

AGREEMENT ON SOCIAL SECURITY  
BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF KOREA  
AND  
THE GOVERNMENT OF CANADA

THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE  
GOVERNMENT OF CANADA,

DESIRING to regulate the relationship between their two countries in the  
field of social security,

HAVE AGREED AS FOLLOWS:

**PART I**  
**GENERAL PROVISIONS**

**Article I**  
**Definitions**

1. For the purposes of this Agreement:

"agency" means, as regards Korea, the National Pension Cooperation, and  
as regards Canada, the competent authority;

"benefit" means, as regards a Contracting State, any cash benefit, pension  
or allowance for which provision is made in the legislation of that  
Contracting State and includes any supplement or increases applicable to  
such a cash benefit, pension or allowance;

"competent authority" means, as regards Korea, the Minister of Health  
and Welfare, and as regards Canada, for all matters other than those  
related to Article 5, the Minister of Human Resources Development, and,  
for matters related to Article 5, the Minister of National Revenue;

"period of coverage" means, as regards Korea, 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 legislation of Korea, or any similar period insofar as it is recognized by that legislation as equivalent to a period of coverage; a period of residence shall not be recognized as a period of coverage; and as regards Canada, a period of contributions or residence used to acquire the right to a benefit under the legislation of Canada, and includes a period during which a disability pension is payable under the Canada Pension Plan;

"legislation" means, as regards a Contracting State, the laws and regulations specified in Article 2 with respect to that Contracting State;

"national" means, as regards Korea, a national of the Republic of Korea as defined in the Nationality Law, as amended, and as regards Canada, a Canadian citizen.

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

## **Article 2**

### **Legislation to Which the Agreement Applies**

1. This Agreement shall apply to the following legislation:
  - (a) with respect to Korea, the National Pension Law and enforcement rules and regulations thereto;
  - (b) with respect to Canada,

- (i) the Old Age Security Act and the regulations made thereunder,  
and
- (ii) the Canada Pension Plan and the regulations made thereunder.

2. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1, unless the competent authority of the Contracting State which has amended, supplemented, consolidated or superseded its legislation otherwise notifies the competent authority of the other Contracting State in writing within ninety days after the publication or entry into force of such an amendment, supplement, consolidation or supersession.

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

### **Article 3**

#### **Persons to Whom the Agreement Applies**

This Agreement shall apply to any person who is or who has been subject to the legislation of either Contracting State, and to the dependants and survivors of such a person within the meaning of the applicable legislation of either Contracting State.

### **Article 4**

#### **Equality of Treatment and Export of Benefits**

1. Unless otherwise provided in this Agreement, in the application of the legislation of a Contracting State, any person described in Article 3 shall receive equal treatment with the nationals of that Contracting State in regards to rights and obligations under that legislation, including eligibility for and the payment of benefits.

2. Unless otherwise provided in this Agreement, any provision in the legislation of a Contracting State which

(a) restricts a person's entitlement to cash benefits under that legislation, or,

(b) reduces, modifies, suspends, cancels or confiscates the benefit payable to that person under that legislation

solely because the person concerned resides outside or is absent from that Contracting State shall not be applicable to a person who resides in the other Contracting State.

## **PART II**

### **PROVISIONS ON COVERAGE**

#### **Article 5**

##### **Determining the Applicable Legislation**

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

2. Where a person in the service of an employer having a place of business in a Contracting State is sent by that employer to the other Contracting State for a period that is not expected to exceed five years, the person shall, in respect of that employment, be subject only to the legislation of the first Contracting State as if the person were employed in that Contracting State. For the purposes of applying this paragraph, an employer and an affiliated or subsidiary company of the employer, as defined under the national statutes of the Contracting State from which the person was sent, shall be considered as one and the same.

3. Paragraph 2 shall apply where a person who has been sent by that person's employer from a Contracting State to a third State is subsequently sent by that employer from the third State to the other Contracting State.

4. A person who ordinarily resides in a Contracting State and who is engaged in self-employment in the other Contracting State or in both Contracting States shall, in respect of that employment, be subject only to the legislation of the first Contracting State.

5. Where the same activity is considered to be self-employment under the legislation of a Contracting State and employment under the legislation of the other Contracting State, that activity shall be treated according to the provisions of paragraph 4 if the person is a resident of the first Contracting State and according to the provisions of this Article concerning employment in any other case.

