

Protocol

At the signing of the Agreement between Japan and the Federal Republic of Germany on Social Security (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

(1) With reference to paragraph (1) of Article 1 of the Agreement:

- a) As regards the Federal Republic of Germany, "legislation" shall also include the by-laws of the institutions and of the associations of institutions.
- b) As regards German legislation, "benefit" shall also include a benefit in kind.

(2) With reference to paragraph (1) of Article 1 and paragraph (2) of Article 2 of the Agreement:

As regards Japan, "legislation" shall not include laws and regulations promulgated for the implementation of other agreements on social security comparable with the Agreement.

(3) With reference to Article 2 of the Agreement:

- a) As regards Japan, it is understood that:
 1. the National Pension does not include the National Pension Fund;
 2. the Employees' Pension Insurance does not include the Employees' Pension Fund;
 3. the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status does not include the pension system for members of local assemblies.

- b) As regards Japan, the National Pension shall not include the Old Age Welfare Pension or any other pensions which are granted transitionally or complementarily for the purpose of welfare and which are payable wholly or mainly out of national budgetary resources.
- c) As regards the Federal Republic of Germany, the provisions of Articles 11 to 13 of the Agreement shall not apply to the Steelworkers' Supplementary Insurance or to the Farmers' Old-age Security.

(4) With reference to paragraph (2) of Article 2 of the Agreement:

If agreements on social security concluded by the Federal Republic of Germany with a third State or arrangements of the European Union on social security contain provisions relating to the apportionment of insurance burdens, those provisions shall be taken into account in the application of the Agreement.

(5) With reference to Article 3 of the Agreement:

In the application of German legislation, stateless persons within the meaning of Article 1 of the Convention Relating to the Status of Stateless Persons of September 28, 1954 shall be also included in Article 3 b).

(6) With reference to paragraph (1) of Article 4 of the Agreement:

- a) The provisions of the said paragraph shall not affect provisions relating to the apportionment of insurance burdens contained in agreements on social security concluded by the Federal Republic of Germany with a third State or in arrangements of the European Union on social security.
- b) The provisions of the said paragraph shall not affect the legislation of either Contracting State which guarantees participation of the insured and of employers in the organs of self-government of institutions and of associations of institutions as well as in the adjudication of social security matters.

- c) Japanese nationals who ordinarily reside in the territory of Japan shall be entitled to voluntary coverage under the German Statutory Pension Insurance if they have made valid contributions to the said insurance for at least sixty months; however, more favourable provisions on the right to voluntary coverage under German legislation shall not be affected. This shall also apply to refugees within the meaning of Article 3 of the Agreement and to stateless persons within the meaning of paragraph (5) of this Protocol, who ordinarily reside in the territory of Japan.
 - d) German nationals who ordinarily reside in the territory of the Federal Republic of Germany shall be entitled to voluntary coverage under the Japanese National Pension if they have made valid contributions to the pension insurance systems specified in paragraph (1) a) of Article 2 of the Agreement for at least sixty months. This shall also apply to refugees within the meaning of Article 3 of the Agreement who ordinarily reside in the territory of the Federal Republic of Germany.
 - e) The provisions of the said paragraph shall not affect the provisions on complementary periods for Japanese nationals on the basis of ordinary residence outside the territory of Japan under Japanese legislation or the provisions on lump-sum payments upon withdrawal for persons other than Japanese nationals under Japanese legislation.
- (7) With reference to Article 5 of the Agreement:
- a) As regards Japan, the provisions of the said Article shall not affect the provisions of Japanese legislation which require a person who is aged 60 or over but under 65 on the date of the first medical examination or of death to reside ordinarily in the territory of Japan for the acquisition of an entitlement to the Disability Basic Pension or the Survivors' Basic Pension.
 - b) As regards the Federal Republic of Germany,
 - 1. With regard to a pension under German legislation on account of reduced earning capacity, the provisions of the said Article

shall apply to a person who ordinarily resides in the territory of Japan only if the entitlement to the pension exists irrespective of the labour market situation.

2. The provisions of the said Article shall not affect:

aa) German legislation on benefits based on periods of coverage completed outside the territory of the Federal Republic of Germany;

bb) German legislation on rehabilitation benefits;

cc) German legislation providing for the suspension of claims for benefits for persons who go abroad to evade criminal proceedings against them.

(8) With reference to Articles 6 to 8 and 10 of the Agreement:

- a) Persons being subject to German legislation on compulsory coverage also include persons who are not actually liable to compulsory coverage in accordance with German legislation.
- b) The provisions of the said Articles on compulsory coverage with regard to employees shall also apply to a person other than an employee but who is treated as such under German legislation on compulsory coverage.

(9) With reference to Articles 4, 7 and 10 of the Agreement:

As regards the accompanying spouse or children of a person who works in the territory of Japan and who is subject to German legislation on compulsory coverage in accordance with the provisions of Article 7 or Article 10 of the Agreement,

- a) In cases in which the accompanying spouse or children are persons other than Japanese nationals, Japanese legislation on compulsory coverage shall not apply to them. However, when the accompanying spouse or children so request, the foregoing shall not apply.

