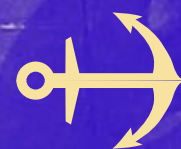




ILO Convention 188 Explained



ILO Convention 188 Explained¹



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1. The majority of the content of this pamphlet is taken verbatim from the footnoted International Labour Organisation (ILO) sources. The sources pertaining to the information in an entire section are indicated by a footnote in the heading of the section.



1. Overview²

Over 58 million people around the world work in the fishing industry. Over 15 million people are working full-time on board fishing vessels. Those who earn a living from the sea are often exposed to challenging and risky conditions. The International Labour Organisation's (ILO) international labour standard for work on board fishing vessels is the Work in Fishing Convention, 2007 (No. 188). It aims to ensure decent conditions of work with regard to minimum requirements for work on board: conditions of service; accommodation and food; occupational safety and health protection; medical care and social security. The Convention is a valuable tool for addressing issues concerning migrant fishers and eliminating forced labour and child labour in the fishing sector. To date 17 countries have ratified the Work in Fishing Convention: Angola, Argentina, Bosnia and Herzegovina, Congo, Estonia, France, Lithuania, Morocco, Namibia, Netherlands, Norway, Poland, Portugal, Senegal, South Africa, Thailand, and the United Kingdom.³ The Convention came into force on 17 November 2017 once 10 States had ratified.

2. "Fisheries," International Labour Organisation, accessed April 2, 2019, <https://www.ilo.org/global/industries-and-sectors/shipping-ports-fisheries-inland-waterways/fisheries/lang--en/index.htm>; Ensuring decent work for fishers: ILO's Work in Fishing Convention, 2007 (N°188), produced by the International Labour Organisation, May 29, 2013, video, 10:54, <https://www.youtube.com/watch?v=1UldDeugSyM#t=76>; and International Labour Organisation, Thailand Ratifies Work in Fishing Convention, January 30, 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_666581/lang--en/index.htm.
3. "Ratifications of C188 - Work in Fishing Convention, 2007 (No. 188)," International Labour Organisation, accessed January 15, 2020, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312333.

2. Ensuring fishers have decent conditions of work on board fishing vessels⁴

In many countries laws and regulations that address the conditions of work of seafarers at least partly also address conditions of work of marine fishers. However, the issues faced by fishers often differ from those faced by seafarers working on cargo or passenger ships. For this reason the ILO's Maritime Labour Convention, 2006, which concerns conditions of work on ships, excludes fishing vessels from its application. To ensure fishers, including fishers working in coastal and inland waters, have updated and comprehensive legal protection States need to ratify the Work in Fishing Convention, 2007 (No. 188).

The Work in Fishing Convention was tailored to reflect the particular characteristics of the fishing industry and the situations fishers face during their day-to-day working lives. Fishers have conditions of work that are different from those experienced by workers in other sectors. Fishing is hazardous. The fatality rate of fishers is typically several times higher than for other workers. There is also often no clear separation between working time and personal time. Many fishers live as well as work on their vessels, in conditions that can be cramped and congested. There may be long periods away from home and very long working hours. Access to adequate food and drinking water – as well as to recreational facilities when fishers are off-duty – can be an issue. Fatigue linked to long working hours has also been identified as a serious problem.

3. What is covered under Convention 188?

Application, eligibility, and scope⁵

The Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.⁶ Fisher is defined in the Convention as “every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers”.⁷ The scope of the Convention thus does not cover fishers who are not working on fishing vessels. The Convention applies to all ships or boats used or intended to be used for the purpose of commercial fishing, irrespective of the form of ownership.⁸ However, some provisions of the Convention apply only to vessels over 24 metres long or those that remain out at sea for three days or more. Commercial fishing means all fishing operations, including fishing operations on rivers, lakes or canals. Only subsistence fishing and recreational fishing are specifically excluded.⁹ Vessels involved in processing and transporting, but not catching fish, are not covered by the Convention.¹⁰

4. *Decent Working Conditions, Safety and Social Protection, Work in Fishing Convention 188 Recommendation 199*, (Geneva: International Labour Organisation, 2007), 2 and 7, accessed April 2, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161209.pdf.

