

AGREEMENT ON SOCIAL SECURITY

BETWEEN

THE REPUBLIC OF KOREA

AND

THE REPUBLIC OF INDIA

The Republic of Korea and the Republic of India (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

Definitions

1. For the purpose of this Agreement:
 - (a) "national" means as regards the Republic of Korea (hereinafter referred to as "Korea"), a national of Korea as defined in the Nationality Law, as amended, and as regards the Republic of India (hereinafter referred to as "India"), a person of Indian nationality;
 - (b) "legislation" 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, and as regards India, the Minister of Overseas Indian Affairs;
 - (d) "agency" means as regards Korea, the National Pension Service, and as regards India, the Employees' Provident Fund Organisation;
 - (e) "period of coverage" means any period of contributions that has been recognized and completed under the legislation of a Contracting State, and any other period recognized as equivalent to a period of contribution under that legislation;
 - (f) "benefit" means any benefit provided for in the legislation specified in Article 2 of this Agreement.

2. Any term not defined in paragraph 1 of this Article shall have the meaning assigned to it in the applicable legislation.

Article 2

Applicable Legislation

1. This Agreement shall apply:
 - (a) as regards Korea, to the National Pension Act and to its regulations;
 - (b) as regards India, to the legislations and regulations concerning:
 - (i) the old age and survivors' pension for employed persons;
 - (ii) the permanent total disability pension for employed persons.
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 on social security that may be concluded between one Contracting State and a third State, or legislation promulgated for their specific implementation.
3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article.
4. Notwithstanding paragraph 3 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 in writing, within six months from the date of the publication of such laws or regulations, that no such extension to the Agreement is intended.
5. This Agreement shall not apply to legislations that establish a new social security branch, unless the competent authorities of the Contracting States agree on this application.

Article 3

Personal Scope

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 whose rights are derived from such a person.

Article 4

Equal Treatment

Unless otherwise provided in this Agreement, the persons specified in Article 3, who ordinarily reside in the territory of a Contracting State, shall receive equal treatment with nationals of that Contracting State in the application of the legislation of that Contracting State.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, a benefit under the legislation of one Contracting State 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 State, and the benefit shall be payable in the territory of the other Contracting State.
2. Benefits under the legislation of one Contracting State shall be granted to nationals of the other Contracting State who reside outside the territories of the Contracting States under the same conditions as they are granted to nationals of the first Contracting State who reside outside the territories of the Contracting States.

Part II

Provisions on Coverage

Article 6
General Provisions

Unless otherwise provided in this Agreement, an employed person who works in the territory of one Contracting State shall, with respect to that work, be subject only to the legislation of that Contracting State.

Article 7
Detached Workers

1. Where a person in the service of an employer having a registered office in the territory of one Contracting State is sent by that employer to work on that employer's behalf in the territory of the other Contracting State, only the legislation on compulsory coverage of the first Contracting State shall continue to apply with regard to that employment during the first sixty calendar months as though the employee were still employed in the territory of the first Contracting State. This paragraph shall also apply to a worker who has been sent by his/her employer in the territory of one Contracting State to the employer's affiliated or subsidiary company in the territory of the other Contracting State.

2. In case the detachment continues beyond the period specified in paragraph 1 of this Article, the legislation of the first Contracting State referred to in that paragraph shall continue to apply, provided that the competent authorities of the Contracting States or the agencies agree.

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

Article 8

Mariners and Aircraft Crew

1. A person who, but for this Agreement, would be subject to the legislation of the Contracting States with respect to employment as an officer or member of a crew on a ship shall be subject only to the legislation of the State in which the person is ordinarily resident.

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

Article 9
Civil Servants, Members of Diplomatic Missions and Consular Posts

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. Subject to paragraph 1 of this Article, where a person who is employed by the central or local Government Service, or any other Public Service of one Contracting State is sent to work in the territory of the other Contracting State, the legislation of the first Contracting State shall apply to him/her as if he/she were employed in its territory.