- b) In cases in which the accompanying spouse or children are Japanese nationals, the exemption from Japanese legislation on compulsory coverage shall be determined in accordance with Japanese legislation.

(10) With reference to Articles 7, 8 and 10 of the Agreement:

- a) If, by virtue of the provisions of the said Articles, German legislation on compulsory coverage applies to a person in the territory of Japan, the German laws and regulations on compulsory coverage for unemployment insurance shall also apply to the person and the person's employer in the same way.
- b) If, by virtue of the provisions of the said Articles, Japanese legislation on compulsory coverage applies to a person who works in the territory of the Federal Republic of Germany or on board a sea-going vessel entitled to fly the flag of the Federal Republic of Germany, the German laws and regulations on compulsory coverage for unemployment insurance shall not apply to the person or to the person's employer.

(11) With reference to Article 7 of the Agreement:

If the detachment had commenced before the date of entry into force of the Agreement, the period of detachment shall run from that date.

(12) With reference to paragraph (1) of Article 7 and Article 10 of the Agreement:

As regards a person who is not covered under Japanese pension systems for employees, exemption from German legislation on compulsory coverage under the said Articles shall be conditional upon Japanese legislation on the National Pension being applicable to that person.

(13) With reference to Article 10 of the Agreement:

Where, by virtue of the provisions of the said Article, a person is subject to German legislation on compulsory coverage in the territory of Japan, that person shall be deemed to work in the place where that person worked last in the territory of the Federal Republic of Germany. If that person did not work previously in the

territory of the Federal Republic of Germany, that person shall be deemed to work at the place where the German competent authority has its seat.

(14) With reference to paragraph (1) of Article 11 and Article 13 of the Agreement:

The above provisions shall not apply to the following benefits under Japanese legislation:

- a) the Disability Allowance under the Employees' Pension Insurance;
- b) the disability lump-sum payments under the mutual aid pensions;
- c) the additional pension for specified occupations under the mutual aid pensions;
- d) any other benefits to be introduced after the entry into force of the Agreement, as may be agreed upon in an arrangement under paragraph (1) of Article 19 of the Agreement.

(15) With reference to Article 13 of the Agreement:

- a) In applying paragraph (3) of the said Article, as regards a person who possesses periods of coverage under two or more Japanese pension systems for employees, the requirement referred to in the said paragraph shall be deemed to be fulfilled for one of those pension systems in accordance with Japanese legislation.
- b) In calculating the amount of benefits under Japanese pension systems for employees in accordance with the provisions of paragraph (4) of the said Article, if the person entitled to the benefits possesses periods of coverage under two or more of such pension systems, the periods of coverage under Japanese legislation referred to in paragraph (4) of the said Article shall be the sum of the periods of coverage under all of those pension systems. However, when that sum of the periods of coverage exceeds the period determined by Japanese legislation referred to in paragraph (4) b) of the said Article, this provision and the method of calculation stipulated in paragraph (4) of the said Article shall not apply.

(16) With reference to paragraph (1) of Article 15 of the Agreement:

As regards Japan, it is understood that the provisions of the said paragraph do not affect the municipal ordinances which provide for an exemption or reduction of the fees for certificates of family registers.

(17) With reference to paragraph (2) of Article 16 of the Agreement:

In applying German legislation, notifications and other documents may be delivered directly to the persons concerned or their representatives who ordinarily reside in the territory of Japan by registered mail with return receipt. This provision shall also apply to notifications and other documents which are delivered in the course of implementing German laws and regulations governing assistance to war victims.

(18) With reference to Article 17 of the Agreement:

- a) When a person claims a benefit under Japanese legislation and in case that person declares that periods of coverage have been completed under German legislation, the claim for that benefit shall be deemed to be a claim for a corresponding benefit under German legislation filed on the same date. However, the foregoing shall not apply if the person declares that the determination of entitlement to old-age benefits under German legislation is to be deferred.
- b) As regards Japan, for the purpose of the said Article, an application for benefits, an appeal or any other declaration under German legislation shall be submitted to an institution, association of institutions or administrative authority which is competent to receive similar applications, appeals or declarations under Japanese pension systems for employees.

(19) With reference to Article 19 of the Agreement:

Communications and transmissions from the institutions, associations of institutions and administrative authorities of the Federal Republic of Germany to those of Japan under the Agreement shall be made through the Japanese liaison agencies unless they are made to the competent authorities of Japan.

(20) With reference to Article 22 of the Agreement:

- a) If, in applying German legislation, the new determination under paragraph (4) of the said Article results in no entitlement or in an entitlement to a lesser amount of pension than that paid for the last period prior to the entry into force of the Agreement, the same amount of pension as paid for that last period shall continue to be paid.
- b) If, under German legislation, an application for the determination of a pension to which an entitlement exists by virtue of the Agreement is filed within twelve months after its entry into force, the pension shall be paid from the calendar month at the beginning of which the eligibility criteria were first met, at the earliest from the entry into force of the Agreement.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Tokyo on April 20, 1998, in duplicate in the Japanese, German and English languages, all three texts being authentic. In case of divergent interpretations of the Japanese and the German texts, the English text shall prevail.

For Japan

Keizo Obuchi

For the Federal Republic
of Germany

Frank Elbe