

## **DRAFT AGREEMENT BETWEEN MONGOLIA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY**

Mongolia and the Republic of Austria, hereinafter referred to as "the Contracting States", being desirous of regulating their relationship in the field of social security, have agreed as follows:

### **PART I GENERAL PROVISIONS**

#### **Article 1 Definitions**

1. For the purposes of this Agreement:
  - a) "**legislation**" means the acts and other legal provisions which regulate the branches of social security, specified in Article 2 of this Agreement;
  - b) "**national**" means, in relation to Mongolia, a citizen of Mongolia and, in relation to the Republic of Austria, a citizen of the Republic of Austria;
  - c) "**competent authority**" means, in relation to Mongolia, the Minister competent for social security, and in relation to the Republic of Austria, the Federal Ministers responsible for the administration of the legislation of the Republic of Austria;
  - d) "**competent institution**" means,  
in relation to Mongolia the institution responsible for the implementation of the legislation specified in Article 2 of this Agreement and  
in relation to the Republic of Austria, the institution, the agency, the organization or body responsible in full or in part for the implementation of the legislation specified in Article 2;
  - e) "**period of coverage**" means periods of contribution or any period treated as such, insofar as it is considered equivalent to a period of coverage by the legislation of each Contracting State;
  - f) "**benefit**" means any pension or any other cash benefit, including any supplements or increases applicable under the legislation specified in Article 2.
2. The competent authorities may notify each other, in writing, of changes in the institutions designated in subparagraph d) of paragraph 1 of this Article without the need to modify the Agreement.
3. Other terms used in this Agreement shall have the meaning assigned to them in the legislation of each Contracting State.

#### **Article 2 Material scope**

1. This Agreement shall apply:

- a) in relation to Mongolia:
    - to the legislation concerning provisions of pensions payable from the Pension Insurance Fund;
    - to the legislation concerning payment of social insurance contributions;
  - b) in relation to the Republic of Austria:
    - to the legislation concerning pension insurance, with the exception of the special protection for notaries;
    - with regard to Part II only, to the legislation concerning sickness insurance and accident insurance.
2. This Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1 of this Article.

### **Article 3**

#### **Personal scope**

This Agreement shall apply to all persons who are or have been subject to the legislation of one or both Contracting States, as well as to any person who derives rights from those persons according to the applicable legislation, unless otherwise provided in this Agreement.

### **Article 4**

#### **Equal treatment**

1. Nationals of the other Contracting State and their dependents and survivors shall, in the application of the legislation of one Contracting State, receive equal treatment with the nationals of this Contracting State, unless otherwise provided in this Agreement.
2. For the purposes of this Agreement, paragraph 1 of this Article shall also apply, in relation to the Republic of Austria, to nationals of a State in which Regulation (EC) No 883/2004 applies and to any dependent or survivor residing in the territory of one Contracting State with respect to his or her rights derived from these persons.
3. Paragraph 1 of this Article shall not apply to the provisions of the legislation of the Republic of Austria concerning the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security.

### **Article 5**

#### **Payment of benefits abroad**

1. A Contracting State shall not reduce or modify benefits acquired under its legislation solely on the ground that the beneficiary stays or resides in the territory of the other Contracting State, unless otherwise provided in this Agreement.
2. Benefits under the legislation of one Contracting State shall be paid to nationals of the other Contracting State, who reside outside the territories of both Contracting States, under the same conditions and to the same extent as they are paid to the nationals of the first Contracting State who reside outside the territories of the Contracting States.

3. As regards the legislation of the Republic of Austria, paragraph 1 of this Article shall not apply to the compensatory supplement and single payments to maintain purchasing power.

## **PART II THE LEGISLATION APPLICABLE**

### **Article 6 General provisions**

Subject to the provisions of Articles 7 and 8, an employed or self-employed person who works in the territory of one Contracting State shall, in respect of that work, be subject only to the legislation of that Contracting State. In the case of an employed person, this shall also apply if the employer's place of business is in the territory of the other Contracting State.