Article 10
Modification Provision

The competent authorities of the Contracting States or the agencies may agree to grant an exception to the provisions of this Part with respect to particular persons or categories of persons, provided that any affected person shall be subject to the legislation of one Contracting State.

Part III
Provisions on Benefits

Article 11

Totalization of Periods of Coverage and Calculation of Pensions

1. When periods of coverage have been completed under the legislation of the Contracting States, the agency of each Contracting State shall, in determining eligibility for benefits under the legislation which it applies, take into account, if necessary, periods of coverage under the legislation of the other Contracting State provided that such periods of coverage do not overlap with periods of coverage under its legislation.
2. If the legislation of one Contracting State subordinates the granting of certain benefits on the condition that the periods of coverage are to be completed in a given occupation, only periods of coverage completed or recognized as equivalent in the same occupation under the legislation of the other Contracting State shall be totalized for admission of the entitlement to these benefits. If the aggregation of periods of coverage does not create eligibility to a benefit within the specific scheme, these periods of coverage shall be aggregated within the general scheme of insurance.
3. Unless otherwise provided in this Agreement, the calculation of the pension shall be determined by the applicable legislation of the respective Contracting States.

Article 12

Totalization of Periods of Coverage under the Legislation of a Third State

1. Where a person is not eligible for a benefit on the basis of the periods of coverage completed under the legislations of both Contracting States, aggregated as provided in Article 11 of this Agreement, the eligibility of that person for that benefit shall be determined by totalizing these periods and periods of coverage completed under the legislation of a third State with which both Contracting States have concluded an international social security agreement which provides for totalizing of periods of coverage.
2. If a person is entitled to a benefit under the legislation of either Contracting State solely through paragraph 1 of this Article, the periods of coverage completed under the legislation of a third State shall be taken into account when applying paragraph 2 of Article 13 and paragraph 2 of Article 14.

Article 13

Special Provisions Relating to Korea

1. Subject to Article 11 of this Agreement, to obtain a disability or survivors' benefit, the requirement of the Korean legislation that a person be covered when the insured event occurs shall be considered to have been met if the person is covered for a benefit under the legislation of India during a period in which the insured event occurs according to the legislation of Korea.
2. Where periods of coverage under the legislation of India are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraphs 1 and 2 of Article 11 and paragraph 1 of this Article, the benefit due shall be determined as follows:
 - (a) the agency 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 the Contracting States 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 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 the Contracting States.

3. Lump-sum refunds shall be granted to nationals of the other Contracting State under the same conditions as they are granted to Korean nationals. Notwithstanding Article 4 of this Agreement, lump-sum refunds shall be paid to nationals of a third state only in accordance with the legislation of Korea.

4. 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 only to the period covered under the legislation of Korea.

Article 14

Special Provisions Relating to India

1. If a person is entitled to an old-age, survivors' or disability benefit under the Indian legislation without necessarily proceeding to totalization, the Indian agency shall calculate the benefit entitlement directly on the basis of the completed periods of coverage in India and only under the Indian legislation.

2. If a person is entitled to an old-age, survivors' or disability benefit by virtue of the Indian legislation, with his right being created solely by taking the totalization of the periods of coverage into account pursuant to Article 11, the following rules apply:

(a) the Indian agency shall calculate the theoretical amount of the benefit due as if all the periods of coverage completed according to the Contracting States' legislations were exclusively completed under the Indian legislation;

(b) the Indian agency shall then calculate the amount due, on the basis of the amount specified in (a) of this paragraph, in proportion to the duration of the periods of coverage under its legislation, in relation to the duration of all periods of coverage accounted under (a) of this paragraph.

3. Benefits in the form of refund of contributions under the legislation of India shall be granted to Korean nationals as they are granted to Indian nationals.

Part IV

Miscellaneous Provisions

Article 15

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 the Contracting States shall be designated in the Administrative Arrangement.

Article 16

Administrative Collaboration

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

- (a) communicate with 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 paragraph 1 (b) of this Article shall be provided free of charge, subject to any exceptions to be agreed upon in the Administrative Arrangement concluded pursuant to paragraph 1 of Article 15.

