

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2004 Nr. 58

A. TITEL

*Verdrag tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Speciale Administratieve Regio Hong Kong van de Volksrepubliek China inzake de export van sociale verzekeringsuitkeringen;
Hong Kong, 1 december 2003*

B. TEKST

Agreement between the Government of the Kingdom of the Netherlands and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the export of social insurance benefits

The Government of the Kingdom of the Netherlands ("Netherlands") and the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") (hereinafter referred to as the "Contracting Parties"),

Wishing to allow the export and payment of Netherlands' social insurance benefits to persons residing or staying in Hong Kong and to develop co-operation between the two Governments in facilitating the export and payment of these benefits;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

- a) "beneficiary" means a person who applies for or who is entitled to a benefit;
- b) "benefit" means any cash benefit or pension paid by the Netherlands under the legislation;

c) “competent authority” means, in the case of the Netherlands, the Minister of Social Affairs and Employment of the Netherlands; and in the case of Hong Kong, the Secretary for Health, Welfare and Food;

d) “competent institution” means, regarding the branches of social insurance mentioned in paragraphs a-c of Article 2: the “Uitvoeringsinstituut werknemersverzekeringen” (Institute for Employee Benefit Schemes); regarding the branches of social insurance mentioned in paragraphs d-f of Article 2: the “Sociale verzekeringsbank” (Social Insurance Bank), or any institution authorized to perform any function at present exercised by the said institution;

e) “Hong Kong agency” means any Hong Kong governmental institution that is involved in the implementation of this Agreement in Hong Kong and includes the registration of persons offices, registries of births, deaths and marriage, tax authorities, educational institutions, police, prison services, immigration offices, social welfare offices, health care authorities, or any institution authorized to perform any function at present exercised by the said institution;

f) “member of his family” means a person defined, or recognized as such by the legislation;

g) “legislation” means the Netherlands’ legislation relating to the branches of social insurance mentioned in Article 2;

h) “liaison agent” means the Consulate General of the Netherlands in Hong Kong;

i) “stay” means to temporarily reside; and

j) “reside” means to ordinarily reside.

Article 2

Material scope

This Agreement shall apply to the Netherlands’ legislation concerning the following branches of social insurance:

- a) sickness and maternity benefits;
- b) disablement benefits for employed persons;
- c) disablement benefits for self-employed persons;
- d) old age pensions;
- e) survivors’ benefits; and
- f) child benefits.

Article 3

Personal scope

Unless otherwise provided for in this Agreement, this Agreement shall apply to a beneficiary as well as to the member of his family insofar as the beneficiary or the member of his family resides or stays in Hong Kong.

Article 4

Export of benefits

1. Unless otherwise provided for in this Agreement, any provision of the legislation which restricts payment of a benefit solely because a beneficiary or the member of his family resides or stays outside the Netherlands shall not be applicable with respect to a beneficiary or the member of his family who resides or stays in Hong Kong.

2. Paragraph 1 does not apply to the Netherlands' Supplementary Benefits Act of 6 November 1986.

3. Paragraph 1 is without prejudice to legislation introducing restrictions to the payment of child benefits with respect to children residing or staying outside the Netherlands or precluding such payment.

Article 5

Identification

1. In order to determine entitlement to a benefit or the legitimacy of the payment of a benefit under the legislation, a beneficiary or the member of his family shall, upon request by the Netherlands' competent institution or the liaison agent, identify himself to the liaison agent by submitting an official proof of identity. The liaison agent identifies the beneficiary or the member of his family on the basis of official proof of identity.

2. Official proof of identity includes a person's valid Hong Kong identity card, valid travel document, a document from the Commissioner of Registration of Hong Kong acknowledging that the person has applied for an identity card and other documents recognized under the laws of Hong Kong as valid proof of identity. The liaison agent may also consider accepting valid identity documents issued by the Netherlands as valid official proof of identity.

3. The liaison agent shall inform the Netherlands' competent institution that the identity of the beneficiary or the member of his family has been verified on the basis of official proof of identity.