5. *Decent Working Conditions*, ILO, 3, 6, 8 and 9.

6. “Work in Fishing Convention, 2007 (No. 188)”, adopted at the 96th International Labour Conference (ILC) of the International Labour Organisation (ILO) on June 14, 2007, Article 2 (1), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188.

7. Work in Fishing Convention, Article 1 (e).

8. Work in Fishing Convention, Article 1 (g).

9. Work in Fishing Convention, Article 1 (a). Refer to Appendix II of the Convention for an ILO informal opinion on the meaning of “subsistence fishing”.

10. *Frequently Asked Questions - Work in Fishing Convention, 2007 (No. 188)*, (Geneva: International Labour Organisation, 2012), accessed April 2, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_206454.pdf.

11. *Decent Working Conditions*, ILO, 8 and 9.



Responsibilities of fishing vessel owners, skippers and fishers¹⁷

Article 8 of the Convention establishes the responsibilities of fishing vessel owners, skippers and fishers.

- The owner of the fishing vessel is ultimately responsible for conditions of work on board the vessel. The fishing vessel owner has the overall responsibility to ensure the skipper is provided with the necessary resources and facilities to comply with the obligations of the Convention.
- The skipper has responsibility for the safety of the fishers on board and the safe operation of the vessel.
- The fishers are responsible for complying with the lawful orders of the skipper and applicable safety and health measures.

Minimum age¹²

Article 9 of the Convention establishes a minimum age for work on board fishing vessels and requires special protection for young fishers.

- The minimum age for work on board a fishing vessel is 16 years.
- Fifteen year olds are permitted to work as fishers in certain circumstances.
- In some situations, for example relating to safety and health concerns, fishers must be at least 18 years of age to be assigned to certain activities.

Medical examinations¹³

Articles 10 to 12 of the Convention address medical examinations. A certain level of fitness is needed on board fishing boats and medical examinations help protect not only the fisher who has undergone the examination but also other fishers on board.

12. *Decent Working Conditions*, ILO, 10.

13. *Decent Working Conditions*, ILO, 11.

14. *Decent Working Conditions*, ILO, 12.

15. *Decent Working Conditions*, ILO, 13.

16. *Decent Working Conditions*, ILO, 13.

17. *Work in Fishing Convention*, Article 22 (3)(b).



- No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.
- The medical certificate requirement can in some circumstances be relaxed for fishers working on fishing vessels less than 24 metres in length or which remain at sea for less than three days.

Manning and hours of work¹⁴

Articles 13 and 14 of the Convention address the serious problem of fatigue, which results from long working hours and insufficient rest periods at sea.

- Fishing vessels are to be sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper. Large vessels are required to carry a sufficient number of qualified fishers.
- Fishers must be given regular periods of rest of sufficient length to ensure safety and health.
- More stringent requirements are set for vessels that remain at sea for longer periods. However, skippers are also allowed to require fishers to work extra hours for the immediate safety of the vessel, persons on board or the catch, or for helping



other vessels in distress, as long as afterwards fishers receive more rest.

- Different arrangements of working hours, rest time and manning are allowed as long as representatives of fishing vessel owners and fishers are consulted and the arrangements do not undermine health and safety.

Crew lists and work agreements¹⁵

Articles 15 to 20 and Annex II of the Convention set out the requirement for fishing vessels to have a crew list and fishers to have the protection of a signed work agreement setting out the terms of the work they are performing.

- Every fishing vessel must carry a crew list, and provide this information to authorised persons ashore.
- Fishers working on vessels must have a work agreement that is comprehensible to them and is consistent with the provisions of the Convention.

Repatriation¹⁶

Article 21 of the Convention lays down the right of fishers to be repatriated when their agreements end, and for other reasons. Repatriation is normally to be at the expense of the fishing vessel owner. The flag State has the duty to intervene if the owner fails in his or her duties, and the State has the right to recover costs from the owner.

