

AGREEMENT
BETWEEN
THE REPUBLIC OF KOREA
AND
THE UNITED STATES OF AMERICA
ON SOCIAL SECURITY

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

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

1. For the purpose of this Agreement:
 - (a) "National" means,
as regards Korea, a national of the Republic of Korea as defined in the Nationality Law, as amended, and
as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended;
 - (b) "Laws" means the laws and regulations specified in Article 2 of this Agreement;
 - (c) "Competent Authority" means,
as regards Korea, the Minister of Health and Welfare or the Minister of Labor as the case may require, and
as regards the United States, the Commissioner of Social Security;
 - (d) "Agency" means,
as regards Korea, the National Pension Corporation or the Korea

Labor Welfare Corporation as the case may require, and
as regards the United States, the Social Security Administration;

- (e) "Period of coverage" means, a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; and
- (f) "Benefit" means any benefit provided for in the laws specified in Article 2 of this Agreement.

2. Any term not defined in this Article shall have the meaning assigned to it in the applicable laws.

Article 2

- 1. For the purpose of this Agreement, the applicable laws are:
 - (a) As regards Korea,
 - (i) the National Pension Law and the enforcement rules and regulations applicable thereto;
 - (ii) with regard to Part II only, the Industrial Accident Compensation Insurance Law and the enforcement rules and regulations applicable thereto;
 - (b) As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:
 - (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections;

(ii) Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.

2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 of this Article shall not include treaties or other international agreements 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. This Agreement shall also apply to future laws which amend or supplement the laws specified in paragraph 1 of this Article.

Article 3

1. A person who is or has been subject to the laws of one Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with nationals of the other Contracting State in the application of the laws of the other Contracting State regarding the eligibility for and the payment of benefits.

2. Unless otherwise provided in this Agreement, any provision of the laws of one Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

PART II
Provisions on Coverage

Article 4

1. Except as otherwise provided in this Article, a person employed within the territory of either Contracting State shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. Where a person who is normally employed in the territory of one Contracting State by an employer having a place of business in that territory is sent by that employer to work for the same employer in the territory of the other Contracting State, the person shall remain subject to the laws of only the first Contracting State as if the person were employed in its territory, provided that the period of employment in the territory of the other Contracting State is not expected to exceed 5 years. For purposes of applying the preceding sentence, an employer and an affiliated or subsidiary company of the employer (as defined under the laws of the Contracting State from which the person was sent) shall be considered one and the same, provided that the employment in the territory of the other Contracting State would have been covered under the laws of the Contracting State from which the person was sent in the absence of this Agreement.

3. Paragraph 2 of this Article shall apply where a person who has been sent by his employer from the territory of one Contracting State to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Contracting State.

4. A self-employed person who resides within the territory of one Contracting State shall be subject to the laws of only that State.

5. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be subject to the laws of only the first Contracting State if the person is a resident of that State and to the laws of only the other Contracting State in any other case.

6. A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to employment as an officer or member of a crew on a ship or aircraft shall be subject to the laws of only the Contracting State in whose territory the person resides.

7. (a) This Agreement shall not 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, or of the Consular Convention between the United States and Korea of January 8, 1963.

(b) Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in the preceding subparagraph shall be subject to the laws of only the first Contracting State. For the purpose of this paragraph, employment by the Government of a Contracting State includes employment by an instrumentality thereof.

(c) As regards Korea, employment by the Government of Korea includes employment by Korea's local governments.

8. The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of this Article with respect to particular persons or categories of persons, provided that any affected person shall be subject to the laws of one of the Contracting States.

PART III

Provisions on Benefits

Article 5

The following provisions shall apply to Korea:

1. If a person is not eligible for old-age, survivors or disability benefits under Korean laws based on periods of coverage credited exclusively under Korean laws, the Agency of Korea shall take into account the person's periods of coverage credited under United States laws, insofar as they do not coincide, for the purpose of establishing the person's entitlement to benefits under Korean laws. The preceding sentence shall not apply for purposes of establishing entitlement to old-age, survivors or disability benefits unless the person has completed at least 18 months of coverage under Korean laws.

2. To obtain a disability benefit or survivors benefit, the requirement of Korean laws 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

United States laws or has credit for at least four quarters of coverage under United States laws during a period of eight calendar quarters ending with the calendar quarter in which the insured event occurs according to Korean laws.

3. In determining eligibility for benefits under this Article, the Agency of Korea shall credit three months of coverage for every quarter of coverage certified by the Agency of the United States.

