sup>. The problem with Singapore's social security system is that there is discrimination due to a lack of enforcement and implementation.

The exploitation of migrant workers can be prevented and reduced through SSAs. The agreements can contain provisions for facilitating procedural matters, portability of social security entitlements, dispute settlement procedures, and remedies for violations of rights from the very start for sending and receiving countries<sup>118</sup>. Multilateral SSAs usually cover the context of labor and the free movement of workers to integrate the economies of the region. Migration is the key indicator in the integration process among member states of a region, and this type of agreement will result in the coordination or harmonization of social security in the region.

Labor and migration policies are shaped on the basis of equal treatment for the nationals of member states and can be extended to third countries as well as EU coordination on social security. Social security rights acquired in the host states, where migrant workers are working, can be ensured and maintained bilaterally or multilaterally through social security agreements. Bilateral social security agreements usually include provisions on nondiscrimination between nationals and migrants with respect to social security and rules of cooperation between the social security institutions of the signatory countries.

## CONCLUSION

This study demonstrates that effective employment injury benefit systems are characterized by comprehensive coverage, equality of treatment, and strong institutional coordination. Germany and Sweden exemplify best practices through inclusive and well-integrated systems, while the United Kingdom provides a more limited model. Malaysia, as a major receiving country for migrant workers, faces significant challenges in ensuring adequate protection under its current framework. Enhancing alignment with international labour standards and adopting selected best practices particularly in relation to non-discrimination, rehabilitation, and social security agreements would significantly improve the protection of migrant workers' rights

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<sup>116</sup> See World Bank Report 2013. *Immigrant Labor*, World Bank Malaysia, KL Office.

<sup>117</sup> See Rohaida Nordin, Muhammad Faliq Abd Razak & et al., *International Journal of Business and Society*, Vol. 19 S3, 2018, 400-413.

<sup>118</sup> *Social Protection for Migrant Workers: National and International Policy Challenges*, Wouter van Ginneken, *European Journal of Social Security*, Volume 15 (2013), No. 2

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