6. This Agreement shall not 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.

7. A person who, but for this Agreement, would be subject to the legislation of both Contracting States in respect of employment as a member of the crew of a ship or aircraft shall, in respect of that employment, be subject only to the legislation of Canada if the person ordinarily resides in Canada and only to the legislation of Korea in any other case.

8. The competent authorities of the Contracting States may, by common agreement, grant an exception to the provisions of this Article with respect to any person or categories of persons, provided that any affected person shall be subject to the legislation of one of the Contracting States.

## **Article 6**

### **Definition of Certain Periods of Residence with Respect to the Legislation of Canada**

1. For the purpose of calculating the amount of benefits under the Old Age Security Act:

- (a) if a person is subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada during any period of presence or residence in Korea, that period shall be considered as a period of residence in Canada for that person as well as for that person's spouse and dependants who reside with the person and who are not subject to the legislation of Korea by reason of employment or self-employment;
- (b) if a person is subject to the legislation of Korea during any period of presence or residence in Canada, that period shall not be

considered as a period of residence in Canada for that person and for that person's spouse and dependants who reside with the person and who are not subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada by reason of employment or self-employment.

2. In the application of paragraph 1:
  - (a) a person shall be considered to be subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada during a period of presence or residence in Korea only if that person makes contributions under the plan concerned during that period by reason of employment or self-employment; and
  - (b) a person shall be considered to be subject to the legislation of Korea during a period of presence or residence in Canada only if that person makes compulsory contributions under that legislation during that period by reason of employment or self-employment.

## **PART III**

### **PROVISIONS ON BENEFITS**

#### **Chapter 1**

#### **Benefits under the Legislation of Korea**

#### **Article 7**

#### **Totalizing and Benefits**

1. If a person is not eligible for old-age, survivors or disability benefits under the legislation of Korea based on periods of coverage credited



exclusively under the legislation of Korea, the agency of Korea shall take into account the person's periods of coverage credited under the Canada Pension Plan, insofar as they do not coincide, for the purpose of establishing the person's entitlement to benefits under the legislation of Korea. 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 twelve months of coverage under the legislation of Korea.

2. 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 Canada Pension Plan during a period in which the insured event occurs according to the legislation of Korea.

3. In determining eligibility for benefits under this Article, the agency of Korea shall credit twelve months of coverage for every year of contributions under the Canada Pension Plan certified as creditable by the agency of Canada.

4. Where periods of coverage under the Canada Pension Plan are taken into account to establish eligibility for benefits under the legislation of Korea 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 legislation of both Contracting States had been completed under the legislation of Korea. To determine the Basic 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 calculate the partial benefit to be paid in accordance with the legislation of Korea 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 legislation and the total duration of the periods of coverage taken into consideration under the legislation of both Contracting States.

5. Entitlement to a benefit from Korea which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under the legislation of Korea to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1.

## **Chapter 2**

### **Benefits under the Legislation of Canada**

#### **Article 8**

#### **Totalizing**

1. (a) If a person is not entitled to the payment of a benefit because the person has not accumulated sufficient periods of coverage under the legislation of Canada, the entitlement of that person to the payment of that benefit shall, subject to sub-paragraph 1(b), be determined by totalizing these periods and those specified in paragraph 2, provided that the periods do not overlap.
- (b) In the application of sub-paragraph 1(a) to the Old Age Security Act,
  - (i) the agency of Canada shall be required to totalize periods to determine a person's entitlement to a benefit only if that person

has completed at least twelve months of residence in Canada as defined in that Act, without reference to sub-paragraph 2(a) of this Article but subject to the provisions of sub-paragraph (b)(ii) of this paragraph; and

(ii) only periods of residence in Canada completed on or after 1 January 1988, including periods deemed as such under Article 6, shall be taken into account.

2. (a) For purposes of determining entitlement to the payment of a benefit under the Old Age Security Act, a month which is a period of coverage under the legislation of Korea and which is completed after the age at which periods of residence in Canada are credited for purposes of that Act shall be considered as a month of residence in Canada.
- (b) For purposes of determining entitlement to the payment of a benefit under the Canada Pension Plan, a calendar year which includes at least three months of coverage credited under the legislation of Korea shall be considered as a year of contributions under the Canada Pension Plan.

