

AGREEMENT ON SOCIAL SECURITY
BETWEEN
THE REPUBLIC OF KOREA
AND
THE KINGDOM OF DENMARK

The Government of the Republic of Korea and the Government of the Kingdom of Denmark

Resolved to co-operate in the field of social security,

Have decided to conclude an Agreement for this purpose, and

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1

Definitions

1. For the purpose of this Agreement:

a) "Contracting Party" means, according to the context, the Kingdom of Denmark, (hereinafter referred to as "Denmark") or the Republic of Korea, (hereinafter referred to as "Korea")

b) "territory" means, in relation to Denmark, its national territory with the exception of Greenland and the Faroe Islands, and in relation to Korea, the territory of Korea;

c) "national" means, in relation to Denmark, a person with Danish citizenship, and in relation to Korea, a national as defined in its Nationality Act as amended;

d) "refugees" shall have the meaning assigned to it in Article 1 of the Convention on the Status of Refugees signed at Geneva on 28 July 1951 and in the Protocol of 31 January 1967 to that Convention;

e) "stateless persons" shall have the meaning assigned to it in Article 1 of the Convention on the Status of Stateless Persons signed in New York on 28 September 1954;

f) "legislation" means, the laws and regulations specified in Article 2 of this Agreement;

g) "competent authority" means, in relation to Denmark, the Minister for Employment, and in relation to Korea, the Minister for Health, Welfare and Family Affairs;

h) "agency" means as regards Denmark, an institution responsible for providing benefits under the applicable legislation; or a body or authority designated by the competent authority of the Contracting Party and as regards Korea, the National Pension Service

i) "residence" means as regards Denmark, ordinary residence which is lawfully established and which forms the permanent place of a person's interests;

j) "worker" means in relation to Denmark any person who, from the fact of pursuing an activity as an employed person, is subject:

- to the legislation on accidents at work and occupational diseases for the period prior to 1 September 1977;
- to the legislation on supplementary pension for employed persons (the Labour Market Supplementary Pension Scheme, ATP), for a period commencing on or after 1 September 1977;

k) "self-employed person" means in relation to Denmark, any person who is entitled to benefits in pursuance of the legislation on daily cash benefits in the event of sickness and who has an income by independent economic activity;

l) "periods of coverage" means contribution periods and periods defined or recognized as periods of insurance by the legislation under which they were completed, and all periods treated as such, by the said legislation as equivalent to periods of contribution or coverage;

m) "benefits" means all cash benefits and pensions, including all elements thereof under the applicable legislation, revaluation increases and supplementary allowances unless otherwise provided by this Agreement, as well as lump-sum benefits which may be paid in lieu of pensions;

2. Other terms, words and expressions which are used in this Agreement shall have the meaning respectively assigned to them in the legislation concerned.

Article 2

Material Scope

1. For the purpose of this Agreement, the applicable legislation is:
 - a. as regards Korea, the National Pension Act.

b. as regards Denmark:

- i. the Social Pensions Act and the regulations made thereunder
- ii. the Act on the highest, the intermediate, the increased ordinary and the ordinary anticipatory pension; and the regulations made thereunder
- iii. the Labour Market Supplementary Pension (ATP) Act and the regulations made thereunder.

2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements or supranational legislation on Social Security that may be concluded between one Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

3. Except as provided in the following sentence, this Agreement shall also apply to legislation which amends or supplements the legislation specified in paragraph 1. This Agreement shall apply to future legislation of a Contracting State which creates new categories of beneficiaries or new benefits under the legislation of that Contracting State unless the Competent Authority of that Contracting State notifies the Competent Authority of the other Contracting State in writing within six months of the date of the official publication of the new legislation that no such extension of the Agreement is intended.

Article 3

Personal Scope

1. This Agreement shall apply to nationals of both Contracting Parties, refugees and stateless persons who are or have been subject to the legislation of Denmark

and Korea specified in Article 2, and who reside within the territory of Denmark or Korea as well as to the members of their families and their survivors.

2. In case of Korea, this Agreement also covers nationals of both Contracting Parties, refugees and stateless persons who are or have been subject to the legislation of Korea, and who reside outside the territories of Denmark and Korea.

Article 4

Equality of Treatment

1. Unless otherwise provided in this Agreement, all nationals of the Contracting Parties, resident in the territory of Denmark or Korea to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations which arise under the legislation specified in Article 2 of that Contracting Party or as a result of this Agreement.

2. Lump-sum refunds of contributions under Korean legislation shall not be granted to nationals of Denmark.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement a benefit acquired under the legislation of one of the Contracting Parties shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides or stays in the territory of the other Contracting Party, and the benefit shall be payable in the territory of the other Contracting Party.

