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Sommaire

Loi du 5 avril 2016 portant approbation de la Convention en matière de sécurité sociale entre le Grand-Duché de Luxembourg et le Japon, signée à Tokyo, le 10 octobre 2014 – RECTIFICATIF. page **1106**

Loi du 5 avril 2016 portant approbation de la Convention en matière de sécurité sociale entre le Grand-Duché de Luxembourg et le Japon, signée à Tokyo, le 10 octobre 2014. – RECTIFICATIF.

Au Mémorial A – N° 61 du 15 avril 2016, à la page 1044, le texte de la convention est à remplacer par la version originale signée en langue anglaise.

La loi du 5 avril 2016 en question est dès lors à lire comme suit:

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

Notre Conseil d'Etat entendu;

De l'assentiment de la Chambre des Députés;

Vu la décision de la Chambre des Députés du 24 février 2016 et celle du Conseil d'Etat du 8 mars 2016 portant qu'il n'y a pas lieu à second vote;

Avons ordonné et ordonnons:

Article unique. Est approuvée la Convention en matière de sécurité sociale entre le Grand-Duché de Luxembourg et le Japon, signée à Tokyo, le 10 octobre 2014.

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

Château de Berg, le 5 avril 2016.
Henri

Le Ministre de la Sécurité sociale,
Romain Schneider

Doc. parl. 6786; sess. ord. 2014-2015 et 2015-2016.

**AGREEMENT
BETWEEN
THE GRAND DUCHY OF LUXEMBOURG
AND
JAPAN
ON SOCIAL SECURITY**

The Grand Duchy of Luxembourg and Japan,
Being desirous of regulating their mutual relations in the field of social security,
Have decided to conclude an agreement on social security as follows:

**PART I
GENERAL PROVISIONS**

**Article 1
Definitions**

1. For the purpose of this Agreement,
 - (a) The term “Luxembourg” means the Grand Duchy of Luxembourg;
 - (b) The term “national” means,
 - as regards Luxembourg,
 - a person of Luxembourg nationality,
 - as regards Japan,
 - a Japanese national within the meaning of the law on nationality of Japan;
 - (c) The term “legislation” means,
 - as regards Luxembourg,
 - the laws, regulations and statutory provisions concerning the branches of social security of Luxembourg specified in paragraph 2 of Article 2,
 - as regards Japan,
 - the laws and regulations of Japan concerning the Japanese pension systems and the Japanese health insurance systems specified in paragraph 1 of Article 2;
 - (d) The term “competent authority” means,
 - as regards Luxembourg,

the Ministers, to the extent that each Minister is responsible for the implementation of the legislation of Luxembourg,

as regards Japan,

any of the Governmental organizations competent for the Japanese pension systems and the Japanese health insurance systems specified in paragraph 1 of Article 2;

(e) The term “competent institution” means,

as regards Luxembourg,

the institution, organization or authority responsible, in full or in part, for the implementation of the legislation of Luxembourg,

as regards Japan,

any of the insurance institutions, or any association thereof, responsible for the implementation of the Japanese pension systems and the Japanese health insurance systems specified in paragraph 1 of Article 2;

(f) The term “period of coverage” means,

as regards Luxembourg,

any period of contribution recognized as such, as well as any period recognized as equivalent to a period of contribution under the legislation of Luxembourg,

as regards Japan,

a period of contributions under the legislation of Japan concerning the Japanese pension systems specified in paragraph 1(a) of Article 2, and any other periods taken into account under that legislation for establishing entitlement to benefits,

however, a period which shall be taken into account, for the purpose of establishing entitlement to benefits under that legislation, pursuant to other agreements on social security comparable with this Agreement, shall not be included;

(g) The term “benefit” means a pension or any other cash benefit under the legislation of a Contracting State.

2. For the purpose of this Agreement, any term not defined in this Agreement shall have the meaning assigned to it under the applicable legislation.