Article 6

Verification of applications and payments

1. With regard to processing an application for a benefit or the payment of a benefit under the Netherlands' legislation, a beneficiary or a member of his family shall, at the request of the Netherlands' competent institution or the liaison agent, supply such information regarding him-

self or the member of his family as required by the relevant legislation in order to establish or support the application or payment of a benefit. Such information should be supplied in the form of a certificate, notice, statement or other document issued by a Hong Kong agency containing information of himself registered or maintained with that agency. The beneficiary or the member of his family may be required by a Hong Kong agency to pay a fee in order to obtain the requested information.

2. The liaison agent shall, at the request of the Netherlands' competent institution, verify the information regarding a beneficiary or a member of his family. The liaison agent shall forward a statement of verification along with authenticated copies of the relevant documents to the Netherlands' competent institution.

3. For the purpose of this Article, the term "information" means data regarding identity, address, household and family situation, work, education, income, state of health, death and detention, or any other data relevant for the implementation of this Agreement.

4. The Netherlands' competent institution, the Hong Kong agency and the liaison agent may directly contact each other, as well as a beneficiary or a member of his family, or an authorized representative of the person concerned for the necessary implementation of this Agreement.

Article 7

Assistance

1. The liaison agent may request the assistance of a Hong Kong agency in verifying the authenticity of information supplied to it under Articles 5 and 6.

2. The Hong Kong agency shall, upon request by the liaison agent pursuant to paragraph 1 of this Article, render such reasonable assistance as may be necessary and within the limits of its authority and available resources in verifying the authenticity of information. This assistance shall be rendered within a period of three months.

3. Where the laws of Hong Kong require that consent be required from a person before his personal data can be collected, stored, used, disclosed or otherwise handled, the Netherlands' competent institution or the liaison agent shall first procure the written consent of such person. The Netherlands' competent institution and the liaison agent undertake to inform the Hong Kong agency of any revocation or termination of any such written consent. The competent authorities of both Contracting Parties shall agree on the requisite form of written consent that is to be used.

Article 8

Medical examinations

1. At the request of the Netherlands' competent institution, verification of medical information regarding the beneficiary residing or staying in Hong Kong shall be carried out with the assistance of the liaison agent.

2. In order to determine the sickness, the disability and partial disability of the beneficiary, the Netherlands' competent institution shall use the medical reports and the administrative data provided by the liaison agent. However, the Netherlands' competent institution may request the beneficiary to undergo a medical examination by a doctor of its own choice or a medical examination in the Netherlands.

3. The beneficiary shall comply with any request referred to in paragraph 2 by presenting himself for medical examination. If the beneficiary feels that, for medical reasons, he is unfit to travel to the Netherlands, he shall inform the Netherlands' competent institution immediately. He shall, in that case, submit a medical statement issued by a doctor designated for this purpose by the liaison agent. This statement shall include the medical reasons for his unfitness for travelling as well as the expected duration of this unfitness.

4. The costs of the examinations under this Article and, as the case may be, expenses for travel and accommodation, shall be borne by the Netherlands' competent institution.

Article 9

Limitations on rendering assistance

Nothing in this Agreement obliges the Hong Kong competent authority or Hong Kong agency to:

- a) render assistance in conflict with its laws or administrative practices or contrary to its public policy or public interest;
- b) provide such information which is not obtainable under its laws or in its normal course of administration; or
- c) render assistance in the form of juridical assistance.

Article 10

Payment

1. The administrative assistance referred to under paragraph 2 of Article 7 shall be provided free of charge to the Netherlands to the extent that such assistance is available and provided free of charge to members of the public in Hong Kong.

2. Where such assistance is chargeable to the Netherlands, such assistance shall be charged in accordance with the prescribed rates. In the absence of such prescribed rates, the full cost of providing the assistance shall be charged. A demand note issued by a Hong Kong agency shall be final and conclusive of the amount to be charged.

3. The term “prescribed rates” referred to in paragraph 2 above means the rates published in the Gazette of Hong Kong or prescribed by the Government of Hong Kong through any other means.

