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chapter R-9, r. 31

Regulation respecting the implementation of the Agreement on Social Security between the Gouvernement du Québec and the Government of the Kingdom of the Netherlands

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 shall apply to any person referred to in the Agreement on Social Security between the Gouvernement du Québec and the Government of the Kingdom of the Netherlands, signed at Quebec on 4 December 2001, and appearing as Schedule I.

O.C. 976-2003, s. 1.

- 2.** That Act and those regulations shall apply in the manner stipulated in the Agreement, and in the Administrative Arrangement for the implementation of the Agreement which appears as Schedule II.

O.C. 976-2003, s. 2.

- 3.** *(Omitted).*

O.C. 976-2003, s. 3.

SCHEDULE I

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOUVERNEMENT DU QUÉBEC AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

THE GOUVERNEMENT DU QUÉBEC

AND

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

RESOLVED to guarantee to their respective nationals the advantages of the coordination of their social security statutes,

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL

ARTICLE 1

DEFINITIONS

(1) In this Agreement, unless a different meaning is indicated by the context, the following expressions shall mean :

(a) “ competent authority ” : as regards Québec, the Minister responsible for the administration of the statutes referred to in Article 2 and as regards the Netherlands, the Minister responsible for the administration of the statutes referred to in Article 2 ;

(b) “ competent institution ” : as regards Québec, the department or body responsible for the application of the statutes referred to in Article 2 ; and, as regards the Netherlands, the institution responsible for the administration of the statutes referred to in Article 2 ;

(c) “ period of insurance ” : as regards Québec, any year for which contributions have been paid or for which a disability pension has been paid under the Act respecting the Québec Pension Plan or any other year considered as equivalent ; and, as regards the Netherlands, any period of contribution, insurance, employment or residence under the statutes referred to in Article 2 ;

(d) “ benefit ” : a pension, an annuity, a lump-sum grant or any other benefit in cash provided under the statutes of each Party, including any extension, supplement or increase thereto under the statutes referred to in Article 2 ;

(e) “ national ” : as regards Québec, a person of Canadian citizenship who is or who has been subject to the statutes referred to in Article 2 (1) a ; and, as regards the Netherlands, a person of Netherlands nationality ;

(f) “ territory ” : as regards the Netherlands, the territory of the Kingdom in Europe ;

(g) “ statutes ” : the statutes referred to in Article 2 ;

and any term not defined in the Agreement has the meaning given to it in the applicable statutes.

ARTICLE 2

MATERIAL SCOPE

(1) The Agreement shall apply

(a) as regards Québec, to the Act respecting the Québec Pension Plan with respect to retirement, disability and survivors' benefits and the regulations made under that Act ;

(b) as regards the Netherlands, to the statutes concerning

(i) general old age insurance ;

(ii) general survivors' insurance ;

(iii) disability insurance for self-employed workers ; and

(iv) disability insurance for employees ;

and, for the purposes of Article 8, Article 9 (1) and (2), and Article 10 (1) and (2),

(v) the statutes concerning health insurance, including an employer's obligation to pay a per diem allowance in case of sickness under the Civil Code of the Netherlands ;

(vi) unemployment insurance ; and

(vii) family allowances.

(2) Subject to the provisions of paragraphs 3 and 4, the Agreement shall equally apply to any statutory or regulatory act which modifies, adds to or replaces the statutes referred to in paragraph 1.

(3) The Agreement shall also apply to a statutory or regulatory act of one Party which extends the existing systems to new classes of beneficiaries ; notwithstanding the preceding, that Party may, within three months of the date of the official publication of that act, notify the other Party that the Agreement shall not apply.

(4) The Agreement shall not apply to a statutory or regulatory act which covers a new branch of social security not referred to in paragraph 1, unless the Agreement is modified to that effect.

(5) As regards the Netherlands, the Agreement shall not apply to social and medical assistance plans, to special plans for public servants or persons considered as such, or to benefit plans for victims of war or its consequences.

ARTICLE 3

PERSONAL SCOPE

Unless otherwise provided, the Agreement shall apply to the nationals of the Parties, to the persons who are or who have been subject to the statutes of either Party, and to the successors of such persons.