Article 2 Matters Covered

This Agreement shall apply,

1. as regards Japan,

(a) to the following Japanese pension systems:

(i) the National Pension (except the National Pension Fund); and

(ii) the Employees’ Pension Insurance (except the Employees’ Pension Fund);

however, for the purpose of this Agreement, the National Pension shall not include the Old Age Welfare Pension or any other pensions which are granted on a transitional or complementary basis for the purpose of welfare and which are payable wholly or mainly out of national budgetary resources; and

(b) to the Japanese health insurance systems implemented under the following laws, as amended:

(i) the Health Insurance Law
(Law No. 70, 1922);

(ii) the Seamen’s Insurance Law
(Law No. 73, 1939);

(iii) the National Health Insurance Law
(Law No. 192, 1958);

(iv) the Law Concerning Mutual Aid Association for National Public Officials
(Law No. 128, 1958);

(v) the Law Concerning Mutual Aid Association for Local Public Officials and Personnel of Similar Status
(Law No. 152, 1962);

(vi) the Law Concerning Mutual Aid for Private School Personnel
(Law No. 245, 1953); and

(vii) the Law Concerning the Security of Healthcare Treatment for Senior Citizens (Law No. 80, 1982);

however, for the purpose of this Agreement, Articles 5, 13 to 20, 26, 27, 30 (except for paragraph 3), 31 and paragraphs 2 and 3 of Article 33 shall only be applicable to the Japanese pension systems referred to in (a) of this paragraph; and

2. as regards Luxembourg, to the following branches of social security of Luxembourg:
 - (a) the pension insurance in case of old-age, invalidity and survivorship; and
 - (b) as regards Part II and relevant provisions in this Agreement, the sickness and maternity insurance, accidents at work and occupational diseases insurance, dependency insurance, unemployment benefits and family benefits; for the purpose of Article 21 only, this Agreement shall apply to Article 2 of the Code of social security; however, this Agreement shall not apply to social assistance or to benefit systems for victims of war or its consequences.
3. This Agreement shall also apply to all amendments to the legislations of both Contracting States insofar as they do not modify substantially the scope of the systems regulated or implemented by those prior to such amendments.

Article 3 Persons Covered

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

Article 4 Equality of 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 Payment of Benefits Abroad

1. Unless otherwise provided in this Agreement, any provision of the legislation of a Contracting State which restricts entitlement to or payment of benefits solely because the person ordinarily resides outside the territory of that Contracting State shall not be applicable to persons who ordinarily reside in the territory of the other Contracting State.

2. Benefits under the legislation of a Contracting State shall be paid to nationals of the other Contracting State who ordinarily reside in the territory of the third state, under the same conditions as if they were nationals of the first Contracting State.

PART II PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 6 General Provision

Unless otherwise provided in this Agreement, a person who works as an employee or a self-employed person in the territory of a Contracting State shall, with respect to that employment or self-employment, be subject only to the legislation of that Contracting State.

Article 7 Special Provisions

1. Where an employee who is covered under the legislation of a Contracting State and employed in the territory of that Contracting State by an employer with a place of business in that territory is sent by that employer from that territory to work for that employer in the territory of the other Contracting State, that employee shall be subject only to the legislation of the first Contracting State as if that employee were working in the territory of the first Contracting State, provided that the period of such detachment is not expected to exceed five years.

2. Paragraph 1 of this Article shall apply where an employee who has been sent by an employer from the territory of a Contracting State to the territory of the third state is subsequently sent by that employer from the territory of that third state to the territory of the other Contracting State.

3. Where a person who is covered under the legislation of a Contracting State and who ordinarily works as a self-employed person in the territory of that Contracting State, works temporarily as a self-employed person only 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, provided that the period of the self-employed activity in the territory of the other Contracting State is not expected to exceed five years.

4. Paragraphs 1 and 3 of this Article shall not apply to a person who is employed in the territory of Japan by an employer with a place of business in that territory or who ordinarily works as a self-employed person in the territory of Japan, if that person is not covered under the legislation of Japan concerning the Japanese pension systems specified in paragraph 1(a) of Article 2.

Article 8

Employees on Board a Sea-Going Vessel or on an Aircraft

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 is located.

Article 9

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.

Article 10

Exceptions to Articles 6 to 9

At the request of an employee and an employer or a self-employed person, the competent authorities of both Contracting States or the competent institutions designated by those competent authorities may agree to grant an exception to Articles 6 to 9 in the interest of particular persons or categories of persons, provided that such persons or categories of persons shall be subject to the legislation of one of the Contracting States.