Recruitment and placement

Article 22 of the Convention sets out the standards in relation to recruitment and placement of fishers. The Convention requires States have in place laws, regulations or other measures to ensure “no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher”.¹⁷

15. *Decent Working Conditions*, ILO, 13.

16. *Decent Working Conditions*, ILO, 13.

17. *Work in Fishing Convention*, Article 22 (3)(b).

18. *Decent Working Conditions*, ILO, 14.

Wages

Articles 23 and 24 of the Convention address how fishers are to be paid.

- Fishers paid a wage must be paid in regular payments.
- All fishers working on board fishing vessels shall be given a means to transmit all or part of the payment received to their families at no cost.

Accommodation and food¹⁸

Articles 25 to 28 and Annex III of the Convention set out the standards for living accommodation and food on board.

- Fishing vessels must have sufficient room for the crew's living space.
- Issues such as ventilation, heating and cooling, lighting, and mitigation of excessive noise and vibration must be addressed.
- Fishers must have adequate sanitary facilities.

Proper accommodation has a direct effect on safety and health. For many fishers the vessel is not only where they work but also where they live for extended periods – not only while at sea but sometimes also while in port. Pressures to reduce accommodation space – often as the result of efforts to carry as much equipment and as many fish possible for the size of the vessel – can lead to unsustainable conditions on board. This can affect recruitment and retention of fishers.

The Convention does recognise what is appropriate for large vessels will not be so relevant for smaller boats or those which do not stay at sea for long periods of time. The Convention therefore sets dimensions for such areas as sleeping rooms for large vessels, but is less specific for small boats. The requirements for specific dimensions of rooms apply to newly built vessels, but not those already in service.

- Food carried and served on board must be of a sufficient nutritional value, quality and quantity.
- Drinking water must be of sufficient quality and quantity.



- Food and water must be provided by the fishing vessel owner at no cost to the fisher. However, costs can be recovered as an operational cost in accordance with national laws and regulations if the collective agreement or fisher's work agreement so provides.

Safety and health¹⁹

Articles 29 to 33 and Articles 38 and 39 of the Convention establish requirements for occupational safety and health, and a basic level of medical care on fishing vessels. Fishers face particular dangers as a consequence of their work. Fishers also suffer from special health problems due to the nature of their work. The Convention therefore aims to ensure States have in place laws, regulations or other measures to address health and safety issues.

- Adequate instruction and training for fishers in such things as handling fishing gear is required.
- Accidents are to be reported and investigated.
- Fishing vessels are to carry medical equipment, and have at least one person on board trained in first aid.
- Fishers have the right to be taken ashore promptly for medical treatment when they suffer serious injuries and illnesses. There are additional measures for larger vessels and for those staying at sea for more than three days.
- Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives.

Social security protection²⁰

Articles 34 to 37 of the Convention cover social security protection. Fishers in many countries do not have the social security protection available to other workers because of the particular nature of their work. The Convention thus requires States ensure fishers ordinarily resident in its territory, and their dependents to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers.

19. *Decent Working Conditions*, ILO, 15.

20. *Decent Working Conditions*, ILO, 16.





4. Why States should ratify Convention 188²¹

Fishing is one of the most hazardous occupations. Fishers face serious challenges to decent working conditions because of weather and seasonality and the generally hazardous nature of working in the marine environment. Though many fishing vessel owners treat their crews well, there are often informal work practices, and there are concerns worldwide about forced labour, human trafficking and the exploitation of migrant labour in fishing. Yet related laws and regulations are often non-existent or unclear. Gaps in labour laws can leave fishers unprotected. The Convention sets the standards for decent work on fishing vessels, standards that countries can enforce, including through inspections.