2. Benefits under the legislation of one Contracting Party shall be granted to nationals of the other Contracting Party who ordinarily reside outside the territories of the Contracting Parties under the same conditions as they are granted to the national of the first Contracting Party who ordinarily reside outside the territories of the Contracting Parties, provided that such payments are subject to the national legislation of the Contracting Parties.

PART II

DETERMINATION OF THE LEGISLATION APPLICABLE

Article 6

General Rules

1. Unless otherwise provided in this Agreement, a person covered by this Agreement shall be subject to the legislation of the Contracting Party in whose territory the person resides.

2. Subject to Article 7 and 8 of this Agreement, a person employed in the territory of one of the Contracting Parties shall, in respect to that employment, be subject only to the legislation of that Contracting Party.

3. A person who ordinarily resides in the territory of one Contracting Party and is self-employed in the territory of the other Contracting Party or in the territory of both Contracting Parties shall be subject only to the legislation of the first Contracting Party.

4. Where a person is employed in the territory of one Contracting Party and is self-employed in the territory of the other Contracting party for the same period, the person shall be subject only to the legislation of the Contracting Party in whose territory the person ordinarily resides.

5. A person who ordinarily resides in the territory of a Contracting Party and is employed in the territory of both Contracting Parties shall be subject only to the legislation of the Contracting Party in whose territory that person ordinarily resides.

Article 7

Special Rules Applicable to Certain Persons

1. A person, including a national of a third country, who is engaged in paid employment and subject to the legislation of a Contracting Party and employed by an undertaking, whose registered office of place of business is situated in the territory of that Party and who is posted by that undertaking to the territory of the other Contracting Party to perform work there on a temporary basis for the account of the undertaking, shall continue to be subject to the legislation of the former Party during his period of posting in the territory of the latter Party, provided that the duration of the work does not exceed 60 months.

2. Paragraph 1 of this Article shall apply to a worker who has been sent by his or her employer in the territory of one Contracting Party to the employer's affiliated or subsidiary company in the territory of the other Contracting Party. The employer's affiliated or subsidiary company shall mean a company defined as such respectively under the national statutes of the Contracting Parties.

3. Paragraph 1 of this Article shall apply where a person who has been sent by that person's employer from the territory of either Contracting Party to a third country and is subsequently sent by that employer from the third country to the territory of the other Contracting Party.

4. Officers and members of a crew on air-crafts who are employed by a company whose registered office or place of business is situated in the territory

of one Contracting Party, and who are working in the territory of the other Contracting Party, shall be subject to the legislation of the former Contracting Party.

5. A person who, but for this Agreement, would be subject to the legislation of both Contracting Parties in respect of employment as a member of the crew of a ship, shall in respect of that employment be subject only to the legislation of Korea if that person ordinarily resides in Korea and has been subject to the legislation of Korea, only to the legislation of Denmark in any other case.

6. The provisions of this Article shall apply by analogy to the accompanying family members insofar as they are not by virtue of their employment entitled to benefits under the legislation of the Contracting Party in whose territory they reside.

Article 8

Special Rules Regarding Diplomats and Persons in Public Service

1. This Agreement does not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961 or the Vienna Convention on Consular Relations of 24 April 1963 with respect to the legislation specified in Article 2.

2. Government and other public employees posted to the territory of the other Contracting Party and accompanying members of their family are subject to the legislation of the sending state.

Article 9

Exceptions to Articles 6, 7 and 8 paragraph 2

The competent authorities or agencies of the Contracting Parties may by common agreement provide for exceptions to the provisions of Articles 6, 7 and 8, paragraph 2 in the interest of certain categories of persons or of certain persons.

PART III
SPECIAL PROVISIONS RELATING TO DANISH BENEFITS

Article 10

Benefits under Danish Legislation

The following provisions shall apply to Denmark:

1. Korean nationals shall be entitled to a Danish social pension under the same conditions as Danish nationals residing in the territory of Denmark if in the qualifying period laid down in the Social Pensions Act the person has had a total period of work under Danish legislation of at least 12
2. Where the condition on work under paragraph 1 of this Article has not been met, a person shall be entitled to a Danish social pension if the person has been resident in Denmark for a period of not less than 10 years in the qualifying period laid down in the Social Pensions Act, of which not less than five years immediately precede the date on which the pension is first payable.
3. Social pension and the highest, the intermediate, the increased ordinary and the ordinary anticipatory pension shall be payable to Korean nationals and persons designated in Article 3 residing in the territory of Korea if the person concerned fulfills the condition on work in paragraph of this Article.
4. Where the condition on work in paragraph 1 of this Article has not been met, a pension awarded in pursuance of the Social Pensions Act to a Korean

national and persons designated in Article 3 residing in the territory of Denmark shall nonetheless continue to be payable in the territory of Korea.

