

**AGREEMENT ON SOCIAL SECURITY
BETWEEN THE REPUBLIC OF KOREA AND
THE REPUBLIC OF POLAND**

The Republic of Korea and the Republic of Poland (hereinafter referred to as the "Contracting Parties"),

Being desirous of regulating the relationship between their two countries in the field of social security,

Have agreed as follows:

Part I
General Provisions

Article 1
Definitions

1. For the purposes of this Agreement:
 - (a) "Legislation" means the laws and other legal provisions referred to in Article 2;
 - (b) "Competent authority" means the Minister competent for social security matters;
 - (c) "Competent agency" means an institution competent for the application of the legislation;
 - (d) "Period of coverage" means, any period of contributions that has been recognized and covered under the legislation of a Contracting Party, and any other period recognized as equivalent to a period of contribution under that legislation;
 - (e) "Benefit" means, any cash benefit provided for in the legislation of each Contracting Party, including all additions and increases applicable to such a cash benefit;
 - (f) "Place of residence" means the place of permanent stay, and
 - (g) "Place of stay" means the place of temporary stay.

2. Any terms not defined in this Article shall have the meaning assigned to them in the applicable legislation.

Article 2
Material Scope

1. This Agreement shall apply to the legislation concerning:
 - (a) as regards the Republic of Korea:

/ (i) the

- (i) the National Pension (old age pension, disability pension, survivor pension and lump-sum benefits) with regard to the compulsory coverage and benefits, and
 - (ii) the Employment Insurance, Health Insurance and Industrial Accident Compensation Insurance with regard to the compulsory coverage only.
- (b) as regards the Republic of Poland, the compulsory coverage and the following benefits within social insurance and social insurance for farmers:
- (i) old age pension, disability pension and survivor pension, and
 - (ii) death grants.

2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third Party, or legislation promulgated for their specific implementation.

3. This Agreement shall also apply to laws and other legal provisions which amend, supplement, consolidate or supersede the legislation.

4. This Agreement shall not apply to the laws or other legal provisions which extend the existing legislation of one Contracting Party to new categories of beneficiaries, if the competent authority of that Contracting Party notifies the competent authority of the other Contracting Party, within six months from the date of the publication of such laws or other legal provisions, that no such extension to the Agreement is intended.

Article 3

Personal Scope

This Agreement shall apply to:

- (a) persons who are or have been subject to the legislation of one or both Contracting Parties, and
- (b) other persons, with respect to their rights to which they are entitled because these rights are derived from persons referred to in sub-paragraph (a).

/ Article 4

Article 4

Equal Treatment

Unless otherwise provided in this Agreement, persons referred to in Article 3, who have the place of residence in either Contracting Party, shall be subject to the legislation of that Contracting Party and shall be entitled to the benefits foreseen by that legislation on equal terms to the nationals of that Contracting Party.

Article 5 Transfer of Benefits

1. Unless otherwise provided in this Agreement, a benefit acquired under the legislation of one Contracting Party shall not be subject to any reduction, modification, suspension or discontinuation by reason of the fact that the entitled person has a place of residence in the territory of the other Contracting Party.
2. Paragraph 1 shall not apply to benefits awarded under a special procedure or in exceptional cases.

Part II Provisions concerning Applicable Legislation

Article 6 General Provisions

1. Unless otherwise provided in this Part, a person employed within the territory of one Contracting Party shall, with respect to that employment, be subject only to the legislation of that Contracting Party.
2. A person who has a place of residence in the territory of one Contracting Party and who is engaged in self-employment in the territory of the other Contracting Party or in the territories of both Contracting Parties shall, in respect of that self-employment, be subject only to the legislation of the first Contracting Party.

Article 7
Detachments

1. Where a person in the service of an employer having a registered office in the territory of one Contracting Party is sent by that employer to work for that employer in the territory of the other Contracting Party, only the legislation on compulsory coverage of the first Contracting Party shall continue to apply with regard to that employment during the first sixty calendar months as though that employee were still employed in the territory of the first Contracting Party. This paragraph shall also apply to an employee who has been sent by an employer in the territory of one Contracting Party to that employer's affiliated or subsidiary company in the territory of the other Contracting Party. For the purposes of applying this paragraph in the case of an employee who is sent from the territory of one Contracting Party by an employer in that territory to the territory of the other Contracting Party, that employer and the affiliated or subsidiary company of the employer shall be considered one and the same, provided that the employment in the territory of the other Contracting Party is covered under the legislation of the Contracting Party from which the person was sent.

2. Where the detachment continues beyond the period indicated in paragraph 1, the legislation of the first Contracting Party shall continue to apply, provided that the competent authorities of both Contracting Parties or the agencies designated by them consent.

