

MEMORIAL

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**MEMORIAL**

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Luxemburg**

RECUEIL DE LEGISLATION

A — N° 241**2 décembre 2016**

S o m m a i r e**APPROBATION DE CONVENTION**

Loi du 29 novembre 2016 portant approbation de la Convention de sécurité sociale entre le Grand-Duché de Luxembourg et la République des Philippines, signée à Luxembourg, le 15 mai 2015. page 4464

Loi du 29 novembre 2016 portant approbation de la Convention de sécurité sociale entre le Grand-Duché de Luxembourg et la République des Philippines, signée à Luxembourg, le 15 mai 2015.

Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau,

Notre Conseil d'État entendu;

De l'assentiment de la Chambre des Députés;

Vu la décision de la Chambre des Députés du 16 novembre 2016 et celle du Conseil d'État du 29 novembre 2016 portant qu'il n'y a pas lieu à second vote;

Avons ordonné et ordonnons:

Article unique. Est approuvée la Convention de sécurité sociale entre le Grand-Duché de Luxembourg et la République des Philippines, signée à Luxembourg, le 15 mai 2015.

Mandons et ordonnons que la présente loi soit insérée au Mémorial pour être exécutée et observée par tous ceux que la chose concerne.

*Le Ministre des Affaires étrangères
et européennes,
Jean Asselborn*

Palais de Luxembourg, le 29 novembre 2016.
Henri

*Le Ministre de la Sécurité sociale,
Romain Schneider*

Doc. parl. 6881; sess. ord. 2014-2015; 2015-2016 et 2016-2017.

AGREEMENT ON SOCIAL SECURITY

BETWEEN

THE GRAND DUCHY OF LUXEMBOURG

AND

THE REPUBLIC OF THE PHILIPPINES

The Government of the Grand Duchy of Luxembourg and the Government of the Republic of the Philippines, hereafter the "Contracting States", wishing to regulate the mutual relations between the two countries in the field of social security, have decided to conclude an Agreement for this purpose and agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. For the purpose of this Agreement,
 - a) "Luxembourg" means: the Grand Duchy of Luxembourg; and
"Philippines" means: the Republic of the Philippines;
 - b) "legislation" means: the laws, regulations, statutory provisions, and all other implementing measures relating to social security as specified in paragraph 1 of Article 2;
 - c) "competent authority" means:

as regards Luxembourg, the minister, ministers or other equivalent authority responsible for the implementation of the legislation specified in paragraph 1 (a) of Article 2 ; and

as regards the Philippines, the President and Chief Executive Officer of the Social Security System, or the President and General Manager of the Government Service Insurance System, each to the extent that he/she is responsible under the legislation specified in paragraph 1 (b) of Article 2.
 - d) "competent institution" means:

as regards Luxembourg, the institution, body or authority responsible for applying all or part of the legislation specified in paragraph 1 (a) of Article 2; and

as regards the Philippines, the Social Security System or the Government Service Insurance System, each to the extent that it is responsible under the legislation specified in paragraph 1 (b) of Article 2.
 - e) "insurance period" means: a period of contribution used to acquire the right to a benefit in the legislation under which it was completed, as well as any period regarded under the said legislation as equivalent to a period of contribution;

- f) "benefit" means: any pension or benefit in cash, including any supplements or increases provided under the legislation specified in paragraph 1 of Article 2.

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

Article 2

Legislative scope

1. This Agreement shall apply:

a) as regards Luxembourg, to the legislation concerning :

- i. pension insurance in case of old-age, invalidity and survivorship;
- ii. Articles 2 and 173 of the Social Security Code, for the purpose of Article 8;

and as regards Part II only, to the legislation concerning

- iii. sickness insurance, accidents at work and occupational diseases insurance, unemployment benefits and family benefits;

b) as regards the Philippines, to the legislation concerning:

- i. the Social Security Law and the regulations made thereunder as they relate to retirement, disability and death benefits;
- ii. the Government Service Insurance Act and the regulations made thereunder as they relate to retirement, disability, death and survivorship benefits; and
- iii. the Portability Law as it relates to totalizing the workers' creditable services or contributions under the laws specified in (i) and (ii).

2. This Agreement shall also apply to all legislation which will amend, supplement, consolidate or replace the legislation specified in paragraph 1.

3. This Agreement shall not apply to any legislation that establishes a new social security branch or extend to new categories of beneficiaries unless the competent authorities of the Contracting States agree on this application.

4. This Agreement shall neither apply to social assistance nor to benefits for victims of war.

Article 3**Personal scope**

This Agreement shall apply to all persons who are or have been subject to the legislation of a Contracting State, as well as to other persons who derive rights from such persons.