ARTICLE 4

EQUAL TREATMENT

(1) With respect to the statutes of Québec, all persons referred to in Article 3 shall be subject to the obligations of those statutes and shall be eligible for their benefits without regard to their nationality.

(2) With respect to the statutes of the Netherlands, unless otherwise provided in the Agreement,

(a) nationals of Québec ;

(b) refugees, as defined by the Convention of 28 July 1951 Relating to the Status of Refugees and by the Protocol of 31 January 1967 to that Convention ;

(c) stateless persons, as defined by the Convention of 28 September 1954 Relating to the Status of Stateless Persons ;

(d) other persons insofar as they derive rights from one of the persons listed in subparagraph *a*, *b* or *c* ;

shall be subject to the obligations of those statutes and shall be eligible for their benefits under the same conditions as nationals of the Netherlands.

ARTICLE 5

EXPORT OF BENEFITS

(1) Unless otherwise provided in the Agreement, any old age, disability or survivors' benefits referred to in Article 2 (1)*a* and Article 2 (1) *b*, *i*, *ii*, *iii*, and *iv*, acquired under the statutes of one Party, as well as any such benefits acquired under the Agreement, shall not be subject to any reduction, modification, suspension, suppression or confiscation by reason only of the fact that the beneficiary resides in or is staying in the territory of the other Party, and such benefits shall be payable in the territory of the other Party.

(2) Any benefit payable under the Agreement by one Party in the territory of the other Party shall also be payable outside the territory of both Parties, under the same conditions that the first Party applies to its nationals under its own statutes.

TITLE II

APPLICABLE STATUTES

ARTICLE 6

GENERAL RULE

Unless otherwise provided in the Agreement and subject to Articles 7, 8, 9, 10 and 11, persons working in the territory of one Party shall be subject only to the statutes of that Party.

ARTICLE 7

SELF-EMPLOYED PERSONS

Persons residing in the territory of one Party and working as self-employed persons in the territory of the other Party shall, with respect to such work, be subject only to the statutes of the Party in the territory of their place of residence.

ARTICLE 8

DETACHED PERSONS

A person subject to the statutes of one Party and performing work for his or her employer in the territory of the other Party, for a period not exceeding 60 months, shall, with respect to such work, remain subject to the statutes of the former Party for the duration of the detachment.

ARTICLE 9

TRAVELLING PERSONNEL EMPLOYED IN INTERNATIONAL TRANSPORT

(1) Persons working in the territory of both Parties as travelling personnel for an international carrier which, on behalf of others or on its own account, transports passengers or goods, by air or by sea, and which has its head office in the territory of one Party, shall, with respect to such work, be subject only to the statutes of the Party in whose territory the head office is located.

(2) Notwithstanding the preceding paragraph, if those persons are employed by a branch or permanent agency which the undertaking has in the territory of a Party other than the Party in whose territory it has its head office, they shall, with respect to such work, be subject only to the statutes of the Party in whose territory the branch or permanent agency is located.

(3) Notwithstanding the two preceding paragraphs, if the persons are employed wholly or mainly in the territory of a Party, and if they reside in the territory of that Party, they shall, with respect to such work, be subject only to the statutes of that Party.

ARTICLE 10

PERSONS IN THE PUBLIC SERVICE

(1) Persons in the Public Service for one of the Parties and assigned to a post in the territory of the other Party shall be subject only to the statutes of the first Party for all matters relative to that post.

(2) Persons residing in the territory of one Party and who are in the Public Service for the other Party in that territory shall, with respect to that service, be subject only to the statutes which apply to that territory.

ARTICLE 11

DEROGATION FROM THE PROVISIONS ON COVERAGE

The competent authorities of both Parties or of the institutions designated by those authorities may, by common agreement, derogate from the provisions of Articles 6, 7, 8, 9 and 10 with respect to any persons or category of persons.

ARTICLE 12

COVERAGE UNDER THE STATUTES OF THE NETHERLANDS

For the purposes of the statutes of the Netherlands, persons subject to the statutes of the Netherlands in accordance with the provisions of this Title are considered residents of the Netherlands.

