

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

The Republic of Austria and the Republic of Korea (hereinafter referred to as "the Contracting States"),

Resolved to regulate the mutual relations between the two States in the field of social security,

Have agreed as follows:

Part I

General Provisions

Article 1

Definitions

1. For purposes of this Agreement,

- a) "Korea" means the Republic of Korea and "Austria" means the Republic of Austria;
- b) "legislation" means the laws, regulations and statutory instruments which relate to the branches of social security specified in Article 2 of this Agreement;
- c) "national" means, in relation to Korea, a national of Korea as defined in the Nationality Law, as amended; and, in relation to Austria, an Austrian citizen;
- d) "competent authority" means, in relation to Korea, the Minister for Health, Welfare and Family Affairs, and, in relation to Austria, the Federal Ministers responsible for the administration of the legislation of Austria;

- e) "institution" means, in relation to Korea, the National Pension Service, and in relation to Austria the institution responsible for the application of the legislation, specified in Article 2;
 - f) "competent institution" means, in relation to Korea, the National Pension Service, and, in relation to Austria, the institution competent under the applicable legislation to deal with the matter in question;
 - g) "period of coverage" means a period of contributions or any similar period insofar as it is considered equivalent to a period of coverage by that legislation;
 - h) "benefit" means a pension or any other cash benefit, including any increases;
2. Any other expression used in this Agreement shall have the meaning respectively assigned to it in the applicable legislation.

Article 2

Material scope

1. This Agreement shall apply:
- (a) in relation to Korea,
 - (i) to the National Pension Act and its regulations,
 - (ii) with regard to Part II only, the Employment Insurance Act, the National Health Insurance Act, the Industrial Accident Compensation Insurance Act, the Act on the Collection of Premiums for Employment Insurance and for Industrial Accident Compensation Insurance and their regulations;
 - (b) in relation to Austria,
 - (i) to the legislation concerning pension insurance, with the exception of the insurance for notaries,
 - (ii) with regard to Part II only, to the legislation concerning sickness insurance and accident insurance.

2. Except as otherwise provided in paragraph 3 and 4 of this Article, this Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1 of this Article.
3. Notwithstanding paragraph 2 of this Article, this Agreement shall not apply to the laws or regulations which extend existing legislation of one Contracting State to new categories of beneficiaries, if the competent authority of that Contracting State notifies the competent authority of the other Contracting State, within six months from the date of the publication of such laws or regulations, that no such extension to the Agreement is intended.
4. Unless otherwise provided in this Agreement, the legislation within the meaning of paragraph 1 of this Article shall not include treaties or other international agreements concluded between one Contracting State and a third state, except insofar as they contain provisions relating to the apportionment of insurance burdens.

Article 3

Personal scope

This Agreement shall apply to:

- (a) persons who are or have been subject to the legislation of one or both of the Contracting States
- (b) other persons with respect to the rights they derive from the persons described in subparagraph (a) of this Article.

Article 4

Equal treatment

1. Unless otherwise provided in this Agreement, the following persons shall, in the application of the legislation of one Contracting State, receive equal treatment with the nationals of this Contracting State:

- (a) nationals of the other Contracting State;
- (b) refugees as defined in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951 and the Protocol to that Convention dated January 31, 1967, resident in the territory of one Contracting State;
- (c) stateless persons as defined in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954, resident in the territory of one Contracting State.

The foregoing shall apply to the dependants and survivors who reside in the territory of either Contracting State with respect to their rights derived from the persons specified in this paragraph.

2. Benefits under the legislation of one Contracting State shall be awarded to nationals of the other Contracting State, who reside outside the territories of both Contracting States, under the same conditions and to the same extent as they are awarded to the nationals of the first Contracting State who reside outside the territories of the Contracting States.

3. Paragraph 1 of this Article shall not apply to the provisions of Austrian legislation concerning:
- (a) the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;
 - (b) the apportionment of insurance burdens resulting from agreements with third States;
 - (c) the insurance of persons employed at a diplomatic mission or consular post of Austria in a third State or by a member of such a mission or post.
4. As regards Austrian legislation concerning the crediting of periods of war service and periods considered as equivalent, Korean nationals who were Austrian nationals immediately before March 13, 1938 shall receive equal treatment with Austrian nationals.

Article 5

Equal status of territories

1. Unless otherwise provided in this Agreement, any provision of the legislation of one Contracting State which requires that entitlement to, or the payment of, benefits is dependent on residence in the territory of that Contracting State shall not be applicable to persons who stay or reside in the territory of the other Contracting State.
2. As regards Austrian legislation, paragraph 1 of this Article shall not apply to the compensatory supplement.