Article 4**Equality of treatment**

Persons to whom this Agreement applies and who reside in the territory of a Contracting State shall enjoy the same rights and be subject to the same obligations under the legislation of this Contracting State as the nationals thereof.

Article 5**Export of benefits**

Benefits payable under the legislation of a Contracting State shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary resides in the territory of the other Contracting State.

Article 6**Reduction or suspension clauses**

The reduction or suspension clauses provided for in the legislation of a Contracting State, in case one benefit coincides with other social security benefits or with other professional income, shall be applied to the beneficiaries, even if these benefits were acquired under the legislation of the other Contracting State, or if the professional activity is exercised in the territory of the other Contracting State. However, this provision shall not apply when benefits of the same nature coincide.

Article 7**Recognition of benefits, income, facts or events**

1. Where, under the legislation of a Contracting State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of the other Contracting State or to income acquired in the other Contracting State.

2. Where, under the legislation of a Contracting State, legal effects are attributed to the occurrence of certain facts or events, that Contracting State shall take into account like facts or events occurring in the other Contracting State as though they had taken place in its own territory.

3. However, paragraph 2 shall not apply to the assessment of disability.

Article 8

Admission to optional continued insurance

1. The provisions of the legislation of a Contracting State, which make the admission to optional continued insurance conditional upon residence in the territory of that State, shall not apply to persons residing in the territory of the other Contracting State, provided that at some time in their past working life they were, as a worker, subject to the legislation of the first Contracting State.

2. Where, under the legislation of a Contracting State, admission to optional continued insurance is conditional upon completion of insurance periods, the insurance periods completed under the legislation of the other Contracting State shall be taken into account, to the extent necessary, as if they were completed under the legislation of the first Contracting State.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 9

General rule

Subject to Articles 10 to 13, a person pursuing an activity as an employed or self-employed person in the territory of a Contracting State shall be subject to the legislation of that Contracting State.

Article 10

Posted workers

1. A person who pursues an activity as an employed person in a Contracting State on behalf of an employer, which normally carries out its activities there, and who is posted by that employer to the other Contracting State to perform work on that employer's behalf, shall continue to be subject to the legislation of the first Contracting State, provided that the anticipated duration of such work does not exceed 60 months.

2. A person who normally pursues an activity as a self-employed person in a Contracting State, who goes to pursue a similar activity in the other Contracting State, shall continue to be subject to the legislation of the first Contracting State, provided that the anticipated duration of such activity does not exceed 60 months.

Article 11

Seafarers and international transport workers

1. Where a person works as an employee on board a sea-going vessel flying the flag of either Contracting State and would otherwise be subject to the legislation of both Contracting States, that person shall be subject only to the legislation of the Contracting State in whose territory that person ordinarily resides.

2. Where a person works as an employee on an aircraft in international traffic and would otherwise be subject to the legislation of both Contracting States, that person shall be subject only to the legislation of the Contracting State in whose territory the employer has its registered office. If, however, the said enterprise has a branch or permanent representation in the territory of the other Contracting State, a person employed by such branch or permanent representation shall be subject to the legislation of the latter Contracting State.

Article 12

Members of diplomatic missions, members of consular posts and civil servants

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or the Vienna Convention on Consular Relations of April 24, 1963.

2. Subject to paragraph 1 of this Article, where any civil servant of a Contracting State or any person treated as such in the legislation of that Contracting State is sent to work in the territory of the other Contracting State, that person shall be subject only to the legislation of the first Contracting State as if that person were working in the territory of the first Contracting State.

3. The provisions of Article 9 shall apply to persons other than those covered by paragraph 1 who are employed by diplomatic missions and consular posts, as well as to the private domestic staff of agents of such missions or posts. However, if these persons are nationals of the sending State, they may opt to be subject to the legislation of that Contracting State within the six months following the entry into force of this Agreement, or the beginning of their employment.

Article 13**Exceptions**

The competent authorities of the Contracting States may by common agreement provide for exceptions to Articles 9 to 12 for certain persons or categories of persons.

PART III**PROVISIONS CONCERNING BENEFITS****Article 14****Aggregation of insurance periods**

The competent institution of a Contracting State, whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of insurance periods, shall, to the extent necessary and insofar as they do not coincide, take into account insurance periods completed under the legislation of the other Contracting State as though they were periods completed under the legislation which it applies.

Article 15**Aggregation of insurance periods completed in a third State**

If a person is not entitled to a benefit on the basis of insurance periods completed under the legislation of both Contracting States, aggregated according to Article 14, the right to the said benefit is determined by totalizing those periods with the insurance periods completed under the legislation of a third State, with whom both Contracting States are bound by a bilateral or multilateral agreement on social security, providing for the aggregation of insurance periods.