TITLE III

BENEFITS

ARTICLE 13

PRINCIPLE OF TOTALIZATION

(1) When persons have completed periods of insurance under the statutes of both Parties and are not eligible for benefits by virtue of the periods of insurance completed solely under the statutes of one Party, the competent institution of that Party shall totalize, to the extent necessary for the entitlement to benefits under the statutes applied by it, the periods of insurance completed under the statutes of each of the Parties, provided that those periods do not overlap.

(2) If a person is not entitled to benefits on the basis of the totalization provided for in paragraph 1, the periods of insurance completed under the statutes of a third party that is related to each of the Parties by a legal instrument respecting social security and making provisions for the totalization of periods of insurance shall be taken into account to determine if the person is entitled to benefits, in accordance with the provisions of this Title.

ARTICLE 14

BENEFITS UNDER QUÉBEC STATUTES

(1) If persons who have been subject to the statutes of either Party meet the requirements for entitlement to benefits, for themselves, for their dependants, survivors or successors, under Québec statutes, without having recourse to the totalization referred to in Article 13, the competent institution of Québec shall determine the amount of benefits in accordance with the provisions of the statutes it applies.

(2) If the persons referred to in paragraph 1 do not meet the requirements for entitlement to benefits without totalization, the competent institution of Québec shall

(a) recognize one year of contribution when the competent institution of the Netherlands certifies that a period of insurance of at least three months has been credited in a calendar year under the statutes of the Netherlands, provided that the year is included in the contributory period as defined in Québec statutes ;

(b) totalize years recognized under subparagraph a with periods of insurance completed under Québec statutes, in accordance with Article 13.

(3) When the totalization provided for in paragraph 2 entitles persons to benefits, the competent institution of Québec shall determine the amount payable as follows :

(a) that part of the benefit which is related to earnings is calculated according to the provisions of the statutes of Québec ;

(b) the amount of the flat-rate portion of the benefit payable is adjusted in proportion to the period for which contributions were paid under the provisions of the statutes of Québec in relation to the contributory period as defined in those statutes.

ARTICLE 15

BENEFITS UNDER THE STATUTES OF THE NETHERLANDS

If persons who have been subject to the statutes of both Parties meet the requirements for entitlement to benefits, for themselves or for their dependants, survivors or successors, under the statutes of the Netherlands without having recourse to the totalization referred to in Article 13, the competent institution of the Netherlands shall determine the amount of the benefits in accordance with the provisions of the statutes it applies.

ARTICLE 16

BENEFITS UNDER THE INCAPACITY INSURANCE ACTS

(1) Subject to the provisions of paragraph 2, the national of one Party or the person referred to in Article 4 (2) *b* or *c* who, at the time when incapacity for work followed by disability occurred, had previously completed a total period of insurance at least equal to 12 months under the statutes of the Netherlands as they regard disability insurance shall be entitled to the benefits determined in accordance with the latter statutes and calculated according to the provisions of Article 17.

(2) Paragraph 1 applies provided that the entitlement to a disability benefit is established under the statutes referred to in Article 2 (1) *a*, considering, if necessary, the application of Article 13, or that the entitlement is established in the absence of an entitlement to a full replacement indemnity under the Québec occupational health and safety plan.

ARTICLE 17

CALCULATION FOR THE PURPOSES OF ARTICLE 16

(1) If entitlement to a benefit is established through the application of Article 16, the amount of the benefit payable shall be calculated in proportion to the ratio obtained by dividing the total length of the periods of insurance completed by the person concerned after reaching the age of 15 under the statutes of the Netherlands by the period between the date on which the person reached the age of 15 and the date of incapacity for work followed by disability.

(2) If, at the time when incapacity for work followed by disability occurred, the person concerned was an employee, the benefit payable shall be determined according to the provisions of the Incapacity Insurance Act of 18 February 1966 (WAO). In any other case, the benefit payable is determined according to the Self-Employed Persons Disablement Benefits Act of 24 April 1997 (WAZ).