Article 8
Aircraft Crews

A person who is employed as a member of the crew of an aircraft shall, in respect of that work, be subject to the legislation of the Contracting Party in the territory of which the enterprise by which that person is employed has its head office. If, however, the enterprise has a branch or permanent representation in the territory of the other Contracting Party, such a person employed by that branch or permanent representation and not subject to Article 7 shall be subject to the legislation of the Contracting Party in the territory of which such branch or representation is located.

/ **Article 9**

Article 9

Members of Diplomatic Mission and Civil Servants

1. Nothing in this Agreement shall affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.
2. A person employed in state administration of one Contracting Party or regarded as such and delegated to work in the territory of the other Contracting Party shall be subject, with regard to this employment, only to the legislation of the first Contracting Party.
3. Except as provided for in paragraphs 1 and 2, a person who has a place of residence in the territory of one Contracting Party and is employed there by state administration of the other Contracting Party, shall be subject, with regard to this employment, only to the legislation of the first Contracting Party.

Article 10

Exceptions

Upon mutual agreement, the competent authorities of both Contracting Parties or the agencies designated by them may change the application of provisions of Article 6 to 9 to any person or a group of persons in their interest.

Article 11

Special Provisions for employees detached from the Republic of Korea to the Republic of Poland

1. Before the employees are detached to the Republic of Poland as provided for in Article 7, the employees and their dependents shall be covered by health/medical insurance and by industrial accident compensation insurance.
2. To any employees referred in paragraph 1 who is not covered under these insurances, Article 6 shall be applied.

Part III
Provisions on Benefits

Article 12
Totalization of Periods of Coverage

1. If, under the legislation of one Contracting Party, the acquisition, maintenance or reacquisition of the right to benefits is conditional upon completing periods of coverage, the competent agency of that Contracting Party shall take into account the periods of coverage completed under the legislation of the other Contracting Party in the required period of time, as if they were the periods of coverage completed under the legislation of the first Contracting Party, unless those periods overlap.

2. If, under the legislation of one Contracting Party, the acquisition of the right to benefits is conditional upon completing periods of coverage in a profession subject to a special system or in a specific occupation, the periods of coverage completed while performing this profession or occupation under the legislation of the other Contracting Party shall be taken into account for awarding these benefits.

3. If, after totalizing of periods of coverage as provided for in paragraph 1, a person is not eligible for a benefit on the basis of the periods of coverage under the legislation of the Contracting Parties, the eligibility of that person for that benefit shall be determined by totalizing these periods and the periods of coverage completed under the legislation of a third state with which both Contracting Parties are bound by social security instruments which provide for the totalization of periods.

Article 13
Periods of coverage shorter than 12 months

1. If the period of coverage completed under the legislation of one Contracting Party is shorter than 12 months and thus it does not result in the right to benefits, the competent agency of that Contracting Party is not obliged to award these benefits.
2. Notwithstanding the provision of paragraph 1, periods of coverage shorter than 12 months completed under the legislation of each Contracting Party shall be taken into account by the competent agency of that Contracting Party where the right to benefits is established after totalizing these periods.

/ **Article 14**

Article 14
Assimilation of Facts

Facts that have legal effect on entitlement to, reduction, suspension or amount of benefits, and which occurred in the territory of one Contracting Party, shall be taken into account as if they had taken place in the territory of the other Contracting Party.

Article 15
Calculation of Old-age Pension, Disability Pension or Survivor Pension

1. If, under the legislation of one Contracting Party, the right to old-age pension, disability pension or survivor pension is established without applying the provisions of Article 12, the competent agency shall establish the right to old-age pension, disability pension or survivor pension and calculate its amount exclusively on the basis of the periods of coverage completed under the legislation of the first Contracting Party, unless the amount of pension calculated according to paragraph 2 proves more favorable.
2. If, under the legislation of one Contracting Party, the right to pension is only established after applying the provisions of Article 12, the competent agency shall:
 - (a) calculate a hypothetical amount of pension, which would be awarded if all the periods of coverage were completed under the legislation which it applies, and
 - (b) taking into account the hypothetical amount of pension, referred to in sub-paragraph (a), determine the actual amount of pension proportionally to the length of the periods of coverage completed under the legislation which it applies in relation to the total length of all completed periods of coverage according to the legislation of both Contracting Parties and, if necessary, to the legislation of a third state.
3. While determining the calculation base for pension, the competent agency of each Contracting Party takes into account only the periods of coverage completed under the legislation it applies.

Article 16
Death Grants or Lump-Sum Benefits

1. The eligibility for death grants or for lump-sum death payments shall be determined by the competent agency of the Contracting Party under the applicable legislation of that Contracting Party.

2. The Lump-sum refunds shall be granted to the nationals of the Republic of Poland under the same conditions as they are granted to the nationals of the Republic of Korea. However, the lump-sum refunds shall be granted to nationals of a third state in accordance with the legislation of the Republic of Korea.