### **Article 7 Special provisions**

1. A person who is employed by an employer for at least one month in the territory of either Contracting State and who is posted by this employer to the territory of the other Contracting State to perform a certain work there for the same employer shall continue, in respect of that employment relationship, to be subject to the legislation of the first Contracting State as if he or she were still employed in the territory of that Contracting State, provided that the anticipated duration of the work does not exceed a period of 60 months.
2. Paragraph 1 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 country is subsequently sent by that employer from the territory of the third country to the territory of the other Contracting State.
3. Article 6 shall apply if a posted person exercises an employment under an additional labour law contract with any other employer or a self-employed activity in the territory of the other Contracting State, in respect to that additional employment relationship or self-employment.
4. A person who was already subject to the provisions of paragraph 1 of this Article, for a period of 60 months, even if the period is in fractions, shall not be subject again to this Article, unless one year has elapsed since the end of the preceding posting.
5. When an employed person is sent to perform services in the territory of a Contracting State for an air transport organization, which has its place of business in the territory of the other Contracting State, paragraph 1 of this Article shall be applied without reference to the sixty-month time limit.
6. A person who performs a paid activity on board a ship that flies the flag of a Contracting State shall be subject to the legislation of that Contracting State.
7. Civil servants from one of the Contracting States and persons considered as such shall be subject to the legislation of the Contracting State whose administration employs them.

8. 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.

**Article 8**  
**Exceptions to the provisions on applicable legislation**

At the request of an employed person and his or her employer, or of a self-employed person, the competent authorities of both Contracting States may provide, by mutual consent, exceptions in the application of Articles 6 and 7 of this Agreement, taking into account the nature and circumstances of the work.

**PART III**  
**PROVISIONS CONCERNING BENEFITS**

**Article 9**  
**Totalization of periods of coverage**

1. If a person has completed periods of coverage under the legislation of both Contracting States, these periods, insofar as they do not overlap, if necessary, shall be added together for the purpose of acquiring entitlement to a benefit, as if they were periods of coverage in the Contracting State in question.
2. Where the legislation of one Contracting State makes the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage under the legislation of the other Contracting State, completed in the same occupation or the same employment shall be taken into account for the award of such benefits.
3. The periods of coverage of a person completed in a third country, with which one of the Contracting States has concluded an Agreement on Social Security of the same kind, shall be taken into account for the purpose of acquiring entitlement to a benefit under the legislation of only this Contracting State.
4. Where the legislation of the Republic of Austria provides that the period of payment of a pension shall prolong the reference period during which periods of coverage must be completed, periods during which a pension has been awarded under the legislation of Mongolia shall also prolong the aforesaid reference period.

**Article 10**  
**Periods of coverage of less than 1 year**

If the total duration of the periods of coverage to be taken into account for the determination of the benefit under the legislation of one Contracting State is less than 12 months and due to these periods of coverage entitlement to a benefit does not exist under that legislation, no benefit will be provided under the legislation of this Contracting State.

**Article 11**  
**Calculation of benefits without totalization of periods of coverage**

Where entitlement to a benefit exists under the legislation of one Contracting State without the application of paragraph 1 of Article 9 of this Agreement, the competent institution of that Contracting State shall determine the amount of the benefit exclusively on the basis of the periods of coverage to be taken into account under that legislation.

#### **Article 12**

#### **Calculation of pensions under the legislation of Mongolia after totalization of periods of coverage**

1. If in accordance with the legislation of Mongolia, the right to the pension is granted after the application of the provisions of Article 9 of this Agreement, the competent institution shall determine the pension in the following way:
  - a) it shall calculate the theoretical amount of the pension due if all the periods of coverage were completed in accordance with the legislation of Mongolia,
  - b) on the basis of the theoretical amount referred to in subparagraph a), it shall determine an actual amount of the pension based on the proportion of the periods of coverage completed in accordance with the legislation of Mongolia to the sum of all periods of coverage completed.
2. When determining the actual amount of a pension, the competent institution of Mongolia shall take into account solely the remuneration received in accordance with the legislation of Mongolia and contributions collected in accordance with this legislation.

#### **Article 13**

#### **Calculation of benefits under the legislation of the Republic of Austria after totalization of periods of coverage**

1. Where entitlement to a benefit exists under the legislation of the Republic of Austria only by totalizing periods under paragraph 1 of Article 9 of this Agreement, the competent institution of the Republic of Austria shall determine the amount of the benefit in accordance with Regulation (EC) No. 883/2004, with periods of coverage in Mongolia to be deemed periods of coverage in another Member State of the European Union.
2. As an exception from paragraph 1 of this Article, child-raising periods shall be taken into account for the determination of the benefit only in accordance with the legislation of the Republic of Austria.