(3) The periods of insurance recognized under the statutes of the Netherlands are

(a) periods of insurance during employment, completed under the Incapacity Insurance Act of 18 February 1966 (WAO) ;

(b) periods of insurance during employment, completed under the General Incapacity Insurance Act of 11 December 1975 (AAW) ;

(c) periods of insurance completed under the Self-Employed Persons Disablement Benefits Act of 24 April 1997 (WAZ) ; and

(d) periods of employment, and periods treated as such, completed in the Netherlands before 1 July 1967.

(4) For the purposes of the first sentence of paragraph 2, when a period of insurance completed under the WAO coincides with a period of insurance completed under the AAW and/or WAZ, only the period completed under the WAO shall be taken into account.

(5) For the purposes of the second sentence of paragraph 2, when a period of insurance completed under the AAW and/or WAZ coincides with a period of insurance completed under the WAO, only the

period completed under the AAW and/or WAZ shall be taken into account.

ARTICLE 18

BENEFITS UNDER THE GENERAL OLD AGE PENSIONS STATUTES

(1) The competent institution of the Netherlands shall determine the old age pension directly and exclusively on the basis of the periods of insurance completed under the Netherlands General Old Age Pensions Act.

(2) Subject to paragraph 3, periods before 1 January 1957 during which a national of one Party or a person referred to in Article 4 (2) *b*, *c* or *d* resided in the territory of the Netherlands after reaching the age of 15 or during which, while residing in another country, those persons were gainfully employed in the Netherlands shall also be considered as periods of insurance if the person does not satisfy the conditions of the statutes of the Netherlands with respect to such periods being treated as periods of insurance.

(3) The periods referred to in paragraph 2 shall be taken into consideration in the calculation of the old age pension only if the person has been insured within the meaning of Article 6 of the Netherlands General Old Age Pensions Act and the person has resided for at least six years in the territory of one or both Parties after reaching the age of 59 and only while that person is residing in the territory of either Party. However, these periods shall not be taken into consideration if they coincide with periods taken into consideration in the calculation of an old age pension under the statutes of a country other than the Netherlands.

ARTICLE 19

BENEFITS UNDER THE GENERAL SURVIVORS' INSURANCE STATUTES

When a national of one Party or a person referred to in Article 4 (2) *b* or *c* was, at the time of death, subject to the statutes identified in Article 2 (1) *a* and had previously completed a total period of insurance at least equal to 12 months under the statutes of the Netherlands as they regard survivors' insurance, the survivors shall be entitled to a benefit determined in accordance with the latter statutes and calculated according to the provisions of Article 20.

ARTICLE 20

CALCULATION FOR THE PURPOSES OF ARTICLE 19

If entitlement to a benefit is established through the application of Article 19, the amount of the benefit payable shall be calculated in proportion to the ratio obtained by dividing

the total length of the periods of insurance under the statutes of the Netherlands completed before the age of 65 by a deceased

by

the period between the date on which the deceased reached the age of 15, or the date on which the General Survivors' Insurance Act came into effect, if it was at a later date, and the date of death, but without exceeding the date on which the deceased reached the age of 65.

ARTICLE 21

BENEFITS UNDER THE GENERAL CHILD BENEFITS ACT

The competent institution of the Netherlands shall determine family allowances directly and exclusively on the basis of the General Child Benefits Act of the Netherlands. A person receiving an allowance or eligible for such allowance under the General Child Benefits Act shall be entitled to receive the payment of the allowance while that person, as a successor, or the child concerned, resides in the territory of Québec.

TITLE IV

MISCELLANEOUS

ARTICLE 22

ADMINISTRATIVE ARRANGEMENT

(1) The terms and conditions for the application of the Agreement shall be set out in an Administrative Arrangement to be agreed to by the competent authority of Québec and the competent authorities of the Netherlands.

(2) The liaison agency of each Party shall be designated in the Administrative Arrangement.

ARTICLE 23

CLAIM FOR BENEFITS

(1) To be entitled to a benefit under the Agreement, a person shall file a claim in accordance with the terms and conditions provided in the Administrative Arrangement.