Part II

Provisions which determine the legislation applicable

Article 6

General provisions

1. Subject to the provisions of Articles 7 to 9, an employed or self-employed person who works in the territory of one Contracting State shall, in respect of that work, be subject only to the legislation of that Contracting State. In the case of an employed person, this shall also apply if the employer's place of business is in the territory of the other Contracting State.
2. A person who would otherwise be compulsorily covered under the legislation of both Contracting States with respect to self-employment and who is a resident of one Contracting State shall be subject to the legislation of only the Contracting State of which he/she is a resident.

Article 7

Special provisions

1. An employed person who is subject to the legislation of one Contracting State and who is sent to perform services, including those in the employer's affiliated or subsidiary company, for the same employer in the territory of the other Contracting State shall, in respect of those services, remain subject only to the legislation of the former Contracting State for the first sixty calendar months as though those services were performed in its territory.

2. When an employed person is sent to perform services in the territory of a Contracting State for an air transport organization, which has its place of business in the territory of the other Contracting State, paragraph 1 of this Article shall be applied without reference to the sixty-month time limit.
3. Nothing in this Agreement shall affect the domestic legislation of either Contracting State on compulsory coverage of persons who work on board a sea-going vessel.

Article 8

Compulsory coverage of persons employed by the government or other public employer

1. Nothing in this Agreement shall affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961 or of the Vienna Convention on Consular Relations of April 24, 1963.
2. A person employed by the government or other public employer of a Contracting State and sent to perform services in the territory of the other Contracting State shall, in respect of those services remain subject to the legislation of the former Contracting State.

Article 9

Exceptions from the provisions on applicable legislation

1. At the request of an employed person and his/her employer, or of a self-employed person, the competent authorities of both Contracting States or the institutions designated by them may provide, by agreement with one another, exceptions in the application of Articles 6 to 8, taking into account the nature and circumstances of the work.

2. Where, in accordance with paragraph 1 of this Article, a person is subject to Austrian legislation, that legislation shall apply to him/her as if he/she were employed in the territory of Austria.

Part III

Provisions concerning benefits

Article 10

Totalization of periods of coverage

1. If a person has completed periods of coverage under the legislation of both Contracting States, these periods, insofar as they do not overlap, if necessary, shall be added together for the purpose of acquiring entitlement to a benefit, as if they were periods of coverage in the relevant Contracting State.
2. If the total duration of the periods of coverage accumulated by a person under the legislation of a Contracting State is less than 12 months, the institution of that Contracting State shall not be required to apply Part III of this Agreement.

Article 11

Calculation of autonomous benefits

Where entitlement to a benefit exists under the legislation of one Contracting State without the application of paragraph 1 of Article 10, the competent institution of that Contracting State shall determine the amount of the benefit in accordance with its legislation on the basis of periods of coverage completed exclusively under that legislation.

Section 1

Benefits under the legislation of Korea

Article 12

Special provisions relating to Korea

1. To obtain a disability or survivors benefit, the requirement of the legislation of Korea that a person be covered when the insured event occurs shall be considered to have been met if the person is insured for a benefit under the legislation of Austria during a period in which the insured event occurs according to the legislation of Korea.
2. In applying Article 10, a period of coverage recognized under the Austrian legislation as a period completed by underground or equivalent work in a mining enterprise shall be taken into account as a period of equivalent work under Korean legislation.

Article 13

Calculation of the Korean benefits

Where periods of coverage under the legislation of Austria are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with Article 10 and paragraph 1 of Article 12, the benefit due shall be determined as follows:

- (a) The competent institution of Korea shall first compute a pension amount equal to the amount that would have been payable to the person if all the periods of coverage taken into account under the legislation of both Contracting States had been completed under the legislation of Korea. To determine the pension amount, the competent institution of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea;
- (b) The competent institution of Korea shall calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding subparagraph, in proportion to the ratio between the duration of the periods of coverage taken into consideration under its own legislation and the total duration of the periods of coverage taken into consideration under the legislation of both Contracting States.

Section 2

Benefits under the legislation of Austria

Article 14

Special provision relating to Austria

When a person who has completed periods of coverage under the legislation of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian institution shall determine, in accordance with Austrian legislation, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10, and taking into account the following provisions:

- (a) Where Austrian legislation makes the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage completed under a corresponding scheme or, failing that, in the same occupation or, where appropriate, in the same employment under the legislation of Korea shall be taken into account for the award of such benefits;

- (b) Where Austrian legislation provides that the period of payment of a pension shall prolong the reference period during which periods of coverage must be completed, periods during which a pension has been awarded under the legislation of Korea shall also prolong the aforesaid reference period.