5. For purposes of meeting the 12-month work requirement of paragraph of this Article, the following periods shall be accepted:

a) periods of work for which membership contributions were paid in respect of a member of the Danish Labour Market Supplementary Pension Scheme (ATP);

b) periods before April 1, 1964, for which a person establishes that he or she worked under Danish legislation;

c) periods for which a person establishes that he or she was self-employed under Danish legislation.

6. Periods described in paragraph 5 of this Article may be combined for purposes of meeting the 12-month work requirement in paragraph 1 of this Article.

7. The basic amount and the anticipatory pension payable in pursuance of the Social Pensions Act as well as the basic amount, anticipatory allowance, disability allowance, unemployability allowance and extra supplementary allowance payable in pursuance of the Act on the highest, the intermediate, the increased ordinary and the ordinary anticipatory pension shall be payable to a person designated in Article 3 residing in the territory of Korea.

8. The provisions laid down in the Social Pensions Act, making periods of stay abroad equivalent with residence in the territory of Denmark in the calculation of the period of residence, shall apply to Korean nationals only if they have completed a period of residence or work in Denmark under Danish legislation totalling at least 12 in the qualifying period as laid down in the Social Pensions Act.

9. Periods of residence completed under Danish legislation after March 31, 1957 shall be taken into account for the calculation of social pensions under Danish legislation payable to nationals of Korea, refugees, stateless persons, members of their families and their survivors resident in the territory of Korea.

Article 11

Membership of ATP

Korean nationals employed in the territory of Denmark shall be covered by the Labour Market Supplementary Pension (ATP) scheme unless the employment period is on a short term basis, which means a maximum of 6 months or, in case of employment as a part of training or education scheme, 18 months.

PART IV

SPECIAL PROVISIONS RELATING TO KOREAN BENEFITS

Article 12

Totalizing and Benefits

The following provisions shall apply to Korea:

1. Where a person has completed at least 12 months of coverage under the legislation of Korea, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to old-age, survivors or disability benefit under the legislation of Korea, the agency of Korea shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage and periods of Danish residence as defined in paragraph 2 which are credited under the legislation of Denmark and which do not coincide with periods of coverage already credited under the legislation of Korea.

2. For purposes of this Article, a "period of Danish residence", means a period after March 31, 1957:

i. credited or recognized as a period of residence under the legislation of Denmark during the qualifying period laid down in the Social Pensions Act; and

ii. during which a person has worked.

3. Subject to paragraph 1 of this Article, to obtain disability or survivors benefits, 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 concerned has carried out an occupation as a worker or self-employed person in the territory of Denmark during a period in which the insured event occurs according to the legislation of Korea.

4. Where periods of Danish residence are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraphs 1, 2 and 3 of the Article, the benefit due shall be determined as follows:

a) The agency of Korea shall first compute the pension amount equal to the amount that would have been payable to the person if all the periods of coverage credited under the legislation of both Contracting Parties had been completed under the legislation of Korea. To determine the pension amount, the agency of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea.

b) The agency of Korea shall then 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 of the duration of the periods of coverage taken into consideration under its own

legislation to the total duration of the periods of coverage taken into consideration under the legislation of both Contracting Parties.

5. Provisions of the legislation of Korea restricting the entitlement to the disability or survivors benefit due to unpaid contributions at the time when the person has otherwise qualified for the benefit shall apply to the period covered under the legislation of Korea.

PART V

Miscellaneous Provisions

Article 13

Administrative Arrangement

1. The competent authorities of the Contracting Parties shall conclude an Administrative Arrangement necessary for the implementation of this Agreement.
2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

Article 14

Exchange of Information and Mutual Assistance

1. The competent authorities and agencies of the Contracting Parties shall, within the scope of their respective authority communicate to each other all information regarding the measures taken for the application of this Agreement;
 - a) communicate to each other, to the extent permitted by the legislation which they administer, 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 to each other, as soon as possible, 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 the Agreement.

2. The assistance referred to in sub-paragraph 1 (b) of this Article shall be provided free of charge, subject to any exceptions to be agreed upon by the competent authorities of the Contracting Parties in the Administrative Arrangement concluded pursuant to Article 13 of this Agreement.

Article 15

Language of Communication

1. The competent authorities and agencies of the Contracting Parties may communicate 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, in English or in the official language of either Contracting Party.

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

Article 16

Confidentiality of Information

Unless otherwise required by the national statutes of a Contracting Party, information about an individual which is transmitted in accordance with this Agreement to the competent authority or agency of that Contracting Party by the competent authority or 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 or agency of a Contracting Party shall be governed by the national statutes of that Contracting Party for the protection of privacy and confidentiality of personal data.