(2) A claim for a benefit filed under the statutes of one Party after the date of coming into force of the Agreement shall be deemed to be a claim for a corresponding benefit under the statutes of the other Party

(a) when a person asks that the claim be considered as a claim under the statutes of the other Party ; or

(b) when a person indicates, at the time of the claim, that periods of insurance have been completed under the statutes of the other Party.

The date of receipt of such a claim shall be deemed to be the date on which that claim was received under the statutes of the first Party.

(3) The presumption set out in paragraph 2 shall not prevent a person from requesting that a claim for benefits under the statutes of the other Party be deferred.

ARTICLE 24

PAYMENT OF BENEFITS

(1) Cash benefits shall be payable directly to the beneficiary in the currency of the Party making the payment or in legal tender in the place of residence of the beneficiary, without any deduction for administrative charges.

(2) For the purposes of paragraph 1 as regards the Netherlands, where an exchange rate is required, that rate shall be the rate in effect on the day the payment is made, as recommended by the Central Bank of the Netherlands.

ARTICLE 25

PAYMENT OF BENEFITS

(1) A request, a declaration or an appeal which, under the statutes of one Party, is filed within a prescribed time to the authority, institution or tribunal of that Party shall be accepted if it is filed within the same time period to the corresponding authority or institution or tribunal of the other Party. In such a case, the authority, institution or tribunal of the latter Party shall immediately forward the request, declaration or appeal to the authority, institution or tribunal of the first Party.

(2) The date on which the request, declaration or appeal is filed with the authority, institution or tribunal of the other Party shall be considered as the date of filing with the authority, institution or tribunal of the other Party.

ARTICLE 26

MEDICAL EXAMINATION REPORTS

(1) At the request of the competent institution of one Party, the competent institution of the other Party shall make the necessary arrangements to provide the medical examination reports required for persons residing or staying in the territory of the latter Party. The cost of medical examination reports not already in the possession of the competent institution of the latter Party shall be subject to reimbursement according to the terms and conditions provided for in the Administrative Arrangement.

(2) The reports referred to in paragraph 1 shall not be considered invalid solely because they have been made in the territory of the other Party.

ARTICLE 27

EXEMPTION FROM FEES AND AUTHENTICATION

(1) Any reduction of or exemption from fees provided for in the statutes of one Party with respect to the issuing of a certificate or document required in accordance with those statutes shall be extended to the certificates and documents required in accordance with the statutes of the other Party.

(2) Any document required for the application of the Agreement shall be exempt from authentication by the responsible authorities or from any other similar procedure.

ARTICLE 28

DISCLOSURE OF PERSONAL INFORMATION

(1) Unless disclosure is required under the statutes of a Party, any personal information communicated by an institution of one Party to an institution of the other Party shall be confidential and shall be used exclusively for the application of the Agreement.

(2) Access to personal information shall be subject to the statutes of the Party on whose territory the information is located.

(3) Where required for processing a claim or for the payment of benefits under the Agreement, personal information held by a third person or by an authority shall be communicated by a liaison agency, as designated in the Administrative Arrangement, to the liaison agency of the other Party after written authorization has been obtained from the beneficiary, the beneficiary's partner or the beneficiary's successors.

ARTICLE 29

MUTUAL ASSISTANCE

The competent authorities and institutions shall

(a) communicate to each other any information required to process the requests between the Parties in accordance with the Agreement ;

(b) assist each other free of charge in any matter concerning the application of the Agreement ;

(c) forward to each other any information on measures adopted for the application of the Agreement or on amendments to their statutes to the extent that such amendments affect the application of the Agreement ; and

(d) inform each other of the difficulties encountered in the interpretation or in the application of the Agreement.

ARTICLE 30

COMMUNICATION

- (1) The competent authorities and institutions and liaison agencies of the Parties may communicate with one another in any of their official languages.
- (2) A decision of an authority, tribunal or institution may be communicated directly to a person residing in the territory of the other Party.

