

CONVENTION ON SOCIAL SECURITY BETWEEN SPAIN AND THE PHILIPPINES

TITLE I

GENERAL PROVISIONS

ARTICLE 1

For the purpose of the present Convention, the expressions and terms cited as follows will have the following:

1st. "Contracting Party" means Spain or the Philippines.

2nd. "Territory" means in relation to Spain, the Spanish national territory and in relation to the Philippines, its territory as defined in the 1986 Philippine Constitution.

3rd. "Legislation" means the laws, regulations and statutory instruments related to the branches of Social Security specified in Article 2, Paragraph 1.

4th. "Nationals" means with respect to Spain, Spanish subjects in accordance with Title I, Book I of the Civil Code and in relation to the Philippines, its citizens as defined in the 1986 Philippine constitution.

5th. "Competent Authority" means with respect to Spain, the Minister of Labor and Social Security and in relation to the Philippines, the Administrator of the Social Security System.

6th. "Institution" means the Institution or Authority responsible for implementing, completely, or partially, the legislations specified in Article 2.

7th. "Competent Institution" means the institution which should take cognizance of each case, in conformity with applicable legislation.

8th. "Economic benefit or pension" means any economic benefit or pension provided for by the legislations mentioned in Article 2 including any subsequent updating.

9th. "Worker" means any person who, as a consequence of having undertaken an activity as a worker, either employed by another or self-employed, is or has been subject to the legislations enumerated in Article 2.

10th. "Insurance period" means for Spain, the periods of contribution or equivalent periods considered as such by Spanish legislation. For the

Philippines, the periods with contributions in accordance with Philippine legislation.

Other expressions and terms used in the Convention shall take the meaning which the respective legislation gives them.

ARTICLE 2

1. The present Convention will be applied:

A. In Spain:

The legislation on the General Regime and the Special Regime which make up the Social Security System with respect to the economic benefits for:

- a. Old age.
- b. Disability.
- c. Death and Survivorship.
- d. Temporary incapacity for work due to common illness and non—work-related accident,
- e. Work-related injuries or occupational illness.

B. In the Philippines:

The legislation on Social Security with respect to the economic benefits for:

- a. Old-Age.
- b. Disability.
- c. Death and survivorship.
- d. Benefits for maternity, sickness and non-work-related injury.
- e. Work-related injury and occupational illness.

2. The present Convention shall be applied in equal manner to the legal provisions that may in the future complete or modify those enumerated in the preceding Article.

3. The present Convention shall be applied to the legislations that may establish a new Special Regime of Social Security when agreed upon by the Contracting Parties.

4. The Convention shall be applied to the legislations that may amplify the coverage of legislations in effect to include new groups of persons, provided the Competent Authority of the other Party does not oppose the same within three months following receipt of notification of said provisions.

ARTICLE 3

The present Convention shall be applied to the workers who are nationals of either Contracting Party, as well as the members of their family and beneficiaries who are entitled to benefits.

It shall also be applied to workers who are refugees in conformity with the 28 July 1951 Geneva Convention and the 31 January 1967 Protocol and stateless persons, in accordance with the 28 September 1954 Convention, who reside ordinarily in the territory of one of the Parties, as well as the members of their family and beneficiaries entitled to benefits.

ARTICLE 4

The persons referred to in the preceding Article shall be subject to the laws established under Article 2 of the present Convention, under equal conditions for the nationals of either Contracting Party.

TITLE II

PROVISIONS ON APPLICABLE LEGISLATION

ARTICLE 5

1. The persons to whom the present Convention may be applicable shall be exclusively subject to the legislation of the Contracting Party in which territory they undertake their labor activity.

2. In the case of self-employed workers who by reason of their work may be subject to the legislation of both Parties, the legislation of the Contracting Party in whose territory they establish their residence shall be applied. If they reside in both Parties, they shall be subject to the legislation of the Party where they ordinarily reside.