The Convention sets out binding requirements to address the main issues concerning work on board fishing vessels, including occupational safety and health and medical care at sea and ashore, rest periods, written work agreements, and social security protection at the same level as other workers. The Convention helps prevent unacceptable forms of work for all fishers, especially migrant fishers. It provides

21. *Convention on working conditions on fishing vessels enters into force*, produced by the International Labour Organisation, November 16, 2017, video, 1:14, https://www.youtube.com/watch?time_continue=52&v=Vxzw7XgyiPA; and International Labour Organisation, *ILO Work in Fishing Convention No.188 (2007) enters into force*, November 16, 2017, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_596898/lang--en/index.htm?utm_content=buffer76e83&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.



for regulation of the recruitment process and investigation of complaints by fishers. It aims to ensure that fishing vessels are constructed and maintained so that fishers have decent living conditions on board. The Convention also enhances dialogue among government, vessel owners and fishers. States ratifying the Convention commit to exercising control over fishing vessels, through inspection, reporting, monitoring, complaint procedures, penalties and corrective measures, and may then also inspect foreign fishing vessels visiting their ports and take appropriate action. This also helps prevent abuses including forced labour and trafficking. Protecting fishers also supports sustainable use of oceans and fisheries.

5. The advantages of Convention 188 for fishing vessel owners²²

The Convention ensures fair competition for fishing vessel owners by marginalising sub-standard fishing operations. Improvements to the consideration of the health and safety of fishers can lead to a reduction in the costs associated with occupational accidents. The minimum requirements of the Convention are comparable with current industry practices and are achievable by most fishing vessel owners. Fishing vessel owners will benefit from the documentation to be carried by certain fishing vessels under the Convention. This documentation will facilitate procedures when calling at foreign ports and when undergoing inspections by port State control officers. Fishing vessel owners whose vessels carry this document could save time and avoid potential detentions in ports.

A more socially responsible fishing sector will benefit fishing vessel owners by enhancing and improving the recruitment and retention of fishers. It is evident that a better protected workforce will be more efficient and readily available. Implementation of the Convention will strengthen social dialogue and improve the status and position of fishing vessel owners and their representative organisations.





6. How States can ratify Convention 188²³

The first step towards ratification will be to conduct a detailed gap analysis of national laws, regulations and other measures that are intended to give effect to the provisions of the Convention to determine where changes are needed to amend or otherwise adjust national laws or regulations. This process will involve all of the relevant government agencies and those people most directly affected by the Convention, including employer and worker organisations, particularly the representative organisations of fishing vessel owners and the fishers themselves.

*Flexible implementation*²⁴

The Convention is designed to be flexible to ensure the maximum number of States are able to ratify it. It takes into account the fact some States might have difficulty implementing all of its requirements. Implementation can

be through national laws and regulations, or through other measures, such as collective agreements.

The flexibility provisions are found in Articles 3, 4, 5, 28 and some Articles covering specific issues (for example, medical examinations).²⁵ Article 3 allows States, after consultation, to exclude limited categories of fishers or fishing vessels from any or all provisions of the Articles of the Convention, but only if the application of the Convention to a category of fishers or fishing vessels raises “special problems of a substantial nature”.

Article 4 is intended to help ensure in particular developing countries will be able to ratify and implement gradually the full range of protective measures provided for in the Convention. Article 4 is limited in scope and time and essentially a grace period during which States have to actively pursue the improvement and development of existing infrastructure or





available institutions, so as to permit the full application of the Convention. Article 4 (1) allows States to implement the provisions of Article 10 (1) (concerning medical examination); Article 10 (3) in so far as it applies to vessels remaining at sea for more than three days (also concerning medical examination); Article 15 (concerning crew lists); Article 20 (concerning fisher's work agreements); Article 33 (concerning risk evaluation with respect to occupational safety and health and accident prevention); and Article 38 (concerning protection in the case of work-related sickness, injury or death) progressively if immediate implementation is not possible "owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions". This must be done in accordance with a plan drawn up in consultation with the employers and workers organisations concerned, and in particular the representative organisations of fishing vessel owners and fishers, where they exist.

In Article 5, member States are permitted to choose the basis for measurement in relation to the equivalences set out in Annex I. The inclusion of this flexibility in the Convention was to take into account different practices and varying designs of traditional fishing vessels in different countries.