4. The competent authorities, the Netherlands’ competent institution and the Hong Kong agency shall agree on the reimbursements of certain types of expenses.

5. The liaison agent shall be responsible for the settlement of all costs, charges and expenses payable by the Netherlands under this Agreement.

Article 11

Refusal to pay, suspension and withdrawal

1. The Netherlands’ competent institution may refuse to grant a benefit, or may suspend or withdraw the payment of a benefit if a beneficiary or a member of his family has failed to undergo a medical examination or to provide necessary information as required under Articles 5, 6 and 8 of this Agreement within a period of three months.

2. The Government of Hong Kong shall not be liable for any claim from any party in respect of any unpaid, suspended, withdrawn, overpaid or wrongly paid benefits made under this Agreement.

Article 12

Data protection

1. Where, under this Agreement, a Contracting Party communicates personal data to the other Contracting Party, that communication shall be regarded as confidential and shall be subject to the legal provisions governing protection of data laid down by the Contracting Party providing the data.

2. The use and disclosure of personal data otherwise than for the purposes of this Agreement shall be subject to the approval of the person who is the subject of the data and the person involved in the data and in accordance with other guarantees provided for by the laws of the Contracting Parties.

Article 13

Implementation of this Agreement

The Netherlands' competent institution, the Hong Kong agency and the liaison agent may, by means of supplementary arrangements, agree on the forms and procedures necessary for the implementation of this Agreement.

Article 14

Language

1. For the purpose of implementing this Agreement, the competent authorities, the Netherlands' competent institution, the Hong Kong agency and the liaison agent may communicate directly with one another in the English language.

2. Documents transmitted between a Hong Kong agency and the liaison agent shall be in, or translated into, English. No document shall be rejected by the competent institution, the competent authority or the liaison agent of the Netherlands on the sole ground that the document is written in the official language of Hong Kong.

Article 15

Settlement of disputes

The competent authorities of both Contracting Parties shall make all reasonable efforts to resolve through mutual agreement any dispute arising from the interpretation or application of this Agreement.

Article 16

Territorial application

In relation to the Netherlands, this Agreement shall apply only to the territory of the Kingdom in Europe.

Article 17

Entry into force

1. The Contracting Parties shall notify each other in writing of the completion of their respective internal procedures required for the entry into force of this Agreement.

2. Subject to paragraph 3, this Agreement shall enter into force on the first day of the second month after the date of the latter notification by either Contracting Party.

3. Article 4 shall enter into force for the Kingdom of the Netherlands, retroactively, as from 1 January 2003.

Article 18

Termination

1. This Agreement may be terminated at any time by notification in writing to the other Contracting Party. In such event, this Agreement shall terminate on the last day of the third calendar month after the date in which the notification of termination was received by the other Contracting Party.

2. In the event that this Agreement is terminated in accordance with paragraph 1 of this Article, this Agreement shall continue to have effect in relation to all persons who –

- a) at the date of termination, are in receipt of benefits; or
- b) prior to the expiry of the period referred to in that paragraph, have applied for and would be entitled to receive benefits by virtue of this Agreement.

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

DONE in duplicate at Hong Kong, on this first day of December 2003, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) A. C. BROUWER

For the Government of the Hong Kong Special Administrative Region of the People's Republic of China

(sd.) E. K. YEOH

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 17, eerste en tweede lid, in werking treden op de eerste dag van de tweede maand na de datum van laatste schriftelijke kennisgeving door de Verdragsluitende Partijen dat hun respectieve nationale procedures vereist voor de inwerkingtreding van het Verdrag, zijn voltooid, met dien verstande dat artikel 4 ingevolge artikel 17, derde lid, in werking zal treden met terugwerkende kracht tot 1 januari 2003.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag ingevolge artikel 16 alleen voor Nederland gelden.

Uitgegeven de *drieëntwintigste* maart 2004.

De Minister van Buitenlandse Zaken,

B. R. BOT