ARTICLE 31

SETTLEMENT OF DISPUTES

- (1) Any dispute between the two Parties concerning the interpretation or the application of the Agreement shall, as far as possible, be settled by the competent authorities.
- (2) If a dispute cannot be settled in the manner provided for in paragraph 1, it shall be referred, at the request of one Party, to a joint commission.
- (3) The joint commission shall be formed on an ad hoc basis.
- (4) The joint commission shall study the dispute and try to conciliate the Parties by submitting recommendations likely to settle the dispute.

TITLE V

TRANSITIONAL AND FINAL

ARTICLE 32

TRANSITIONAL PROVISIONS

- (1) The Agreement shall not confer any right to the payment of benefits before the date of its coming into force.
- (2) For the purposes of Title III and subject to the provisions of paragraph 1 of this Article,
 - (a) a period of insurance completed prior to the date of coming into force of the Agreement shall be taken into consideration for the purpose of determining entitlement to benefits under the Agreement ;
 - (b) a benefit, other than a death benefit, is due under the Agreement even if it is related to an event prior to the date of coming into force of the Agreement ;
 - (c) when benefits are payable pursuant to Article 13 and when a claim for such benefits is produced within two years from the date of coming into force of the Agreement, rights arising from the Agreement shall be acquired from that date or from the date of the retirement, death or invalidity as confirmed by a medical report creating the right to benefits if such date follows, notwithstanding the provisions of the statutes of both Parties relative to the forfeiture of rights ;
 - (d) benefits which, on account of nationality or residence, have been refused, reduced or suspended shall, at the request of the person in question, be granted or re-established from the date of coming into force of the Agreement ;
 - (e) benefits granted before the date of coming into force of the Agreement shall be revised, at the request of the person in question. They may also be revised of their own motion. If the revision leads to benefits that are lower than the benefits paid before the coming into force of the Agreement, the amount of benefits previously paid shall be maintained ;
 - (f) if a request referred to in subparagraphs *d* and *e* is filed within two years of the date of coming into force of the Agreement, rights arising from the Agreement shall be acquired from that date, notwithstanding the provisions of the statutes of both Parties relative to the forfeiture of rights ;

(g) if a request referred to in subparagraphs *d* and *e* is filed after the limit of two years following the coming into force of the Agreement, rights which are not forfeited shall be acquired from the date of the request, unless there are more favourable provisions in the applicable statutes.

(3) For the purposes of Article 8, a person already detached at the date of coming into force of the Agreement shall be deemed to have become detached on that date.

ARTICLE 33

COMING INTO FORCE AND TERM OF THE AGREEMENT

(1) The Parties shall notify one another in writing when their respective internal procedures required for the coming into force of the Agreement have been completed. This Agreement comes into force, after the Administrative Arrangement referred to in Article 22 has been entered into, on the first day of the third month following the date of the last notification.

(2) The Agreement is entered into for an indefinite term. It may be denounced by either Party giving notice to the other Party. The Agreement expires on the 31st day of December which follows the date of notification by at least 12 months.

(3) If the Agreement is terminated, all rights acquired by a person under the provisions of the Agreement shall be maintained, and negotiations shall be undertaken to settle any rights in the process of being acquired under these provisions.

Done at Québec on 4 December 2001, in two copies, in the French language.

For the Gouvernement
du Québec

For the Government of
the Kingdom of the Netherlands

DIANE LEMIEUX,

ADRIANUS CORNELIS BROUWER,

*Minister of State for Culture
and Communications*

Consul General

O.C. 976-2003, Sch. I.

SCHEDULE II

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY BETWEEN QUÉBEC AND THE KINGDOM OF THE NETHERLANDS

CONSIDERING Article 22 of the Agreement on Social Security between the Gouvernement du Québec and the Government of the Kingdom of the Netherlands, signed on 4 December 2001 ;

CONSIDERING the desire of both Governments to implement the Agreement ;

THE COMPETENT AUTHORITIES OF EACH OF THE PARTIES HAVE AGREED AS FOLLOWS :

ARTICLE 1

DEFINITIONS

In this Administrative Arrangement,

(a) the term "Agreement" shall mean the Agreement on Social Security between the Gouvernement du Québec and the Government of the Kingdom of the Netherlands, signed on 4 December 2001 ; and