Article 17
Confidentiality of Information

Unless otherwise required by the national laws and regulations 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 laws and regulations of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 18
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 by the competent authority or the agency of either Contracting State for the 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.

Article 19
Language of Communication

1. The competent authorities and agencies of the Contracting States may communicate directly with one another as well as 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 communication may be made in the official language of either Contracting State or in English.
2. An application or document may not be rejected by a competent authority or agency of a Contracting State solely because it is in the official language of the other Contracting State.

Article 20
Submission of Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting State which should, for the purposes of that legislation, have been presented within a specified period to a competent authority or agency of that Contracting State, but which is presented within the same period to a competent 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. An application for benefits under the legislation of one Contracting State shall be deemed to be also an application for the benefit of corresponding benefits under the legislation of the other Contracting State, if the applicant:

- (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 of this Article applies the competent 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 21
Payment of Benefits

1. Payments of benefits under this Agreement may be made in the currency of either Contracting State. If pensions are paid in the currency of the other Contracting State, the conversion rate shall be the rate of exchange in effect on the day when pensions are paid.

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 22
Resolution of Disagreement

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

Part V
Transitional and Final Provisions

Article 23
Transitional Provisions

1. This Agreement shall not establish any right to payment of a benefit for any period before the date of the entry into force of this Agreement.

2. Subject to paragraph 1 of this Article, 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 from it.

4. Benefits determined before the entry into force of this Agreement may be newly determined upon application if a change in such benefits results solely from the

provisions of this Agreement. If the new determination under the preceding sentence of this paragraph results in no entitlement or entitlement to a lesser amount of pension that was paid for in the last period prior to the entry into force of this Agreement, the same amount of pension as was previously paid shall continue to be paid.

5. 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.

6. Rights that were liquidated by the granting of a lump sum payment or the reimbursement of contributions will be treated in accordance with the provisions of the national legislations of the Contracting States.

7. If an application for any benefit is made within five years of the date of the entry into force of this Agreement, any entitlement arising from the implementation of this Agreement shall be effective from that date, and the legislation of either Contracting State concerning the forfeiture or the prescription of rights shall not be applicable to such interested persons.

8. If the application is made after five years following the entry into force of this Agreement, the entitlements which are not subject to forfeiture or which are not yet prescribed shall be acquired from the date of the application, unless more favourable legislative provisions of the Contracting State concerned are applicable.

Article 24

Entry into Force

This Agreement shall enter into force on the first day of the second 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 internal requirements for the entry into force of this Agreement.

Article 25

Duration and Termination

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which 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 by virtue of the Agreement shall be retained. The Contracting States shall make arrangements regarding rights in the process of acquisition.

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

DONE at Seoul on 19th day of October 2010, in two originals each in the Korean, Hindi and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF INDIA

PROTOCOL

Signing the Agreement on Social Security between the Republic of Korea and the Republic of India (hereinafter referred to as this Agreement or the "SSA") today, the undersigned confirm their common understanding, which shall form integral part of this Agreement, regarding this Agreement's relationship with paragraph 3 of Article 8.3 of the Comprehensive Economic Partnership Agreement between the Republic of Korea and the Republic of India, done at Seoul on 7 August, 2009 (hereinafter referred to as the "CEPA"):

- (1) In case of Independent Professionals, provisions of paragraph 3 of Article 8.3 of the CEPA shall apply and in case of any other category of workers, the SSA shall apply; and
- (2) The scope of bilateral cooperation in social security under the SSA and under paragraph 3 of Article 8.3 of the CEPA covers only the old age, survivors' and disability pension under the legislations and regulations of both countries.¹⁾

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

DONE at Seoul on 19th October 2010, in two originals each in the Korean, Hindi and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR THE REPUBLIC OF INDIA

1) For greater certainty, for Korea, the scope of bilateral cooperation in social security under the SSA and under paragraph 3 of Article 8.3 of the CEPA as stated in paragraph (2) corresponds to the national pension plan under the National Pension Act and its regulations.