4. Where periods of coverage under United States laws are taken into account to establish eligibility for benefits under Korean laws in accordance with this Article, the benefit due shall be determined as follows:

(a) The Agency of Korea shall first compute a Basic Pension Amount equal to the amount that would have been payable to the person if all the periods of coverage credited under the laws of both Contracting States had been completed under Korean laws. To determine the Basic Pension Amount, the Agency of Korea shall take into account the person's average standard monthly income while covered under Korean laws.

(b) The Agency of Korea shall calculate the partial benefit to be paid in accordance with Korean laws based on the Basic 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 laws and the total duration of the periods of coverage taken into consideration under the laws of both Contracting States.

5. Entitlement to a benefit from Korea which results from paragraph 1 of this Article shall terminate with the acquisition of sufficient periods of coverage under

Korean laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

6. (a) United States nationals shall receive equal treatment with Korean nationals in the application of provisions of Korean laws regarding lump-sum refunds of contributions, regardless of when the contributions were paid. Notwithstanding paragraph 1 of Article 3, lump-sum refunds of contributions shall be paid to nationals of a State other than the Contracting States in accordance with Korean laws.
- (b) The periods of coverage for which contributions have been refunded in lump-sum shall not be certified by the Agency of Korea as creditable in totalizing periods to determine entitlement to a benefit.

Article 6

The following provisions shall apply to the United States:

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under Korean laws and which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of coverage certified by the Agency of Korea; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.
3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1 of this Article, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.
4. Entitlement to a benefit from the United States which results from paragraph 1 of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

PART IV

Miscellaneous Provisions

Article 7

The Competent Authorities of the two Contracting States shall:

- (a) Conclude all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;
- (b) Communicate to each other information concerning the measures taken for the application of this Agreement; and
- (c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 8

The Competent Authorities and the Agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

Article 9

1. In accordance with measures to be agreed upon, the Competent Authorities and Agencies of the two Contracting States shall communicate to each other any information necessary for the application of this Agreement.
2. Unless otherwise required by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with this

Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing this Agreement. Such information received by one Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 10

1. Where the laws of one Contracting State provide that any document which is submitted to the Competent Authority or the Agency of that Contracting State 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 or the Agency of the other Contracting State in the application of this Agreement.

2. Documents and certificates which are presented 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 Agency of one Contracting State shall be accepted as true and exact copies by the Agency of the other Contracting State, without further certification. The Agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 11

1. The Competent Authorities and Agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official language of either Contracting State.
2. An application or document may not be rejected by the Competent Authority or Agency of one Contracting State because it is in the official language of the other Contracting State.

Article 12

1. A written application for benefits filed with the Agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.
2. If an applicant has filed a written application for benefits with the Agency of one Contracting State and has not explicitly requested that the application be restricted to benefits under the laws of that Contracting State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

3. 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 13

1. A written appeal of a determination made by the Agency of one Contracting State may be validly filed with the Agency of either Contracting State. The appeal shall be dealt with according to the procedure and laws of the Contracting State whose decision is being appealed.

2. Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the Agency of that Contracting State, but which is instead filed within the same period with the Agency of the other Contracting State, shall be considered to have been filed on time.

Article 14

In any case to which the provisions of Article 13 of this Agreement apply, the Agency to which the claim, notice or written appeal has been submitted shall indicate the date of receipt on the document or on a form agreed upon for this purpose pursuant to Article 7(a) of this Agreement and transmit it without delay to the liaison agency of the other Contracting State.

Article 15

1. Payments under this Agreement may be made in the currency of the Contracting State making the payments.
2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States shall immediately take measures necessary to ensure the transfer of sums owed by either Contracting State under this Agreement.

Article 16

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

Article 17

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement.

PART V

Transitional and Final Provisions

Article 18

1. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of this Agreement, or to a lump-sum death benefit if the person died before the entry into force of this Agreement.
2. In determining the right to benefits under this Agreement, consideration shall be given to periods of coverage and other events which occurred before the entry into force of this Agreement. However, neither Contracting State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.
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 a benefit to which entitlement was established prior to its entry into force.
5. In applying paragraph 2 of Article 4 in the case of persons who were sent to the territory of a Contracting State 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 19

This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

Article 20

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by either Contracting State to the other Contracting State.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

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

DONE in duplicate at Washington on March 13, 2000, in the Korean and English languages, the two texts being equally authentic.

FOR THE REPUBLIC OF
KOREA

FOR THE UNITED STATES OF
AMERICA