Article 16**Extension of the reference period**

If the legislation of a Contracting State makes the entitlement to benefits conditional upon the completion of a minimum insurance period during a specified period preceding the insured contingency (reference period), and lays down that certain facts or circumstances shall extend this reference period, those facts and circumstances have the same effect when they occur on the territory of the other Contracting State.

Article 17

Insurance periods of less than one year

1. The competent institution of a Contracting State shall not be required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, if the duration of the said periods is less than one year, and taking only these periods into account, no right to benefit is acquired under that legislation.
2. However, the competent institution of the other Contracting State shall take into account the periods referred to in paragraph 1, for the purposes of Article 18, paragraph 3, except letter c), and Article 20.

Article 18

Calculation of benefits under the legislation of Luxembourg

1. If a person is entitled to a benefit under the legislation of Luxembourg without applying Articles 14 and 15, the competent institution of Luxembourg shall calculate, according to the legislation it applies, the benefit on the basis of the total duration of insurance periods to be taken into account by virtue of that legislation.
2. The competent institution shall also calculate the amount of the benefit that would be obtained by applying the rules specified in paragraph 3. Only the higher of these two amounts shall be taken into consideration.
3. If a person is entitled to a benefit only by taking into account insurance periods totaled pursuant to Articles 14 and 15, the following rules apply:
 - a) the competent institution shall calculate the theoretical amount of the benefit due as if all the insurance periods completed under the legislations of both Contracting States were exclusively completed under the legislation it applies;
 - b) for determining the theoretical amount referred to under a), the calculation basis is established by reference only to those insurance periods completed under the legislation of Luxembourg;
 - c) the competent institution shall then calculate the amount due, on the basis of the amount specified under a), in proportion to the duration of the insurance periods completed under the legislation of Luxembourg, in relation to the total duration of insurance periods completed under both Contracting States' legislation.
4. Where the conditions required for the entitlement to a benefit are satisfied only after application of Article 15, the insurance periods completed under the legislation of the third State aimed by Article 15, are considered for the application of paragraph 3.

Article 19

Particular provision of Luxembourg legislation (baby-years)

When calculating a pension under the legislation of Luxembourg, the provisions of Article 14 of this Agreement shall apply for the acknowledgement of the baby-years provided by said legislation, under the condition that the person concerned last completed insurance periods under Luxembourg legislation before the birth or adoption of the child.

Article 20

Calculation of benefits under the legislation of the Philippines

If a person is not entitled to the payment of a benefit solely on the basis of the insurance period under the legislation of the Philippines, but is entitled to the payment of that benefit through the application of the totalization provisions of Articles 14 and 15, the competent institution of the Philippines shall calculate the amount of benefit payable to that person in the following manner:

- a) It shall first determine the amount of the theoretical benefit which would be payable under the legislation of the Philippines solely on the basis of the minimum insurance period required under that legislation;
- b) It shall then multiply the theoretical benefit by the ratio that the insurance period actually completed under the legislation of the Philippines represent in relation to the minimum insurance period required under that legislation.

PART IV

MISCELLANEOUS PROVISIONS

Article 21

Administrative arrangement

The competent authorities shall take, by means of an administrative arrangement the measures required to implement this Agreement and shall designate their respective liaison bodies.

Article 22

Exchange of information

The competent authorities shall directly communicate to each other any information concerning the measures taken for the application of this Agreement and all information concerning changes in their legislation to the extent that these changes may affect the application of this Agreement.

Article 23

Mutual administrative assistance

1. For the implementation of this Agreement, the competent authorities and institutions of both Contracting States shall assist each other with regard to the determination of entitlement to or payment of any benefit under this Agreement as they would for the application of their own legislation. The administrative assistance of the competent authorities and institutions shall be provided free of charge.
2. For the implementation of this Agreement, the competent authorities and institutions of the Contracting States may communicate directly with each other as well as with any person, regardless of the residence of such persons.
3. The medical examinations and administrative checks of persons residing in the territory of the other Contracting State shall be carried out, on request and at charge of the competent institution, by the institution of the beneficiary's place of residence, in accordance with the procedures laid down by the legislation applied by that institution. Expenses related to medical examinations carried out in the interest of the competent institutions of both Contracting States are not refunded.
4. The terms and conditions of medical and administrative checks of beneficiaries under this Agreement shall be fixed in the administrative arrangement mentioned in Article 21.

Article 24

Languages

1. Communications addressed for the application of this Agreement to competent authorities or institutions of the Contracting States shall be written in French, English or Filipino.
2. An application or document may not be rejected solely because it is written in an official language of the other Contracting State.