## **Article 9**

### **Benefits under the Old Age Security Act**

1. If a person is entitled to the payment of an Old Age Security pension or a spouse's allowance solely through the application of the totalizing provisions of Article 8, the agency of Canada shall calculate the amount of the pension or the spouse's allowance payable to that person in conformity with the provisions of the Old Age Security Act governing the payment of a partial

pension or a spouse's allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act or are deemed as such under Article 6 and which have been completed on or after 1 January 1988.

2. Paragraph 1 shall also apply to a person outside Canada who would be entitled to the payment of a pension in Canada but who has not resided in Canada for the minimum period required by the Old Age Security Act for entitlement to the payment of a pension outside Canada.

3. Notwithstanding any other provision of this Agreement:

- (a) an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, totalized as provided in Article 8, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for entitlement to the payment of a pension outside Canada; and
- (b) a spouse's allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the Old Age Security Act.

## **Article 10**

### **Benefits under the Canada Pension Plan**

If a person is entitled to the payment of a benefit under the Canada Pension Plan solely through the application of the totalizing provisions of Article 8, the agency of Canada shall calculate the amount of benefit payable to that person in the following manner:

- (a) the earnings-related portion of the benefit shall be determined in

conformity with the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under that Plan; and

- (b) the flat-rate portion of the benefit shall be determined by multiplying:
  - (i) the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the Canada Pension Plan by
  - (ii) the fraction which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under that Plan to establish entitlement to that benefit, but in no case shall that fraction exceed the value of one.

## PART IV

### MISCELLANEOUS PROVISIONS

#### Article 11

##### **Administrative Arrangement**

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 liaison agencies of each Contracting State shall be designated in the Administrative Arrangement.

## **Article 12**

### **Exchange of Information and Mutual Assistance**

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

- (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 this Agreement.

2. The assistance referred to in sub-paragraph 1(b) shall be provided free of charge, subject to any exceptions to be agreed upon by the competent authorities of the Contracting States in the Administrative Arrangement concluded pursuant to Article 11.

## **Article 13**

### **Confidentiality of Information**

Unless otherwise required by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with this Agreement to the competent authority or agency of that Contracting State by

the competent authority or agency of the other Contracting State 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 State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

## **Article 14**

### **Exemption from Fees and Certification of Documents**

1. Where the legislation of a Contracting State provides that any document which is submitted to the competent authority or 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 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 an agency of one Contracting State shall be accepted as true and exact copies by an 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 sources.

## **Article 15**

### **Language of Communications**

1. The competent authorities and agencies of the Contracting States 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 in any official language of either Contracting State.
2. An application or document may not be rejected by a competent authority or agency of a Contracting State solely because it is in an official language of the other Contracting State.

## **Article 16**

### **Submitting Claims, Notices or Appeals**

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting State which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority or agency of that Contracting State, but which is presented within the same period to an authority or agency of the other Contracting State, shall be treated as if it had been presented to the competent authority or agency of the first Contracting State.
2. If, after the entry into force of this Agreement, a person files a written application for benefits with the agency of a Contracting State under the legislation of that Contracting State, 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 State, 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 State, or
- (b) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting State.

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

## **Article 17**

### **Payment of Benefits**

1. The agency of a Contracting State shall pay benefits in accordance with this Agreement in the currency of that Contracting State.

2. In the event that a Contracting State 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 State, 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 reside in the other Contracting State.

**Article 18**  
**Resolution of Difficulties**

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

**Article 19**  
**Understandings with a Province of Canada**

The Government of the Republic of Korea and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada insofar as those understandings are not inconsistent with the provisions of this Agreement.

**PART V**  
**TRANSITIONAL AND FINAL PROVISIONS**

**Article 20**  
**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, or to a lump-sum death benefit if the person concerned died before 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, shall be taken into consideration. However, the agency 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. 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 5 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 paragraph 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 21**

### **Period of Duration and Termination**

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 one 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.

## **Article 22**

### **Entry into Force**

This Agreement shall enter into force on the first day of the fourth 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.

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

DONE in two copies at Seoul this 10th day of January, 1997, in the Korean, English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT  
OF CANADA

# PROTOCOL

At the signing of the Agreement on Social Security between the Government of the Republic of Korea and the Government of Canada(hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. In calculating the amount of lump-sum refunds to be paid to a national of Canada who has paid contributions under the legislation of Korea, periods of coverage before the date of the entry into force of the Agreement shall not be taken into consideration.
2. 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.

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

DONE in two copies at Seoul this 10th day of January, 1997, in the Korean, English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF  
CANADA