ARTICLE 6

The principles cited in Article 5 of the present Convention will have the following exceptions:

a. The worker who is in the service of a company that has an establishment in the territory of one of the Parties on which it normally operates, and is posted by said company in the territory of the other Party for the purpose of taking charge of a job on the account of said company, shall continue to be subject to the legislation of the first Party on condition that said worker is not sent to replace another whose period of assignment has ended and provided that the scheduled duration of the job does not exceed three years. In case such work should be extended for a period longer than that scheduled, the preceding situation may be maintained as an exception as long as there exists an agreement on the matter between the Competent Authorities of both Parties.

b. The diplomatic personnel and career consuls as well as the officials or persons in the service of the Government of one of the Contracting Parties who may have been posted in the territory of the other Party shall be governed by the Vienna Convention on Diplomatic Relations of 18 April 1961 and on Consular Relations of 24 April 1963.

c. Workers in the service of a diplomatic mission or in the service in a personal capacity of a member of said mission who are nationals of a Contracting Party represented, can opt for the application of the legislation of the Party represented within the period of three months which shall begin to be counted from the date of the start of their work or the date of effectivity of the present Convention. Persons

who are employed in a port of a Contracting Party in Jobs of loading and unloading, repairs or in the inspection of said jobs, shall be subject to the legislation of the Contracting Party to which the port may belong.

d. Persons who in a port of a contracting party are employed in jobs of loading and unloading, repairs or in the inspection of said jobs shall be governed by the legislation of the contracting party to which the port belongs.

ARTICLE 7

1. The pensions, subsidies, income and indemnities to which one may be entitled by virtue of the legislation of a Contracting Party shall not be subject to reduction, modification, retention or imposition by reason of the fact that the beneficiary resides in the territory of the other Party.

2. The Social Security benefits to which one is entitled under the legislation of one of the Contracting Parties shall be paid to the nationals of the other Party who reside in a third country under the same conditions and to the same extent as those given to the nationals of the first Party who reside in said third country.

TITLE III

PROVISIONS OF BENEFITS

CHAPTER 1

TOTALIZATION OF INSURANCE PERIODS

ARTICLE 8

1. When a worker has been subject to the legislation of the two Contracting Parties, the insurance periods complied with in each Party shall be totalized provided they do not overlap.

2. When there is an overlap of insurance periods, the following rules shall be taken into account.

a. When an obligatory insurance period coincides with a voluntary insurance period or an equivalent period, the obligatory insurance period shall be taken into account.

b. When a voluntary insurance period and an equivalent period coincide, the voluntary insurance period shall be taken into account.

c. When two voluntary insurance periods, or two equivalent insurance periods coincide, the voluntary insurance period or the equivalent periods corresponding to the Party in which the person may have been mandatorily insured in the last instance shall be taken into account.

d. When it is not possible to determine the period in which determinate insurance periods may have been completed, it shall be presumed that said periods do not overlap with the insurance periods complied with in the other Party.

ARTICLE 9

In cases where it is the legislation of one of the Contracting Parties which determines the right or the amount of benefits upon completion of the insurance and the equivalent periods derived from the exercise of a profession for which a special Social Security regime may exist, what will be totalized by the Competent Institution of said Party shall only be the insurance and equivalent periods complied with in the Special Regime corresponding to the Social Security of the Party or, in its absence, those derived from the exercise of the same profession.

CHAPTER 2

SICKNESS BENEFITS

ARTICLE 10

The economic benefits for sickness shall be determined and paid by the Competent Institution of the Party whose legislation is applicable to the worker in accordance with Articles 5 and 6.

In order to be entitled to such benefits, the totalization of the insurance periods in the manner as provided in Article 8 shall be taken into account when necessary.

CHAPTER 3

OLD-AGE BENEFITS

ARTICLE 11

The worker who may have been successively or alternatively subject to the legislation of both Contracting Parties shall be entitled to the benefits under this Chapter as follows:

1. If the requisites under the legislation of one or both Contracting Parties for entitlement to benefits are completed, the Competent Institution or Institutions shall apply their own internal legislation taking into account only the insurance periods complied with under said legislation.

2. If the requisites under the legislation of one or both Contracting Parties for entitlement to benefits are not completed, the Competent Institution or Institutions shall totalize the insurance periods completed under the legislation of the other Party with their own. If after totalization, the right to the benefit is established, the following rules shall be applied in order to estimate the amount of benefit.

a. The amount of benefit to which the interested person shall have been entitled shall be determined as if all the totalized insurance periods have been completed under one legislation (theoretical pension).

b. The amount of pension actually due shall be established by applying to the theoretical pension the same proportion that exists between the insurance period completed in the Party to which the Institution estimating the pension belongs and the totalization of the insurance periods complied with in both Parties (pro-rata pension).

ARTICLE 12

Where a pension is established by only one of the Parties because the requirements in the other Party are not completed, the benefit shall be adjusted, if necessary, in