#### **PART IV**

#### **MISCELLANEOUS PROVISIONS**

#### **Article 14**

#### **Cooperation between the competent authorities and administrative assistance**

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 competent authorities and competent institutions of the Contracting States shall, within the scope of their respective authorities:

- a) communicate to each other information concerning the measures taken for the application of this Agreement and
  - b) inform each other of all changes in legislation, which affect the application of this Agreement.
3. The competent authorities and the competent institutions of the Contracting States may contact each other or involved persons or their legal representatives directly.

#### **Article 15** **Administrative and legal assistance**

1. The competent authorities and the competent institutions of the Contracting States shall assist each other in applying this Agreement as if they were applying their own legislation. This assistance shall be free of charge.
2. The competent authorities and the competent institutions of a Contracting State may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Contracting State or in the English language.
3. The competent authorities of the Contracting States shall designate liaison bodies in order to facilitate the application of this Agreement particularly for the creation of a simple and fast liaison between the institutions concerned.

#### **Article 16** **Data protection**

1. Where it is necessary for the implementation of this Agreement, the Contracting States may mutually transmit personal data. Mutual transmission of personal data between the Contracting States as well as any further processing of transmitted personal data shall be carried out in accordance with the respective nationally applicable law as well as any conditions issued by the transmitting bodies and in accordance with the following principles which apply to the processing of data by automated and non-automated means:
  - a) Personal data shall be processed lawfully and fairly and in a transparent manner in relation to the data subject. They shall only be processed for the specified, explicit and legitimate purposes of this Agreement. They must be adequate, relevant and not excessive in relation to the purposes for which they are processed.
  - b) Transmitted personal data shall only be processed for the purposes for which they were transmitted, unless the transmitting Contracting State explicitly authorizes their processing for another purpose.
  - c) Personal data have to be accurate and, where necessary, kept up-to-date; all reasonable steps shall be taken to erase or rectify without delay personal data that turn out to be inaccurate with regard to the purposes for which they are processed. If it becomes evident that incorrect data or data whose transmission is incompatible with the nationally applicable law of the transmitting Contracting State were transmitted, the transmitting body shall immediately notify the receiving body of this fact. In this case the receiving body shall correct or delete this data immediately.

- d) Personal data shall be kept in a form which permits identification of the data subject for no longer than is necessary for the purposes for which they are processed.
2. Personal data shall be processed and kept in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, accidental destruction or accidental damage, using appropriate technical and organizational measures.
  3. The transmitting body and the receiving body shall maintain a record of every transfer or receipt of personal data. These records shall include the purpose, content and time of the transfer or receipt as well as the transmitting and the receiving body. This applies accordingly to the erasure of personal data. The records shall be protected with suitable measures against unauthorized use and other forms of improper use and shall be kept for a minimum of three years. The records shall only be used to control compliance with the applicable data protection rules.
  4. Every data subject shall have the right, upon proof of his or her identity, to obtain information from the body responsible for processing the data about any personal data transmitted or processed in the framework of this Agreement, their origin, any recipients or categories of recipients, their intended purpose and the legal basis. The information shall be provided in an intelligible form, without undue delay and free of charge.

Furthermore, every data subject shall have the right to obtain the rectification of inaccurate personal data and the erasure of unlawfully processed personal data.

Moreover, the Contracting States shall ensure that every data subject has the right to lodge an effective complaint with an independent and impartial tribunal established by law where his or her rights to data protection are infringed and that the data subject is given the possibility to seek an effective remedy and, where appropriate, compensation.

The detailed rules for the procedure to assert these rights shall be governed by the relevant national legal provisions of the Contracting State where the data subject asserts his or her rights. In case of a request to assert these rights, the body possessing the data in question gives the transmitting body the opportunity to comment before a decision is taken.

5. Transmitted personal data shall only be onward transferred to third parties upon written prior authorization of the transmitting Contracting State. Such authorization shall only be granted where permitted by the nationally applicable law of the transmitting Contracting State. The received personal data shall be confidential.
6. Transmitted personal data shall be erased as soon as it is no longer necessary for the purposes of the transmission or the basis for the processing has expired. Upon request, the transmitting Contracting State shall be informed about the erasure.
7. Upon request of the transmitting authority, the receiving authority shall inform about any processing of the received data, including the results achieved therewith.

## **Article 17**

### **Exemption from Charges and Authentication**

1. Any exemption from or reduction of taxes, stamp duty, legal dues or registration fees provided for in the legislation of one Contracting State in respect of certificates or documents which have to be submitted for the application of this legislation shall be extended also to similar certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Contracting State.
2. All statements, documents and certificates of any kind which must be submitted for the application of this Agreement shall not require any authentication by diplomatic or consular authorities.

