

**AGREEMENT ON SOCIAL SECURITY
BETWEEN
CANADA AND THE REPUBLIC OF MALTA**

The Government of Canada and the Government of the Republic of Malta,

Resolved to co-operate in the field of social security,

Have decided to conclude an agreement for this purpose, and

Have agreed as follows:

PART I GENERAL PROVISIONS

Article I *Definitions*

1. For the purposes of this Agreement,

"benefit" means any cash benefit, pension or allowance for which provision is made in the legislation of either Party and includes any supplements or increases applicable to such a cash benefit, pension or allowance;

"competent authority" means, as regards Canada, the Minister or Ministers responsible for the application of the legislation of Canada; and, as regards Malta, the Minister from time to time in charge of the Department of Social Security;

"competent institution" means, as regards Canada, the competent authority; and, as regards Malta, the Department of Social Security;

"creditable period" means a period of contributions, whether paid or credited, or a period of residence used to acquire the right to a benefit under the legislation of either Party; as regards Canada, it also means a period during which a disability pension is payable under the Canada Pension Plan;

"Government of Canada" means the Government in its capacity as representative of Her Majesty the Queen in right of Canada and represented by the Minister of National Health and Welfare;

"legislation" means, in relation to a Party, the laws and regulations specified in Article II(1) with respect to that Party;

"member of the crew of a ship or aircraft" includes master, pilot, commander and navigator;

"territory" means, as regards Canada, the territory of Canada; and, as regards Malta, the territory of Malta as defined in the Constitution of Malta.

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

Article II

Legislation to Which the Agreement Applies

1. This Agreement shall apply to the following legislation:
 - (a) with respect to Canada:
 - (i) the Old Age Security Act and the regulations made thereunder, and
 - (ii) the Canada Pension Plan and the regulations made thereunder;
 - (b) with respect to Malta:

the Social Security Act, 1987 and the regulations made thereunder, as they provide for, apply to or affect:

 - (i) pensions in respect of retirement,
 - (ii) age pension,
 - (iii) pensions in respect of invalidity,
 - (iv) pensions to widows,
 - (v) orphan's allowance, and
 - (vi) the payment of contributions.
2. This Agreement shall apply also to the laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraph 1.
3. This Agreement shall apply to laws which extend the legislation of either Party to new benefits or to new categories of beneficiaries, only if the two Parties so agree in a Protocol to this Agreement.

Article III

Persons to Whom the Agreement Applies

This Agreement shall apply to any person who is or who has been subject to the legislation of Canada or Malta, and to the dependants and survivors of such a person within the meaning of the applicable legislation of either Party.

Article IV
Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

Article V
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits payable under the legislation of a Party to any person described in Article III, including benefits acquired by virtue of this Agreement, shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the person resides in the territory of the other Party, and they shall be paid in the territory of the other Party.
2. Benefits payable under this Agreement to a person who is or who has been subject to the legislation of both Parties, or to the dependants or survivors of such a person, shall be paid in the territory of a third State.

PART II
PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article VI
Rules Regarding Contributions

1. Subject to the following provisions of this Article,
 - (a) an employed person who works in the territory of a Party shall, in respect of that work, be subject only to the legislation of that Party; and
 - (b) a self-employed person who ordinarily resides in the territory of a Party and who works for his own account in the territory of the other Party or in the territories of both Parties shall, in respect of that work, be subject only to the legislation of the former Party.

2. An employed person who is covered under the legislation of a Party and who performs services in the territory of the other Party for the same employer shall, in respect of those services, be subject only to the legislation of the former Party as though those services were performed in its territory. In the case of an assignment, this coverage may not be maintained for more than 36 months without the prior consent of the competent authorities of both Parties.
3. (a) Paragraph 2 shall apply to a person who is sent to work on an installation situated in the continental shelf area of a Party in connection with the exploration of the seabed and sub-soil of that area or the exploitation of its mineral resources, as though that installation were situated in the territory of that Party.

(b) For the purposes of this Article, the continental shelf area of a Party includes every area beyond the territorial seas of that Party that, in accordance with international law and the laws of that Party, is an area in respect of which that Party may exercise rights with respect to the seabed and sub-soil and their natural resources.
4. A person who, but for this Agreement, would be subject to the legislation of both Parties in respect of employment as a member of the crew of a ship or aircraft shall be subject solely to the legislation of Canada if he or she ordinarily resides in Canada.
5. A person who is locally engaged to perform the duties of a government employment in respect of one Party while in the territory of the other Party shall, in respect of those duties, be subject to the legislation of the latter Party only if he or she is a citizen thereof or ordinarily resides in its territory. In the latter case that person may, however, elect to be subject only to the legislation of the former Party if he or she is a citizen thereof.
6. The competent authorities of the Parties may, by common agreement, modify the application of the provisions of this Article with respect to any persons or categories of persons.

Article VII
***Definition of Certain Periods of Residence
with Respect to the Legislation of Canada***

For the purpose of calculating the amount of benefits under the Old Age Security Act:

- (a) if a person is subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada during any period of residence in the territory of Malta, that period shall be considered as a period of residence in Canada for that person as well as for that person's spouse and dependants who reside with him or her and who are not subject to the legislation of Malta by reason of employment;
- (b) if a person is subject to the legislation of Malta during any period of residence in the territory of Canada, that period shall not be considered as a period of residence in Canada for that person and for that person's spouse and dependants who reside with him or her and who are not subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada by reason of employment.

PART III PROVISIONS CONCERNING BENEFITS

CHAPTER 1 TOTALIZING

Article VIII *Periods under the Legislation of Canada and Malta*

1. Subject to paragraph 5, if a person is not entitled to a benefit because he or she has not completed sufficient creditable periods under the legislation of a Party, entitlement to that benefit shall be determined by totalizing these periods and those specified in paragraphs 2, 3 and 4 of this Article, provided that the periods do not overlap.
2.
 - (a) For purposes of determining entitlement to a benefit under the Old Age Security Act of Canada, a creditable period under the legislation of Malta or a period of residence in the territory of Malta, after the age at which periods of residence in Canada are creditable for purposes of that Act, shall be considered as a period of residence in the territory of Canada.
 - (b) For purposes of determining entitlement to a benefit under the Canada Pension Plan, a calendar year including at least 13 weekly contributions under the legislation of Malta, whether paid or credited, shall be considered as a year for which contributions have been made under the Canada Pension Plan.

3. For purposes of determining entitlement to a benefit under the legislation of Malta other than a pension in respect of invalidity,
 - (a) a calendar year which is a creditable period under the Canada Pension Plan shall be considered as 52 weeks of contributions under the legislation of Malta;
 - (b) a calendar week after the 7th May, 1956 which is a creditable period under the Old Age Security Act of Canada and which is not part of a creditable period under the Canada Pension Plan shall be considered as a week of contributions under the legislation of Malta.
4. For purposes of determining entitlement to a pension in respect of invalidity under the legislation of Malta, a calendar year which is a creditable period under the Canada Pension Plan shall be considered as 52 weeks of contributions under the legislation of Malta, and any creditable period under the Old Age Security Act of Canada shall not be taken into account.
5. No totalization of creditable periods shall be made under this Article unless:
 - (a) in the case of a Two-Thirds Pension (Retirement) payable under the legislation of Malta, the person concerned has paid at least 156 contributions under the legislation of Malta after 21st January, 1979;
 - (b) in the case of a Survivor's Pension (Widowhood) payable under the legislation of Malta, the husband of the widow concerned would have paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979;
 - (c) in the case of any other pension payable under the legislation of Malta, the person concerned or the husband (as is the case with a pension in respect of widowhood) has paid at least 52 contributions after 7th May, 1956; and
 - (d) in the case of a benefit payable under the legislation of Canada, the person concerned has completed creditable periods under that legislation which total at least one year.

Article IX
Periods under the Legislation of a Third State

If a person is not entitled to a benefit on the basis of the periods creditable under the legislation of the Parties, totalized as provided in Article VIII, entitlement to that benefit shall be determined by totalizing these periods and periods creditable under the legislation of a third State with which both Parties are bound by separate social security instruments which provide for totalizing periods.

CHAPTER 2
BENEFITS UNDER THE LEGISLATION OF CANADA

Article X
Benefits under the Old Age Security Act

1. If a person is entitled to a pension or a spouse's allowance solely through the application of the totalizing provisions of Chapter 1 of this Part, the competent institution of Canada shall calculate the amount of the pension or spouse's allowance payable to that person in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods of residence which may be considered under that Act.
2. Paragraph 1 shall also apply to a person who is entitled to a pension in Canada but who has not resided in Canada for the minimum period required by the Old Age Security Act for entitlement to a pension outside Canada.
3. Notwithstanding any other provision of this Agreement,
 - (a) the competent institution of Canada shall not be liable to pay an Old Age Security pension outside Canada unless the periods of residence, when totalized as provided in Chapter 1 of this Part, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for entitlement to a pension outside Canada; and
 - (b) the spouse's allowance and the guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

Article XI
Benefits under the Canada Pension Plan

If a person is entitled to a benefit solely through the application of the totalizing provisions of Chapter 1 of this Part, the competent institution of Canada shall calculate the amount of benefit payable in the following manner:

- (a) the earnings-related portion of such benefit shall be determined in conformity with the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under that Plan; and
- (b) the flat-rate portion of the benefit shall be determined by multiplying:
 - (i) the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the Canada Pension Plan
 - by
 - (ii) the fraction which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under that Plan to establish entitlement to that benefit, but in no case shall that fraction exceed the value of one.

CHAPTER 3
BENEFITS UNDER THE LEGISLATION OF MALTA

Article XII

1. Subject to the provisions of paragraphs 2 and 3 of this Article, if a person is entitled to a benefit solely through the application of the totalizing provisions of Chapter 1 of this Part, the competent institution of Malta shall calculate the amount of the pension payable to that person in the following manner:
 - (A) a Two-Thirds Pension (Retirement) and a Survivors' Pension (Widowhood) shall be determined in conformity with the provisions of the Social Security Act, 1987 exclusively on the basis of:
 - (a) the contributions paid or credited in Malta, and

- (b) the pensionable income as defined in that Act; so however that such pensionable income shall be calculated solely on the basic wage/salary or net income, as the case may be under that Act, which:
 - (i) had been earned or received in Malta during the last 10 calendar years immediately preceding his or her retirement or invalidity, as the case may be, or
 - (ii) if during the last 10 calendar years immediately preceding his or her retirement or invalidity he or she was a resident of Canada or of a third State with which both Parties have a Reciprocal Agreement on social security or was residing in Malta but exempt from the payment of contributions under the legislation of Malta, had been earned or received in Malta during the last 10 calendar years immediately preceding his or her last day of employment/self-employment in Malta; and
 - (B) any other pension, excluding an Age Pension, shall be determined in conformity with the Social Security Act, 1987 exclusively on the basis of the contributions paid or credited in Malta.
- 2. In the application of paragraph 1, the competent institution of Malta shall first compute the amount of the theoretical benefit which would be payable if the creditable periods under the legislation of Canada and Malta, totalized as provided in Article VIII and, where required, taking into account periods in a third State through the application of Article IX, had been creditable periods under the legislation of Malta alone. The theoretical benefit so computed shall be pro-rated by the fraction that the total reckonable contributions paid or credited under the legislation of Malta bear to the number of contributions totalized under the provisions of Chapter 1.
- 3. In the case of an Age Pension as is payable under the Social Security Act, 1987, a citizen of Canada who is normally residing in Malta shall have the same rights and obligations as a citizen of Malta who is normally residing in Malta.
- 4. A benefit payable under the Old Age Security Act of Canada and/or the Canada Pension Plan shall not be considered as income for the purposes of disqualifying a person from receiving a pension as is referred to under (A) of paragraph 1.

PART IV
ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Article XIII
Administrative Arrangement

1. The competent authorities of the Parties shall establish by means of an administrative arrangement the measures necessary for the application of this Agreement.
2. The liaison agencies of the Parties shall be designated in that arrangement.

Article XIV
Exchange of Information and Mutual Assistance

1. The competent authorities and institutions responsible for the application of this Agreement:
 - (a) shall, to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;
 - (b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation; and
 - (c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.
2. The assistance referred to in sub-paragraph 1(b) shall be provided free of charge, subject to any agreement reached between the competent authorities of the Parties for the reimbursement of certain types of expenses.
3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

Article XV

Medical Examinations

Subject to any conditions that may be set out in an administrative arrangement concluded pursuant to Article XIII,

- (a) if an institution of a Party requires an applicant or beneficiary who resides in the territory of the other Party to undergo a medical examination, such examination, at the request of the institution of the first Party, shall be arranged or carried out by an institution of the other Party; and
- (b) the costs related to such a medical examination, whether the examination is performed by a specialist or a general practitioner, shall be borne by the institution which has requested the examination.

Article XVI

Exemptions or Reductions 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 Party in connection with the issuing 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 Party.
- 2. Any acts or documents of an official nature required to be produced for the application of this Agreement shall be exempt from any authentication by diplomatic or consular authorities and similar formality.

Article XVII

Language of Communication

For the application of this Agreement, the competent authorities and institutions of the Parties may communicate directly with one another in any official languages of either Party.

Article XVIII
Submitting Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Party which should, for the purposes of that legislation, have been presented within a prescribed period to an authority or institution of that Party, but which is presented within the same period to an authority or institution of the other Party, shall be treated as if it had been presented to the competent authority or institution of the first Party.
2. A claim for a benefit under the legislation of a Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:
 - (a) requests that it be considered an application under the legislation of the other Party, or
 - (b) provides information at the time of application indicating that creditable periods have been completed under the legislation of the other Party.
3. In any case to which paragraph 1 or 2 applies, the authority or institution to which the claim, notice or appeal has been submitted shall transmit it without delay to the authority or institution of the other Party.

Article XIX
Payment of Benefits

1. The competent institution of a Party may discharge its obligations under this Agreement in the currency of that Party.
2. Benefits shall be paid to beneficiaries free from any deduction for administrative expenses that may be incurred in paying the benefits.

Article XX
Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either Party concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.
5. The arbitrators shall determine their own procedures.
6. The decision of the arbitrators shall be final and binding.

Article XXI ***Understandings with a Province of Canada***

The relevant authority of Malta and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada insofar as those understandings are not inconsistent with the provisions of this Agreement.

PART V **TRANSITIONAL AND FINAL PROVISIONS**

Article XXII ***Transitional Provisions***

1. Unless otherwise provided in this Agreement, any creditable period completed before the date of entry into force of this Agreement shall be taken into account for the purpose of determining the right to a benefit under the Agreement.
2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of the Agreement.
3. Subject to paragraph 2, a benefit, other than a lump sum payment, shall be paid under this Agreement in respect of events which happened before the date of entry into force of the Agreement.

Article XXIII
Entry into Force and Termination

1. This Agreement shall enter into force, after the conclusion of the administrative arrangement referred to in Article XIII, on the first day of the second month following the month in which each Party shall have received from the other Party written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.
2. This Agreement shall remain in force without any limitation on its duration. It may be denounced at any time by either Party giving 12 months' notice in writing to the other Party.
3. In the event of the termination of this Agreement, any right acquired by a person in accordance with its provisions shall be maintained and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in two copies at Toronto, this 4th day of April 1991, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF CANADA
Perrin Beatty

FOR THE GOVERNMENT OF THE REPUBLIC OF MALTA
Dr. Louis Galea