Article 11

Spouse and Children

While a person works in the territory of Japan and is subject only to the legislation of Luxembourg in accordance with Article 7, paragraph 2 of Article 9 or Article 10, the spouse or children coming with that person shall be exempted from the legislation of Japan concerning the Japanese systems specified in paragraph 1(a)(i), (b)(iii) and (b)(vii) of Article 2, provided that the requirements specified in the legislation of Japan concerning the enforcement of the agreements on social security are fulfilled. However, when those spouse or children so request, the foregoing shall not apply.

Article 12

Compulsory Coverage

Articles 6 to 8, paragraph 2 of Article 9 and Article 11 shall apply only to compulsory coverage under the legislation of each Contracting State.

PART III

PROVISIONS CONCERNING BENEFITS

Chapter 1

Common Provision

Article 13

Totalization

Where a person does not have sufficient periods of coverage to fulfill the requirement for entitlement to benefits under the legislation of a Contracting State, the competent institution of that Contracting State shall take into account, for the purpose of establishing entitlement to those benefits, the periods of coverage completed under the legislation of the other Contracting State insofar as they do not coincide with the periods of coverage completed under the legislation of the first Contracting State.

Chapter 2

Provisions concerning Japanese Benefits

Article 14

Special Provisions concerning Totalization

1. Article 13 shall not apply to the lump-sum payments equivalent to the refund of contributions.

2. In applying Article 13, the periods of coverage under the legislation of Luxembourg shall be taken into account as periods of coverage under the Employees' Pension Insurance and as corresponding periods of coverage under the National Pension.

Article 15
Special Provisions concerning Disability Benefits
and Survivors' Benefits

1. Where the legislation of Japan requires for entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) that the date of the first medical examination or of death lies within specified periods of coverage, this requirement shall be deemed to be fulfilled for the purpose of establishing entitlement to those benefits if such a date lies within the periods of coverage under the legislation of Luxembourg. However, if entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) under the National Pension is established without applying this Article, this Article shall not be applied for the purpose of establishing entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) based on the same insured event under the Employees' Pension Insurance.

2. Paragraph 1 of Article 5 shall not affect the provisions of the legislation of Japan which require a person who is aged 60 or over but under 65 on the date of the first medical examination or of the death to reside ordinarily in the territory of Japan for the acquisition of entitlement to the Disability Basic Pension or the Survivors' Basic Pension.

Article 16
Calculation of the Amount of Benefits

1. Where entitlement to a Japanese benefit is established by virtue of Article 13 or paragraph 1 of Article 15, the competent institution of Japan shall calculate the amount of that benefit in accordance with the legislation of Japan, subject to paragraphs 2 to 4 of this Article.

2. With regard to the Disability Basic Pension and other benefits, the amount of which is a fixed sum granted regardless of the period of coverage, if the requirements for receiving such benefits are fulfilled by virtue of Article 13 or paragraph 1 of Article 15, the amount to be granted shall be calculated according to the proportion of the sum of the periods of contribution and the premium-exempted periods under the pension system from which such benefits will be paid to the sum of those periods of contribution, those premium-exempted periods and the periods of coverage under the legislation of Luxembourg.

3. With regard to disability benefits and survivors' benefits under the Employees' Pension Insurance, insofar as the amount of those benefits to be granted is calculated on the basis of the specified period determined by the legislation of Japan when the periods of coverage under the Employees' Pension Insurance are less than that specified period, if the requirements for receiving such benefits are fulfilled by virtue of Article 13 or paragraph 1 of Article 15, the amount to be granted shall be calculated according to the proportion of the periods of coverage under the Employees' Pension Insurance to the sum of the periods of coverage and the periods of coverage under the legislation of Luxembourg. However, when the sum of the periods of coverage exceeds that specified period, that sum of the periods of coverage shall be regarded as equal to that specified period.

4. With regard to the Additional Pension for Spouses which is included in the Old-age Employees' Pension and any other benefits that may be granted as a fixed sum in cases where the periods of coverage under the Employees' Pension Insurance equal or exceed the specified period determined by the legislation of Japan, if the requirements for receiving such benefits are fulfilled by virtue of Article 13, the amount to be granted shall be calculated according to the proportion of those periods of coverage under the Employees' Pension Insurance to that specified period.

Article 17
Exception to Article 4

Article 4 shall not affect the provisions on complementary periods for Japanese nationals on the basis of ordinary residence outside the territory of Japan under the legislation of Japan.