### **Article 18**

#### **Equal status of applications, notices or appeals**

1. Any claim, declaration or appeal, which, for the application of this Agreement or of the legislation of a Contracting State, is submitted to the competent authority or competent institution of one Contracting State, shall be considered as a claim, declaration or appeal submitted to a competent authority or competent institution of the other Contracting State.
2. A claim for benefits made under the legislation of one Contracting State shall also be valid as a claim for a corresponding benefit according to the legislation of the other Contracting State provided that at the time of application information is provided indicating that periods of coverage have been completed under the legislation of the other Contracting State. This shall not apply, however, when the claimant expressly requests that the granting of an old age benefit under the legislation of the other Contracting State should be suspended.
3. Any claim, declaration or appeal, which, under the legislation of one Contracting State, must be submitted within a specified time to the competent authority or a competent institution, may be submitted within the same time to the corresponding authority or institution of the other Contracting State.
4. In the cases to which paragraphs 1 to 3 of this Article apply, the competent authority or the institution to which the submission is made shall forward the claim, declaration or appeal without delay to the corresponding authority or institution of the other Contracting State, indicating the date of receipt of the document.

### **Article 19**

#### **Medical examinations**

If the competent institution of a Contracting State requires an applicant or beneficiary who stays or resides in the territory of the other Contracting State to undergo a medical examination, such examination shall, at the request of that institution and at its expense, be arranged or carried out at the place of stay or residence by the competent institution of this other Contracting State. In case of medical examinations carried out under the legislation of both Contracting States, such examinations shall be arranged or carried out by the competent institution of the place of stay or residence at its expense.

### **Article 20**

#### **Communication**



For the purpose of the application of this Agreement the competent authorities and competent institutions of the Contracting States shall use the official languages of each Contracting State or the English language.

#### **Article 21**

##### **Payments**

1. Payment of benefits under this Agreement may be made in the currency of either Contracting State.
2. Reimbursements according to this Agreement shall be made in the currency of the Contracting State in which the service has been carried out.
3. Payments according to this Agreement shall be carried out in accordance with the rules or practices, which are in force in this field in each one of the Contracting States at the time of payment.
4. 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, the Contracting State 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 of this Agreement who reside in the other Contracting State.

#### **Article 22**

##### **Undue payments**

Where the competent institution of one Contracting State has made an undue payment of a benefit, the amount of the undue payment may be deducted from the arrears of a corresponding benefit payable under the legislation of the other Contracting State and may be transferred to the account of that competent institution.

#### **Article 23**

##### **Resolution of disputes**

The disputes resulting of the application or interpretation of this Agreement shall be resolved through consultations between the competent authorities of the Contracting States.

### **PART V**

#### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 24**

##### **Transitional provisions**

1. This Agreement shall not establish any entitlement to payment of a benefit for any period before the date of entry into force of this Agreement.
2. Any period of coverage completed under the legislation of a Contracting State before the entry into force of this Agreement, shall also be taken into consideration for the determination of rights acquired under this Agreement.

3. The amount of a benefit determined before the entry into force of this Agreement shall not be reviewed anew in both Contracting States.
4. Subject to paragraph 1 of this Article, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not given rise to lump-sum payments.
5. The amount of a benefit due only by virtue of this Agreement shall be determined from the date of entry into force of this Agreement at the request of the beneficiary. Where the claim is submitted within two years from the entry into force of this Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Contracting State.
6. In applying paragraph 1 of Article 7 of this Agreement, in case of persons who were posted 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.

#### **Article 25** **Period of duration and termination**

1. This Agreement shall remain in force for an indefinite period. Either Contracting State may terminate it in writing, with twelve months previous notice.
2. In the event of termination of this Agreement, all rights acquired under its provisions shall be maintained.
3. If this Agreement is terminated in accordance with paragraph 1 of this Article, rights regarding entitlement to and payment of benefits acquired under this Agreement shall be retained in respect of a person who submits an application for those benefits and who fulfils the requirements for entitlement to those benefits prior to the date of termination.

#### **Article 26** **Entry into force of the Agreement**

1. The Contracting States shall inform each other, by way of written notification, through diplomatic channels, of the completion of the internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the month of the last notification.
2. IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.
3. DONE at [city] on [date] in two originals, each in German, Mongolian and English, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

ON BEHALF OF MONGOLIA

ON BEHALF OF THE REPUBLIC  
OF AUSTRIA