Article 15

Calculation of the Austrian benefits

Where entitlement to a benefit exists under Austrian legislation only with the application of Article 10, the competent Austrian institution shall determine the amount of the benefit in accordance with Austrian legislation on the basis of periods of coverage completed exclusively under that legislation and taking into account the following provisions:

- (a) Benefits or parts of benefits, the amount of which does not depend on the duration of periods of coverage completed, shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into account for the calculation under Austrian legislation and the period of 30 years, but shall not exceed the full amount;
- (b) Where periods after the contingency arises are to be taken into account for the calculation of invalidity or survivors' benefits, such periods shall be taken into account only in proportion to the ratio between the duration of the periods of coverage to be taken into account for the calculation under Austrian legislation and two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 and the date on which the contingency occurred, but shall not exceed the full period.
- (c) Sub-paragraph (a) of this paragraph shall not apply to:
- (i) benefits resulting from supplementary insurance,
 - (ii) means-tested benefits designed to ensure a minimum income.

Part IV

Miscellaneous Provisions

Article 16

Cooperation between the competent authorities and administrative assistance

1. The competent authorities of the Contracting States shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The competent authorities and institutions of the Contracting States shall, within the scope of their respective authorities:
 - (a) inform each other of all measures taken for the application of this Agreement; and
 - (b) inform each other of all changes in legislation, which affect the application of this Agreement.
3. The authorities and institutions of the two Contracting States shall assist each other in applying this Agreement as if they were applying their own legislation. With the exception of cash expenditures relating thereto, such assistance shall be provided free of charge.
4. The authorities and institutions of the Contracting States may contact each other or involved persons or their representatives directly.
5. The authorities and institutions of one Contracting State may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Contracting State.
6. If the competent institution of one Contracting State requires an applicant or beneficiary who stays or resides in the territory of the other Contracting State to undergo a medical examination, such examination shall, at the request of that institution and at its expense, be arranged or carried out by the institution of the

latter Contracting State. In case of medical examinations carried out under the legislation of both Contracting States, such examinations shall be arranged or carried out by the institution of the place of stay or residence at its expense.

Article 17

Liaison agencies

The competent authorities of the Contracting States shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison agencies.

Article 18

Exemptions from charges and authentication

1. Any exemption or reduction provided for in the legislation of one Contracting State for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Contracting State.
2. Documents and certificates of any kind which must be submitted for the application of this Agreement shall not require authentication by diplomatic or consular authorities.
3. Copies of documents which are certified as true and exact copies by an institution of one Contracting State shall be accepted as true and exact copies by an institution of the other Contracting State, without further certification.

Article 19

Equal status of applications, notices or appeals

1. Any claim, notice or appeal which, for the application of this Agreement or of the legislation of a Contracting State, has been submitted to a competent authority, institution or other competent body of one Contracting State shall be considered as a claim, notice or appeal submitted to a competent authority, institution or other competent body of the other Contracting State.
2. Any claim for a benefit under the legislation of one Contracting State shall be considered to be a claim for the corresponding benefit under the legislation of the other Contracting State, provided that the claimant at the time of application:
 - (a) is entitled on age grounds to lodge a valid claim for a benefit of the other Contracting State, and
 - (b) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting State.

This shall not apply, however, when the claimant expressly requests that the determination of an old age benefit under the legislation of the other Contracting State be deferred.

3. Any claim, notice or appeal which, under the legislation of one Contracting State, must be submitted within a specified time to a competent authority, institution or other competent body of that Contracting State may be submitted within the same time to the corresponding body of the other Contracting State.
4. In the cases to which paragraphs 1 to 3 of this Article apply, the body to which the submission has been made shall forward the claim, notice or appeal without delay to the corresponding competent body of the other Contracting State, indicating the date of receipt of the document.

Article 20

Payments

1. The benefit-paying institution of a Contracting State may discharge its obligations under this Agreement towards a beneficiary who stays or resides in the other Contracting State in the national currency of the benefit-paying institution.
2. Reimbursements according to this Agreement shall be made in the currency of that Contracting State in which the institution which has carried out the service is seated.
3. Payments according to this Agreement shall be carried out in accordance with the arrangements or practice which are in force in this field in both of the Contracting States at the time of payment.

Article 21

Data protection

1. Insofar as personal data are communicated pursuant to this Agreement, and in conformity with domestic law, the following provisions shall apply, taking into consideration other binding provisions of the respective Contracting States:
 - (a) For the implementation of this Agreement and the legislation referring thereto, personal data may be communicated to the responsible bodies of the receiving State. The respective receiving bodies shall not use these data for other purposes. Onward transmission of personal data within the territory of the receiving State to other bodies is admissible in conformity with the domestic law of the receiving State insofar as it serves social security purposes, including related court procedures. Even in the case of disclosure of information in public court proceedings or in judicial decisions, confidentiality of personal data shall only be subject to those restrictions which are necessary to safeguard overriding substantial public interests;