Chapter 3
Provisions concerning Luxembourg Benefits

Article 18
Extension of the Reference Period

Where the legislation of Luxembourg makes the entitlement to benefits conditional upon the completion of a minimum period of coverage 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 shall have the same effect when they occur in the territory of Japan.

Article 19
Calculation of Benefits

1. If a person is entitled to an old-age, invalidity or survivors' benefit under the legislation of Luxembourg without applying Article 13, the competent institution of Luxembourg shall calculate, according to the legislation of Luxembourg, the benefit on the basis of the total duration of periods of coverage to be taken account of by virtue of the legislation of Luxembourg. That institution shall also calculate the amount of the old-age, invalidity or survivors' benefit that would be obtained by applying the rules specified in paragraph 2 of this Article. Only the higher of these two amounts shall be taken into consideration.

2. If a person is entitled to an old-age, invalidity or survivors' benefit by virtue of the legislation of Luxembourg only by taking into account the totalization pursuant to Article 13, the following rules apply:

- (a) the competent institution of Luxembourg shall calculate the theoretical amount of the pension due as if all the periods of coverage completed under the legislation of both Contracting States were exclusively completed under the legislation of Luxembourg;
- (b) for determining the theoretical amount referred to in (a) of this paragraph, the basis for calculation is established by reference only to those periods of coverage completed under the legislation of Luxembourg; and
- (c) the competent institution of Luxembourg shall then calculate the amount due, on the basis of the theoretical amount referred to in (a) of this paragraph, in proportion to the duration of the periods of coverage completed under the legislation of Luxembourg, in relation to the total duration of periods of coverage completed under the legislation of both Contracting States.

Article 20

Particular Provisions of the Legislation of Luxembourg

1. When calculating a pension, Article 13 shall apply for the acknowledgement of the baby-years provided by the legislation of Luxembourg, under the condition that the person concerned last completed periods of coverage under the legislation of Luxembourg before the birth or adoption of the child.

2. The provisions of the legislations of Luxembourg concerning the reduction, suspension or withdrawal of benefits in cases of overlapping with other social security benefits or other professional income, shall be applied to the beneficiaries, even if such benefits are acquired under the legislation of Japan or if the related professional activities are exercised in the territory of Japan.

Article 21

Optional Continued Sickness Insurance

Beneficiaries of an old-age, invalidity or survivors' benefit solely under the legislation of Japan and who reside in the territory of Luxembourg, may join the optional continued sickness insurance, according to the provisions of the legislation of Luxembourg.

PART IV

MISCELLANEOUS PROVISIONS

Article 22

Administrative Collaboration

1. The competent authorities of both Contracting States shall:

- (a) agree on the administrative measures necessary for the implementation of this Agreement, including provision of medical information necessary for establishing entitlement to a benefit under the legislation of a Contracting State;
- (b) designate liaison agencies for the implementation of this Agreement; and
- (c) communicate to each other, as soon as possible, all information about changes to their respective legislation insofar as those changes affect the implementation of this Agreement.

2. The competent authorities and competent institutions of both Contracting States, within the scope of their respective authorities, shall provide any assistance necessary for the implementation of this Agreement. This assistance shall be provided free of charge.

Article 23

Charges or Fees and Legalization

1. Insofar as the legislation and other relevant laws and regulations of a Contracting State contain provisions on an exemption or reduction of administrative charges or consular fees for documents to be submitted under the legislation of that Contracting State, those provisions shall also apply to documents to be submitted in the application of this Agreement and the legislation of the other Contracting State.

2. Documents which are presented for the purpose of this Agreement and the legislation of a Contracting State shall not require legalization or any other similar formality by diplomatic or consular authorities.

Article 24

Communication

1. In implementing this Agreement, the competent authorities and competent institutions of both Contracting States may communicate directly in one of the official languages of Luxembourg, in Japanese or in English language with each other and with any concerned person wherever the person may reside.

2. In implementing this Agreement, the competent authorities and competent institutions of a Contracting State may not reject applications or any other documents for the reason that they are written in the language of the other Contracting State or in English language.