Annex II provides for the contents of a fisher's work agreement, giving States the flexibility to regulate the contents of the fisher's work agreement in another manner where national laws and regulations, or a collective bargaining agreement are in place.

Article 28 (2) provides that member States not in a position to implement the provisions of Annex III (Fishing vessel accommodation) may, after consultation, adopt in their laws and regulations other measures substantially equivalent to the provisions set out in Annex III, with the exception of the food and water provisions related to Article 27.

The flexibility clauses in the Convention allow States to adapt the Convention's provisions in a way that recognises the wide range of types of fishing vessels and fishing operations and the differences among countries. Throughout the Convention there are provisions that apply only to larger vessels or for those at sea for long periods. Less demanding provisions are made for smaller vessels and for boats on short fishing trips. States can choose to initially exclude some types of boats or fishing craft (for example, those fishing in inland waters like lakes, rivers and canals).

The flexibility permitted in the Convention has limits. In all cases the flexibility offered must be determined after or in consultation with the representative organisations of employers and workers concerned, and in particular the representative organisations of fishing vessel owners and fishers.

22. *Frequently Asked Questions*, ILO.

23. International Labour Organisation, "Guideline to undertake a comparative analysis of the Work in Fishing Convention, 2007 (No. 188) and national laws, regulations or other measures," (Geneva: International Labour Organisation, 2011), 1 and 2, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161223.pdf.

24. *Decent Working Conditions*, ILO, 17 and 18; *Handbook for improving living and working conditions on board fishing vessels*, (Geneva: International Labour Organisation, 2010), 3, accessed May 20, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_162323.pdf; and International Labour Organisation, "Working Paper No. 315, The flexibility clauses of the Work in Fishing Convention, 2007 (No. 188)," (Geneva: International Labour Organisation, 2018), 4, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_618563.pdf.



7. Conclusion

Fishing is one of the most challenging and hazardous occupations in the world. Fishers need global standards that provide protection, reflect their special situation and allow for sufficient flexibility in order to account for the differences within the sector and among different ILO member States. Above all, standards must serve to improve the conditions of as many fishers as possible.²⁶

The Work in Fishing Convention sets out in a comprehensive manner the minimum international standards for living and working in the fishing sector. It covers a broad range of issues particular to the fishing industry with the objective of ensuring that fishers have decent conditions of work on board fishing vessels. The Convention provides flexibility with respect to certain Articles so that as many States as possible can ratify. By ratifying the Convention, States commit to ensuring acceptable living and working conditions for fishers working on board fishing vessels, thereby contributing to the elimination of human rights abuse, forced labour and trafficking issues prevalent in this sector.

25. A table summarising the flexibility clauses of the Work in Fishing Convention is attached as an Appendix.

26. *Handbook*, ILO, 3.





8. Appendix²⁷

Table summarizing the flexibility clauses of the Convention, by Article

C188 Articles/Annexes	Flexibility clauses within the Article	Application of Article 4 on Progressive implementation	Application of Article 3 on Limited vessel/ fisher exclusions
Article 1 Definitions	None	NO	YES
Article 2 Scope	Determination of whether vessel is engaged in commercial fishing.	NO	YES
Article 3 Limited exclusions	Limited vessel/fisher exclusion of entire or part(s) of C188.	NO	YES
Article 4 Progressive implementation	Progressive implementation. Not with respect to vessels: of 24 m L and over; or remaining at sea for more than 7 days; or normally navigate > 200 nm from coastline of flag State; or are subject to port State control.	NO	YES
Article 5 Measurement	Usage of Length Overall or, with regard to Annex III, Gross Tonnage instead of Length.	NO	YES
Article 6 Implementation	Flexibility on instruments of implementation.	NO	YES
Article 7 Competent authority and coordination	None	NO	YES
Article 8 Responsibilities of fishing vessel owners, skippers and fishers	None	NO	YES
Article 9 Minimum age	Competent authority may permit 15 year olds to work on fishing vessels, no longer in compulsory schooling and engaged in vocational training.	NO	YES
Article 10 Medical examination	Exemptions possible for vessels < 24 m L, or at sea not more than 3 days.	YES	NO
Article 11 Medical examination	None	YES	YES
Article 12 Medical examination	None	NO	YES
Article 13 Manning and hours of rest General	None	NO	YES
Article 14 Manning and hours of rest Additional	Alternative but substantially equivalent requirements with regard to manning and hours of rest. Temporary exceptions for limited and specified reasons with regard to hours of rest.	NO	YES
Article 15 Crew list	None	YES	YES
Article 16 Fisher's work agreement	None; see Annex II.	NO	YES
Article 17 Fisher's work agreement	None	NO	YES
Article 18 Fisher's work agreement	None	NO	YES
Article 19 Fisher's work agreement	None	NO	YES
Article 20 Fisher's work agreement	Possibility to have the fisher's work agreement signed by a different party than the fishing vessel owner or his authorized representative.	YES	YES