- (b) Any personal data communicated in whatsoever form between the responsible authorities, institutions and other bodies concerned pursuant to this Agreement or to any arrangement implementing this Agreement are treated as secret in the same manner as like information obtained under the domestic law of the receiving State. These obligations shall apply to all persons fulfilling tasks under this Agreement and also to persons bound themselves by the obligation of secrecy;
- (c) In specific cases, the receiving body shall give information upon request of the communicating body about both the use of the data received and the results, which had been achieved by this data;
- (d) The communicating body shall guarantee that the personal data communicated are accurate and up-to-date. Before initiating any communication of personal data the communicating body has to examine whether or not the communication is necessary and proportionate with regard to the purpose of the communication in question. This is to be done with due consideration to prohibitions on communication existing in the relevant domestic laws. In the case of communication of inaccurate data or data which should not have been communicated under the domestic law of the communicating State the receiving body must be informed thereof without undue delay. The latter shall carry out the necessary deletion or correction of the data immediately. If the receiving body has reason to suppose that communicated data might be inaccurate or should be deleted, this body shall immediately inform the communicating body thereof;
- (e) Every person concerned, who proves his/her identity in an appropriate manner, shall be provided by the body responsible for the data processing with information about the data relating to him/her which have been communicated or processed, about their origin, the recipients or categories of recipients of communications, the purpose of the use of data as well as its legal basis in an understandable form. The information shall be given without undue delay and - in principle - free of charge. Moreover the person concerned shall have the right to correction of incomplete or inaccurate data and to deletion of unlawfully processed data. Further procedural details relating to the enforcement of these rights are subject to domestic law;

- (f) The Contracting States shall provide every person concerned whose right to data protection has been violated with an effective remedy before a national court or another independent authority. Furthermore, the Contracting States shall ensure that any person concerned by an unlawful processing of data is entitled to receive compensation for the damage suffered;
 - (g) Personal data communicated shall be deleted, if found to be inaccurate, or unlawfully obtained or communicated, or if lawfully communicated data have to be deleted at a later date pursuant to the domestic law of the communicating State, or if data are no longer needed for the fulfillment of the task and if there is no reason to suppose that the deletion could endanger a person's interests deserving protection in the field of social security;
 - h) Both the communicating body and the receiving body shall be obliged to register the purpose, subject and date of any communication of personal data as well as the communicating and receiving body;
 - (i) Both the communicating body and the receiving body shall be obliged to effectively protect the received personal data against accidental or unauthorized destruction, accidental loss, unauthorized access, unauthorized or accidental modification and unauthorized disclosure.
2. The provisions of paragraph 1 of this Article shall apply accordingly to trade and business secrets.

Article 22

Settlement of disputes

1. Any dispute between the Contracting States relating to the interpretation or application of this Agreement shall be made the subject of direct negotiations between the competent authorities of the Contracting States.

2. If the dispute cannot be resolved in this manner within six months from the beginning of such negotiations, it shall be submitted, at the request of one or both of the Contracting States, to an arbitration commission, whose composition and rules of procedure shall be determined by agreement between the Contracting States.
3. The arbitration commission shall decide the dispute according to the spirit and fundamental principles of this Agreement. Its decisions shall be binding and final.

Part V

Transitional and final provisions

Article 23

Transition provisions

1. This Agreement shall not establish any entitlement for payment of a benefit for a period before its entry into force.
2. In determining entitlement to a benefit under this Agreement, periods of coverage completed under the legislation of a Contracting State before the entry into force of this Agreement, shall also be taken into consideration. However, the institution of neither Contracting State shall be required to take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its legislation.
3. Subject to paragraph 1, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not been settled by lump-sum payments.

4. In the case of paragraph 3 of this Article, the amount of a benefit due only by virtue of this Agreement shall be determined from the date of entry into force of this Agreement at the request of the beneficiary.

In relation to Austria, where the claim for determination of the amount of the benefit is submitted within two years from the entry into force of this Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Contracting State.

5. In case of paragraph 4 of this Article, determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

6. In applying Article 7, in case of persons who were sent to a Contracting State 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 the date of entry into force of this Agreement.

Article 24

Entry into force, period of duration and termination

1. This Agreement shall enter into force on the first day of the third month following the month in which each Contracting State shall have received from the other Contracting State written notification that it has complied with all requirements for the entry into force of this Agreement.
2. This Agreement shall remain in force for an indefinite period. Either Contracting State may denounce it in writing, with twelve months previous notice.
3. In the event of termination of this Agreement by denunciation, any right acquired under its provisions not later than the effective date of that termination shall be maintained; negotiations shall take place for the settlement of any rights in the course of acquisition by virtue of the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Vienna, on the 23rd of January 2010, in the German, Korean and English languages, each text being equally authentic.

In the case of divergent interpretations of the Korean and the German texts, the English text shall prevail.

For the Republic of Austria

For the Republic of Korea

Rudolf Hundstorfer m.p.

Jae-Hee Jeon m.p.