Part IV

Miscellaneous Provisions

Article 17

Administrative Arrangement

1. The competent authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.

2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

Article 18

Exchange of Information and Mutual Assistance

1. The competent authorities, liaison agencies and competent agencies of the Contracting Parties shall, within the scope of their respective authority:

- (a) communicate to each other, to the extent permitted by their respective legislation, any information necessary for the application of this Agreement;
- (b) assist each other with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies, and

/ (c) communicate

(c) communicate to each other, as soon as possible, any information concerning the measures taken by them for the application of this Agreement and of any changes in their respective legislation which may affect the application of this Agreement.

2. The assistance referred to in paragraph 1 (b) shall be provided free of charge, subject to any exceptions to be agreed upon in the Administrative Arrangement concluded pursuant to Paragraph 1 of Article 17.

Article 19

Protection of data

Unless otherwise required by the legal provisions of a Contracting Party, any information about an individual which is transmitted in accordance with this Agreement to the competent authority, the liaison agency or the competent agency of that Contracting Party by the competent authority, the liaison agency or the competent agency of the other Contracting Party shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a competent authority, a liaison agency or a competent agency of a Contracting Party shall be governed by the legal provisions of that Contracting Party for the protection of privacy and confidentiality of personal data.

Article 20

Exemption from Fees and Certification of Documents and Certificates

1. Where the legislation of a Contracting Party provides that any document which is submitted to the competent authority, the liaison agency or the competent agency of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the competent authority, the liaison agency or the competent agency of the other Contracting Party in the application of this Agreement.

2. Documents and certificates which are presented by the competent authority, the liaison agency or the competent agency of either Contracting Party for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by the competent agency of one Contracting Party shall be accepted as true and exact copies by the competent agency of the other Contracting Party, without further certification.

Article 21

Language of Communications

1. The competent authorities, the liaison agencies or the competent agencies of the Contracting Parties may correspond directly with each other and with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be conducted in any official language of either Contracting Party.

2. An application or document may not be rejected by a competent authority, a liaison agency or a competent agency of a Contracting Party solely because it is written in an official language of the other Contracting Party.

Article 22

Submitting of Claims, Notices, or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority, a liaison agency or a competent agency of that Contracting Party, but which is presented within the same period to the competent authority, the liaison agency or the competent agency of the other Contracting Party, shall be treated as if it had been presented to the competent authority, the liaison agency or the competent agency of the first Contracting Party. The date of submitting any claim, notice or appeal to the competent authority, the liaison agency or the competent agency of one Contracting Party shall be considered the date of submitting it to the competent authority, the liaison agency or the competent agency of the other Contracting Party.

2. If, after the entry into force of this Agreement, a person files a written application for benefits with the competent agency of a Contracting Party under the legislation of that Contracting Party, and if that person has not explicitly requested that the application be

/ restricted to

restricted to benefits under that legislation, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application :

- (a) requests that it be considered as an application for a benefit under the legislation of the other Contracting Party, or
- (b) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting Party.

3. In any case to which paragraph 1 or 2 applies, the competent authority, the liaison agency or the competent agency to which the claim, notice or appeal has been submitted shall indicate the date of receipt of such a document and transmit it without delay to the competent authority, the liaison agency or the competent agency of the other Contracting Party.

Article 23

Payment of Benefits

1. The competent agency of a Contracting Party shall pay benefits, under this Agreement, directly to the entitled persons who have the place of residence in the territory of the other Contracting Party in the currency of the latter Contracting Party or in any other freely convertible currency.

2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting Party, it shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who have the place of residence in the territory of the other Contracting Party.

Article 24

Resolution of Disagreement

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the competent authorities of the Contracting Parties.

Part V
Transitional and Final Provisions

Article 25
Transitional Provisions

1. This Agreement shall not establish any right to payment of a benefit for any period before the date of the entry into force of this Agreement.
2. Subject to paragraph 1, in determining the right to a benefit under this Agreement, any period of coverage completed before the date of entry into force of this Agreement, and any other relevant events that occurred before that date, is taken into account. However, the competent agency of neither Contracting Party shall be required to take into account any periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its legislation.
3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
4. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.
5. In applying of Article 7 in case of persons who were detached to a Contracting Party prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on that date.
6. The provisions of Part III shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

Article 26
Period of Duration and Termination

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which a written notice of its termination is given by either Contracting Party to the other Contracting Party.

/ 2. If

2. If this Agreement is terminated, any rights regarding the entitlement to or payment of benefits acquired under it shall be retained. The competent authorities shall agree on the way of regulating rights in the process of being acquired.

Article 27
Entry into Force

The Contracting Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the month during which the last notification occurs.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE in duplicate at Warsaw, on 25th day of February 2009, in Korean, Polish and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF POLAND