Article 25

Exemptions or reduction of taxes, dues, fees or charges

1. Any exemption from or reduction of taxes, legal dues, consular fees or administrative charges for which provision is made in the legislation of a Contracting State in connection with the issuance of any certificate or document required to be produced for the application of that legislation shall be extended to certificates or documents required to be produced for the application of the legislation of the other Contracting State or of this Agreement.
2. Any document of an official nature required to be produced for the application of this Agreement shall be exempted from any authentication by diplomatic or consular authorities and similar formalities.

Article 26

Claims, declarations or appeals

1. Claims, declarations or appeals which, according to the legislation of one of the Contracting States, should have been submitted within a specified period to the competent authority or institution of that Contracting State, are acceptable if they are presented within the same specified period to a competent authority or institution of the other Contracting State. In this case, the competent authority or institution receiving the claim, declaration or appeal shall forward it without delay to the competent authority or institution of the first Contracting State, either directly or through the liaison bodies of the Contracting States.
2. The date on which these claims, declarations or appeals have been submitted to a competent authority or institution of the second Contracting State shall be considered to be the date of submission to the body competent to deal with such claims, declarations or appeals.
3. An application for benefits under the legislation of one Contracting State shall be deemed to be also an application for a benefit of the same nature under the legislation of the other Contracting State except if the applicant expressly requests deferment of the award of a benefit acquired under the legislation of one of the Contracting States.

Article 27

Confidentiality of information

Unless otherwise required by the legislation of the Contracting States, information about an individual which is transmitted in accordance with this Agreement between the competent authorities and institutions of the Contracting States is considered confidential and shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies.

Article 28

Payment of benefits

1. Payments of benefits under this Agreement may be made in the currency of either Contracting State.
2. The method of payments shall be agreed by administrative arrangement mentioned in Article 21.

Article 29

Recovery of undue payments

1. If the competent institution of a Contracting State has paid to a person benefits of undue sum, that institution may request the competent institution of the other Contracting State responsible for the payment of corresponding benefits to the person concerned to deduct the amount overpaid from the amount due and payable to the person concerned. The competent institution of the latter Contracting State shall deduct the amount concerned subject to the conditions and limits applying to this kind of offsetting procedure in accordance with the legislation it applies in the same way as if it had made the overpayments itself, and shall transfer the amount deducted to the competent institution that has paid undue benefits.
2. The procedures of offsetting in case of overlapping of benefits of a different kind, including social assistance, shall be fixed by the administrative arrangement mentioned in Article 21.

Article 30

Resolution of disputes

Disputes which arise in interpreting or applying this Agreement shall be resolved by direct negotiations between the competent authorities.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 31

Transitional provisions

1. This Agreement shall also apply to events which occurred prior to its entry into force.

2. This Agreement shall not create any entitlement to benefits for any period prior to its entry into force.
3. All insurance periods completed under the legislation of one of the Contracting States prior to the date on which this Agreement enters into force shall be taken into consideration in determining entitlement to any benefit in accordance with the provisions of this Agreement.
4. This Agreement shall not apply to rights that were liquidated by the granting of a lump sum payment or the refund of contributions.

Article 32

Revision of rights

1. Any benefit that was not paid or that was suspended by reason of the nationality of a concerned person or by reason of his residence in the territory of a Contracting State other than that in which the competent institution responsible for payment is located, shall, on application by such person, be paid or restored from the entry into force of this Agreement.
2. The entitlement of concerned persons who, prior to the entry into force of this Agreement, obtained the payment of a benefit may be revised upon application by those persons, in accordance with the provisions of this Agreement. Such a revision may also be made automatically. In no case shall such a revision result in a reduction of the prior entitlement of the interested persons.

Article 33

Prescription and forfeiture

1. If the application referred to in Article 32 is made within two years from 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.
2. If the application referred to in Article 32 is made after two 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 34

Duration of the agreement

This Agreement shall remain in force for an indefinite period. Either Contracting State may give to the other Contracting State, through diplomatic channels, written notice of termination of this Agreement, at the latest within the six months preceding the end of the current calendar year; in this case the Agreement will cease to be in force at the end of that year.

Article 35

Guarantee of rights that are acquired or in the course of acquisition

In the event of termination of this Agreement, any rights and payment of benefits acquired by virtue of the Agreement shall be maintained. The Contracting States shall make arrangements regarding the rights in the course of acquisition.

Article 36

Entry into force

This Agreement shall enter into force on the first day of the fourth month following the date of the later written notification by the Contracting States through diplomatic channels indicating that the domestic requirements for its entry into force have been complied with.

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

Done at Luxembourg on 15th May 2015 in the English language in two originals.

For the Government
of the Grand-Duchy of Luxembourg,



For the Government
of the Republic of the Philippines