Article 25

Transmission and Confidentiality of Information

1. The competent authorities or competent institutions of a Contracting State shall, in accordance with its laws and regulations, transmit to the competent authorities or competent institutions of the other Contracting State information about an individual collected under the legislation of that Contracting State insofar as that information is necessary for the implementation of this Agreement. Unless otherwise required by the laws and regulations of that other Contracting State, that information shall be used exclusively for the purpose of implementing this Agreement.

2. The competent authorities or competent institutions of a Contracting State may, upon the request of the competent authorities or competent institutions of the other Contracting State, transmit, in accordance with the legislation and other relevant laws and regulations of that Contracting State, information about an individual other than that referred to in paragraph 1 of this Article collected under the legislation of that Contracting State, to the competent authorities or competent institutions of that other Contracting State insofar as it is necessary for the implementation of the legislation of that other Contracting State. Unless otherwise required by the laws and regulations of that other Contracting State, that information shall be used exclusively for the purpose of implementing that legislation of that other Contracting State.

3. Information referred to in paragraphs 1 and 2 of this Article received by a Contracting State shall be governed by the laws and regulations of that Contracting State for the protection of confidentiality of personal data.

Article 26

Submission of Applications, Appeals and Declarations

1. When a written application for benefits, an appeal or any other declaration under the legislation of a Contracting State is submitted to a competent authority or competent institution of the other Contracting State which is competent to receive similar applications, appeals or declarations under the legislation of that other Contracting State, that application for benefits, appeal or declaration shall be deemed to be submitted on the same date to the competent authority or competent institution of the first Contracting State and shall be dealt with, according to the procedure and legislation of the first Contracting State.

2. The competent authority or competent institution of a Contracting State shall send the application for benefits, appeal or any other declaration submitted in accordance with paragraph 1 of this Article to the competent authority or competent institution of the other Contracting State without delay.

Article 27

Payment of Benefits

Payments of benefits under this Agreement may be made in the currency of either Contracting State. In case provisions for restricting the exchange of currencies or remittance are introduced by either Contracting State, the Governments of both Contracting States shall immediately consult on the measures necessary to ensure the payments of benefits by that Contracting State under this Agreement.

Article 28

Resolution of Disagreement

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

Article 29

Headings

The headings of Parts, Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 30

Events and Decisions prior to the Entry into Force

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.

2. In the implementation of this Agreement, periods of coverage completed before its entry into force as well as other legally relevant events occurring before its entry into force shall also be taken into account.

3. In applying paragraph 1 or 3 of Article 7, in the case of a person who has been working in the territory of a Contracting State prior to the entry into force of this Agreement, the period of detachment or self-employed activity referred to in paragraph 1 or 3 of Article 7 shall be considered to begin on the date of entry into force of this Agreement.

4. Decisions made before the entry into force of this Agreement shall not affect any rights to be established by virtue of this Agreement.

5. The application of this Agreement shall not, for a beneficiary, result in any reduction in the amount of benefits to which entitlement was established before the entry into force of this Agreement.

Article 31
Revision, Forfeiture and Prescription

1. The amount of benefits determined before the entry into force of this Agreement shall be revised upon application by a beneficiary if any increase in the amount of the benefits results from the application of this Agreement.

2. If the application referred to in paragraph 1 of this Article or the application for the benefit by a beneficiary at the age concerning the establishment of entitlement to such benefit, which is acquired under this Agreement, is made within two years from the date of entry into force of this Agreement, any right arising from the implementation of this Agreement shall be acquired on that date. The legislation of either Contracting State concerning the forfeiture or the prescription of rights shall not be applicable to that application.

3. If the application referred to in paragraph 2 of this Article is made after two years from the date of entry into force of this Agreement, the rights which are not subject to forfeiture or which are not prescribed shall be determined subject to the legislation of each Contracting State.

Article 32
Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which the Contracting States shall have completed an exchange of diplomatic notes informing each other that their respective constitutional requirements necessary for the entry into force of this Agreement have been fulfilled.

Article 33
Duration and Termination

1. 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. In that event, this Agreement shall remain in force until the last day of the twelfth month following the month in which the termination was notified.

2. 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.

3. Subject to paragraph 2 of this Article, both Contracting States shall consult each other how to deal with the periods of coverage which have been completed under the legislation of both Contracting States by the date of the termination of this Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Tokyo on the tenth day of October, 2014 in duplicate in the English language.

For the Grand Duchy of Luxembourg:

For Japan:


