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chapter R-9, r. 40

## **Regulation respecting the implementation of the Understanding on Social Security between the Gouvernement du Québec and the Swiss Confederation**

### **An Act respecting the Québec Pension Plan**

(chapter R-9, s. 215)

### **Tax Administration Act**

(chapter A-6.002, ss. 9 and 96)

### **An Act respecting the Ministère de l'Emploi et de la Solidarité sociale and the Commission des partenaires du marché du travail**

(chapter M-15.001, s. 10)

**1.** The Act respecting the Québec Pension Plan (chapter R-9) and the Regulations made thereunder apply to any person referred to in the Understanding on Social Security between the Gouvernement du Québec and the Swiss Confederation signed on 25 February 1994 and appearing in Schedule I.

O.C. 918-95, s. 1.

**2.** That Act and those Regulations apply in the manner prescribed in the Understanding, in the Final Protocol and in the Administrative Arrangement appearing in Schedules II and III, respectively.

O.C. 918-95, s. 2.

**3.** *(Omitted).*

O.C. 918-95, s. 3.

## **SCHEDULE I**

(s. 1)

UNDERSTANDING ON SOCIAL SECURITY

BETWEEN THE GOUVERNEMENT DU QUÉBEC

AND THE SWISS CONFEDERATION

THE GOUVERNEMENT DU QUÉBEC

AND

THE SWISS FEDERAL COUNCIL

BEING desirous of regulating the relationship between Québec and Switzerland in the field of Social Security,

HAVE DECIDED to conclude and Understanding for that purpose,

AND

HAVE AGREED to the following provisions:

## **PART I**

### DEFINITIONS AND LEGISLATIONS

#### Article 1

1. For the purposes of this Understanding:

(a) «national»

means, as regards Switzerland, a person of Swiss nationality and, as regards Québec, a Canadian citizen residing in Québec or, if not residing therein, who is subject or has been subject to the legislation specified in subparagraph 1 *b* of Article 2;

(b) «legislation»

means the laws and regulations specified in Article 2;

(c) «competent authority»

means, as regards Switzerland, the Federal Social Insurance Office (Office fédéral des assurances sociales), and, as regards Québec, the Minister responsible for the administration of the legislation specified in Article 2;

(d) «institution»

means the agency or authority responsible for the administration of the legislations specified in Article 2;

(e) «reside»

means, as regards Switzerland, to usually sojourn;

(f) «domicile»

means, within the meaning of the Swiss Civil Code, the place where a person lives and intends to establish his or her residence;

(g) «period of insurance»

means, as regards Switzerland, a period during which contributions were made to the Swiss Old Age, Survivors and Disability Insurance or a period which is equivalent to a similar period in the same insurance and

as regards Québec, any year during which contributions have been paid or a disability pension has been paid under the Act respecting the Québec Pension Plan or any year considered as equivalent.

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

#### Article 2

1. This Understanding shall apply:

(a) with respect to Switzerland:

(i) to the Federal law on Old Age and Survivors Insurance (Loi fédérale sur l'assurance vieillesse et survivants) of December 20, 1946;

(ii) to the Federal Law on Disability Insurance (Loi fédérale sur l'assurance-invalidité) of June 19, 1959;

(b) with respect to Québec:

to the legislation relating to the Québec Pension Plan.

2. This Understanding shall also apply to any laws or regulations which consolidate, amend or supplement the legislations specified in paragraph 1 of this Article.

3. This Understanding shall apply to laws or regulations which extend the existing schemes to new categories of beneficiaries only if no objection on the part of the Party which amended its legislation has been communicated to the other Party within six months of the official publication or proclamation of such acts.

## **PART II**

### GENERAL PROVISIONS

#### Article 3

Unless otherwise provided, this Understanding shall apply to:

(a) nationals of either Party, as well as to their family members and survivors to the extent that their rights are derived from these nationals;

(b) other persons who are or who have been subject to the legislation of one of the Parties or who have acquired rights under that legislation.

#### Article 4

1. Unless otherwise provided in this Understanding, Québec nationals, their family members and survivors to the extent that their rights are derived from those nationals shall be subject to the obligations and shall be eligible for the benefits of the Swiss legislation under the same conditions as Swiss nationals.

2. Unless otherwise provided in this Understanding, the persons described in Article 3 shall be subject to the obligations and shall be eligible for the benefits under the legislation of Québec under the same conditions as Québec nationals.

#### Article 5

1. Unless otherwise provided in this Understanding, Swiss cash benefits acquired under Swiss legislation or by virtue of this Understanding by a person described in paragraph a of Article 3 shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only that the beneficiary resides outside of the Swiss territory.

2. Unless otherwise provided in this Understanding, Québec benefits acquired under the legislation of Québec or by virtue of this Understanding shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only that the beneficiary resides outside of the Québec territory.

## **PART III**

### APPLICABLE LEGISLATION

#### Article 6

1. Unless otherwise provided in this Part, any person who is employed in the territory of one or both Parties shall, in respect of that work, be subject only to the legislation on compulsory insurance of the Party in the territory where the person is employed.

2. A person who is self-employed in the territory of one or both Parties and who resides in the territory of

one of the Parties shall be subject only to the legislation on compulsory coverage of the Party in whose territory he or she resides.

#### Article 7

1. A person who is employed by an employer having a place of business in the territory of a Party and who is detached by that employer to work in the territory of the other Party for a period not expected to exceed 5 years shall be subject to the legislation on compulsory coverage of the first Party as though he were employed in its territory.

2. If the employer who requested the detachment status for that person wishes to obtain an extension of such status, such extension shall be granted on an exception basis if the competent authority of the Party from whose territory that person is detached considers the request of extension to be justified and if, on that basis, it has presented the extension request to the competent authority of the other Party and has received the consent of that Party. The extension request must be presented to the competent authority of the Party in whose territory that person is detached before the end of the existing detachment.

#### Article 8

The competent authority of one of the Parties may, by agreement with the competent authority of the other Party, make exceptions to the provisions of this Part.

### **PART IV**

#### PROVISIONS CONCERNING BENEFITS

#### **CHAPTER I**

#### APPLICATION OF THE LEGISLATION OF QUÉBEC

#### Article 9

Where a person has completed periods of insurance under the legislation of both Parties and that person is not entitled to a benefit solely on the basis of the periods of insurance completed under the legislation of Québec, the Québec institution shall totalize, to the extent necessary to give entitlement to a benefit under the legislation it applies, the periods of insurance completed under the legislation of each Party, provided that those periods do not overlap.

#### Article 10

1. If persons who have been subject to the legislation of both Parties meet the requirements for entitlement to benefits, for themselves or for their dependants, survivors or other rightful claimants, under the legislation of Québec without having recourse to the totalization provided for in Article 9, the institution of Québec shall determine the amount of benefits in accordance with the provisions of the legislation it administers.

2. If the persons referred to in paragraph 1 do not meet the requirements for giving entitlement to benefits without having recourse to the totalization, the institution of Québec shall proceed as follows:

(a) it shall recognize a year of contribution when the Swiss institution certifies that a period of insurance of at least 3 months in a calendar year has been completed under Swiss legislation, provided that the year is included in the contributory period as defined in the legislation of Québec;

(b) years recognized under subparagraph a shall be totalized with periods of insurance completed under the legislation of Québec, in accordance with Article 9.

3. When the totalization prescribed in paragraph 2 entitles persons to benefits, the institution of Québec shall determine the amount payable as follows:

(a) that part of the benefit which is related to earnings is calculated in accordance with the provisions

(b) the flat rate portion of the benefit is adjusted proportionately to the periods for which contributions were paid under the legislation of Québec relative to the contributory period as defined in that legislation.

## **CHAPTER II**

### **APPLICATIONS OF SWISS LEGISLATION**

#### **Article 11**

1. Québec nationals may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their residence in Switzerland and provided that, immediately prior to disablement, they have paid contributions to Swiss Old Age, Survivors and Disability Insurance.

2. Québec nationals who are not pursuing gainful employment may claim rehabilitation measures as long as they maintain their domicile in Switzerland and provided that, immediately prior to disablement, they have resided in Switzerland without interruption for at least one year. Minor children domiciled in Switzerland may, moreover, claim such measures if they have been born disabled in Switzerland or have resided in Switzerland without interruption since birth. A sojourn of a maximum of three months by a child in Québec immediately after birth shall be considered equivalent to a period of residence in Switzerland.

3. A child domiciled in Switzerland and born disabled in Québec whose mother has not sojourned in Québec in excess of two months in total prior to the birth of that child, shall be considered as if he or she was a child born disabled in Switzerland. The Swiss Disability Insurance shall assume responsibility for the payment of benefits for a child with congenital defects for a period of three months following the birth of that child to the extent that such benefits would have been payable in Switzerland.

4. Paragraphs 2 and 3 shall apply by analogy to children born disabled outside Switzerland or Québec; in such a case, the Disability Insurance shall assume responsibility for benefits only if such benefits would be awarded abroad on an emergency basis due to the state of health of the child.

#### **Article 12**

Where the right to an ordinary pension under Swiss legislation is subject to a current affiliation under that legislation, a Québec national shall be considered insured under that legislation provided that, on the date the insured event occurs according to Swiss legislation, he or she is insured under the Québec Pension Plan or resides in Québec within the meaning of the Old Age Security Act which applies to the Québec territory.

#### **Article 13**

Québec nationals shall be entitled to extraordinary pensions under Swiss legislation.

(1) only for as long as they maintain their domicile in Switzerland, and

(2) if, immediately prior to the month in which they apply for a pension, they have resided in Switzerland without interruption for

(a) at least ten full years if applying for an old age pension;

(b) at least five full years if applying for a disability or survivors pension or for an old age pension which would replace a disability or survivors pension.

#### **Article 14**

Ordinary pensions for insured persons with a disability inferior to 50 percent, extraordinary pensions, helplessness allowances and auxiliary measures under Swiss legislation shall be granted only as long as the beneficiary maintains his or her domicile in Switzerland.

## **PART V**

## ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

### Article 15

The competent authorities or, with their consent if required, the institutions of both Parties shall:

- (a) make all necessary administrative arrangements for the application of this Understanding and designate their liaison agencies;
- (b) define the procedures for reciprocal administrative assistance, such as the allocation of expenses associated with obtaining medical, administrative and other evidence required for the application of this Understanding;
- (c) communicate to each other all information concerning the measures taken by them for the application of this Understanding;
- (d) communicate to each other, as soon as possible, all changes in their respective legislation.

### Article 16

1. For the application of this Understanding, the competent authorities and the institutions of both Parties shall assist each other, within the scope of their respective jurisdiction, and shall communicate to each other, to the extent permitted by their legislation, all information necessary for the purposes of this Understanding. This assistance shall be free of charge subject to exceptions provided in an administrative arrangement.

2. Any information about a person which is transmitted in accordance with this Understanding to that Party by the other Party is confidential and shall be used only for purposes of implementing this Understanding and the legislation to which this Understanding applies and for no other purpose.

### Article 17

Where the legislation of a Party provides that any document which is submitted to the competent authority or an agency of that Party shall be exempted, wholly or partly, from fees or charges, that exemption shall also apply to documents which are submitted to the competent authority or an agency of the other Party for the administration of its legislation.

### Article 18

- 1. For the purposes of this Understanding, the competent authorities and institutions of the Parties may correspond directly with each other in one of their official languages and with any person concerned regardless of the place of residence.
- 2. An application or document may not be rejected because it is written in an official language of the other Party.
- 3. The decisions of an agency or a tribunal which, under the legislation of a Party, require personal delivery to the person concerned may be transmitted directly by registered letter to the person concerned who resides in the territory of the other Party.

### Article 19

A claim for a benefit under the legislation of one Party presented after the coming into force of this Understanding, 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 or periods of insurance have been completed under the legislation of the other Party.

The date of receipt of such an application shall be presumed to be the date on which this application has been received under the legislation of the first Party. However, the applicant may request that the payment of benefits under the legislation of the other Party be deferred.

#### Article 20

Any claim, notice or appeal which under the legislation of a Party should have been presented within a prescribed period to an authority, tribunal or institution of that Party, but which is presented within the same period to an authority, tribunal or institution of the other Party, shall be treated as if it had been presented to the authority, tribunal or institution of the first Party.

#### Article 21

The institutions responsible for the payment of benefits in accordance with the provisions of this Understanding shall discharge their obligations in the currency of their country.

#### Article 22

1. Any dispute between both Parties concerning the interpretation or the administration of the Understanding shall, as far as possible, be settled by the competent authorities.
2. If a dispute cannot be settled as prescribed in paragraph 1, it shall be referred, at the request of one Party, to a joint committee established for that purpose.
3. The joint committee shall be formed on an ad hoc basis; it shall be composed of 4 members, 2 members being designated by each Party.
4. The joint committee shall study the dispute and, where expedient, shall make recommendations by mutual agreement with a view to settling the dispute.

### **PART VI**

#### TRANSITIONAL AND FINAL PROVISIONS

#### Article 23

1. This understanding shall also apply to events which occurred prior to its coming into force.
2. This Understanding shall not confer any right to payment of a benefit for any period before its coming into force or to payment of a lump-sum death benefit if the person died before its coming into force.
3. Any period of insurance and any period of residence completed under the legislation of either Party before the coming into force of this Understanding shall be taken into consideration in the determination of the right to a benefit under the provisions of this Understanding.
4. This Understanding shall not apply to rights settled by a lump-sum payment or a refund of contributions.
5. Decisions made before the coming into force of this Understanding shall not affect any rights arising from the administration of this Understanding.
6. The coming into force of this Understanding shall not result in the reduction of the amount of the benefits in kind being received by beneficiaries.

#### Article 24

The attached Final Protocol shall form an integral part of this Understanding.

## Article 25

Each Party shall notify in writing the other Party that it has completed its required statutory and constitutional procedures required for the coming into force of this Understanding; this Understanding shall take effect the first day of the fourth month following the date of receipt of the last of these notifications.

## Article 26

1. This Understanding shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Parties.

2. If this Understanding is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; both Parties shall make arrangements dealing with rights in the process of being acquired.

IN WITNESS WHEREOF, the plenipotentiaries of the Parties, being duly authorized thereto, have signed this Understanding.

Done in duplicate at Montréal, this 25<sup>th</sup> day of February, 1994, in the French language.

FOR THE GOUVERNEMENT DU QUÉBEC

Violette Trépanier

FOR THE SWISS FEDERAL COUNCIL

(Illegible)

O.C. 918-95, Sch. I.

## SCHEDULE II

(s. 2)

FINAL PROTOCOL REGARDING THE

UNDERSTANDING ON SOCIAL SECURITY

BETWEEN THE GOUVERNEMENT DU QUÉBEC

AND THE SWISS CONFEDERATION

AT THE TIME OF SIGNING THE UNDERSTANDING ON SOCIAL SECURITY BETWEEN QUÉBEC AND THE SWISS CONFEDERATION, THE UNDERSIGNED PLENIPOTENTIARIES STATED THAT THEY ARE IN AGREEMENT ON THE FOLLOWING POINTS:

1. Paragraph 1 of Article 4 shall not apply to Swiss legal provisions on

(a) voluntary Old Age, Survivors and Disability Insurance of Swiss nationals residing abroad;

(b) Old Age, Survivors and Disability Insurance of Swiss nationals working abroad for an employer in Switzerland and being paid by that employer;

(c) welfare allowances granted to Swiss nationals residing abroad.

2. The provisions of the Understanding shall not prevent the application of a provision of the Swiss legislation which would be more advantageous to persons with respect to benefits.

3. With respect to paragraph 1 of Article 6, the income a person receives from gainful employment in the territory of Québec shall not be taken into account in the calculation of contributions required under Swiss



legislation.

4. The spouse and children accompanying a detached person in Switzerland within the meaning of Article 7 shall be exempted from coverage under Swiss legislation in so far as they are not pursuing gainful employment in Switzerland.

5. The spouse and children accompanying a detached person in Québec within the meaning of Article 7 shall remain insured under Swiss legislation in so far as they are not pursuing gainful employment in Québec.

6. Québec nationals residing in Switzerland who leave Switzerland for a period not exceeding two months shall not interrupt their residence in Switzerland within the meaning of Article 11, paragraph 2.

7. Québec nationals not domiciled in Switzerland who have had to forsake gainful employment in that country because of an accident or illness and who benefit from Swiss Disability Insurance rehabilitation measures or who live in Switzerland until the settlement of the insured contingency shall be considered insured under Swiss legislation for entitlement to benefits under Disability Insurance. Such persons shall be required to pay contributions to Old Age, Survivors and Disability Insurance as if they were domiciled in Switzerland.

8. With respect to Article 13, the duration of residence in Switzerland of a Québec national shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding three months within a calendar year. However, a period of residence in Switzerland during which a Québec national has been exempt from coverage to Swiss Old Age, Survivors and Disability Insurance shall not be considered a period of residence for purposes of Article 13.

9. The refund of contributions paid under Swiss legislation, carried out in accordance with the provisions of Swiss legislation on the refund of contributions to foreigners and stateless persons, shall not bar the payment of extraordinary pensions in accordance with Article 13. In such cases, however, the amount of contributions refunded shall be charged against benefits to be paid.

Done in duplicate at Montréal, this 25<sup>th</sup> day of February, 1994, in the French language.

FOR THE GOUVERNEMENT DU QUÉBEC

Violette Trépanier

FOR THE SWISS FEDERAL COUNCIL

(Illegible)

O.C. 918-95, Sch. II.

### **SCHEDULE III**

(s. 2)

AMINISTRATIVE ARRANGEMENT FOR THE

IMPLEMENTATION OF THE UNDERSTANDING

ON SOCIAL SECURITY BETWEEN THE

GOUVERNEMENT DU QUÉBEC AND THE SWISS

CONFEDERATION

PURSUANT TO article 15, paragraph a, of the Understanding on social security between Québec and the Swiss Confederation, concluded on 25 February 1994, hereinafter referred to as «the Understanding», the Gouvernement du Québec and the competent Swiss authority, namely the Federal social insurance office (Office fédéral des assurances sociales),