Article 21 Repatriation	None	NO	YES
Article 22 Labour market services	Conditional possibility to have certain fishing vessel owner responsibilities allocated to private employment agencies as referred to in C181, Article 1, paragraph 1(b).	NO	YES
Article 23 Payment of fishers	None	NO	YES
Article 24 Payment of fishers	None	NO	YES
Article 25 Accommodation and food	None	NO	YES
Article 26 Accommodation	None	NO	YES
Article 27 Food and potable water	None	NO	YES
Article 28 Accommodation and food	Substantially equivalent alternative requirements with regard to Annex III.	NO	YES
Article 29 Medical care	None	NO	YES
Article 30 Medical care Additional	None	NO	YES
Article 31 Occupational safety and health	None	NO	YES
Article 32 Occupational safety and health Additional	None	NO	YES
Article 33 Risk assessment	None	YES	YES
Article 34 Social security	None	NO	YES
Article 35 Social security	None	NO	YES
Article 36 Social security	None	NO	YES
Article 37 Social security	Other rules concerning applicable social security legislation.	NO	YES
Article 38 Protection in the case of work- related sickness, injury or death	None	YES	YES
Article 39 Fishing vessel owner liability	None	NO	YES
Article 40 Compliance and enforcement	None	NO	YES
Article 41 Valid document	None	NO	YES
Article 42 Inspectors and inspection	None	NO	YES
Article 43 Flag State and port State control	None	NO	YES
Article 44 Port State control No more favourable treatment	None	NO	YES
Article 45 Amendment of Annexes	None	NO	YES
Article 46 Revised earlier Conventions on fishing	None	NO	YES

27. ILO, Working Paper No. 315, The flexibility clauses, 31-34, Table 3.1.

Article 47	None	NO	YES
Article 48	None	NO	YES
Article 49	None	NO	YES
Article 50	None	NO	YES
Article 51	None	NO	YES
Article 52	None	NO	YES
Article 53	None	NO	YES
Article 54 Authoritative languages	None	NO	YES
Annex I Equivalence in measurement	Flexibility instrument of Article 5	NO	YES
Annex II Fisher's work agreement	Allows to regulate content of fisher's work agreement in another manner by national laws or regulations or a collective bargaining agreement.	NO	YES
Annex III Fishing vessel accommodation	Flexibility with regard to: (a) existing and undecked fishing vessels (item 2); (b) vessels at sea < 24 hours (item 3); (c) substantial equivalence except for food and potable water (see Article 28); use of GT instead of L or LOA (see Article 5 and item 8); religious and social practices (item 84).	NO	YES

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PHOTOGRAPHS APIL
DESIGN BY Jae Young Chung
(jae0chung@gmail.com)

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Advocates for Public Interest Law

TEL **82-2-348-0529**
FAX **82-2-3478-0527**
EMAIL **info@apil.or.kr**

**#505, Yulgok-ro 47, Jongno-gu
Seoul, Republic of Korea**

www.apil.or.kr