Article 17

Exemption from Fees

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for in the legislation of a Contracting Party in respect of certificates or documents required to be produced for the purposes of the legislation of that Party shall be extended to similar certificates or documents required to be produced for the purposes of the legislation of the other Contracting Party or of this Agreement.
2. All statements, documents and certificates of any kind whatsoever required to be produced for the purposes of this Agreement shall be exempt from authentication by diplomatic or consular authorities.

Article 18

Claims for Benefits

1. Any claim for benefits shall be submitted in accordance with the provisions of the Administrative Arrangement to be concluded in pursuance of Article 13.

2. If, after the entry into force of this Agreement, a person files a written application for benefits with the 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 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 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.

Article 19

Submission of Claims, Declarations and Appeals

Any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of a Contracting Party, within a specified period to a competent authority or institution of that Party shall be admissible if it is submitted within the same period to a corresponding competent authority or institution of the other Contracting Party. In such a case the competent authority or institution receiving the claim, declaration or appeal shall forward it without delay to the competent authority or institution of the former Party either directly or through the competent authorities of the Party concerned. The date on which such claims, declarations or appeals were submitted to the competent authority or institution of the other Contracting Party shall be considered as the date of their submission to the competent authority or institution which shall investigate them.

Article 20

Currency

1. Payments under this Agreement may legitimately be made in the currency of the Contracting Party making the payment.
2. Should currency restrictions be introduced by either of the Contracting Parties, the two Governments shall immediately and jointly take steps to safeguard transfers between their territories of necessary amounts of money for the purpose of implementing this Agreement.

Article 21

Settlement of Disputes

1. The contracting Parties shall endeavour to resolve by mutual agreement any dispute that may arise in connection with the application of this Agreement.
2. If any such dispute is not resolved by agreement, the dispute may, on the request of either Contracting Party, be submitted to arbitration by a court of arbitration, whose composition and procedure shall be agreed upon by the Contracting Parties.
3. Each of the Contracting Parties shall be bound to comply with and enforce the decisions handed down by the court of arbitration.

PART VI

FINAL AND TRANSITIONAL PROVISIONS

Article 22

Determination of Claims

1. No entitlement to payment of benefits shall be acquired under this Agreement for any period prior to the date of its entry into force.
2. Subject to Article 10, paragraph 9, all periods of insurance and periods treated as such, and all periods of employment or residence completed under the legislation of a Contracting Party before the date of entry into force of this Agreement, shall be taken into account for the determination of rights under this Agreement. However, the agency of Korea shall not be required to take into account periods of coverage which occurred prior to 1 January 1988.
3. A right shall be acquired under this Agreement, even though it relates to a contingency which is materialized prior to the entry into force of this Agreement.
4. Any benefit which has not been awarded or which has been suspended or reduced by reason of the nationality of the person concerned or his residence in the territory of the other Contracting Party shall, on the application of that person, be awarded, resumed or recalculated with effect from the date of entry into force of this Agreement. A recalculation of a benefit may not result in any reduction of the benefit paid.
5. If the application referred to in paragraph 4 of this Article is submitted within two years from the date of entry into force of this Agreement, the rights acquired under this Agreement shall have effect from that date. If the application referred to in paragraph 4 of this Article is submitted after the expiry of the two-year period following the date of entry into force of this Agreement, rights which have not been forfeited or are not barred by limitation shall have effect from the date on which the application was submitted, except where more favourable provisions of the legislation of any of the Contracting Parties apply.

6. In applying paragraph 1 of Article 7 of this Agreement in case of persons who were sent to Denmark from Korea prior to the date of entry into force of this Agreement, the periods of employment referred to in that paragraph shall be considered to begin on that date.

Article 23

Review of the Agreement

The Contracting Parties may agree at any time to review and amend any of the provisions of this Agreement.

Article 24

Entry into Force and Termination

1. This Agreement is concluded for an indefinite period and shall enter into force on the first day of the third month following the month in which each Contracting Party shall have received from the other Contracting Party written notification that it has complied with all requirements for the entry into force of this Agreement.

2. The Agreement may be denounced by notification by one of the Contracting Parties to the other Contracting Party. The Agreement shall cease to be in force on December 31 after at least 12 months from the date of notification.

3. The termination of the Agreement shall be without prejudice to any rights acquired by a person in accordance with its provisions. Any questions relating to the award of future benefits by virtue of rights in the course of acquisition at the time when the Agreement ceases to have effect on account of denunciation, shall be fixed by special arrangement.

In witness whereof, the undersigned, duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at this day of in the Korean, Danish and English languages, each version being equally authentic. In case of divergences in the interpretation, the English text shall prevail.

For the Government of the Republic of Korea
For the Government of the Kingdom of Denmark