

AGREEMENT ON SOCIAL SECURITY

BETWEEN

THE REPUBLIC OF INDIA

AND

CANADA

THE REPUBLIC OF INDIA ("INDIA")

AND

CANADA

hereinafter referred to as "the Contracting States",

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 1
Definitions

1. For the purposes of this Agreement:

"benefit" means, as regards a Contracting State, any cash benefit for which provision is made in the legislation of that Contracting State and includes any supplements or increases applicable to such a cash benefit;

"competent authority" means:

as regards India, the Minister of Overseas Indian Affairs responsible for the application of the legislation specified in Article 2(1)(a); and

as regards Canada, the Minister or Ministers responsible for the application of the legislation of Canada specified in Article 2(1)(b);

"competent institution" means:

as regards India, the Employees' Provident Fund Organization;
and,

as regards Canada, the competent authority;

"creditable period" means:

as regards India, any period of contributions or insurance recognized as such in the legislation under which that period was completed, as well as any period recognized as equivalent to a period of contribution or insurance under that legislation; and,

as regards Canada, a period of contribution used to acquire the right to a benefit under the *Canada Pension Plan*; a period during which a disability pension is paid under that Plan; and a period of residence used to acquire the right to a benefit under the *Old Age Security Act*;

"legislation" means, as regards a Contracting State, the laws and regulations referred to in Article 2;

"territory" means:

as regards India, the geographic areas of the Republic of India including territorial seas, as well as the exclusive economic zones over which, in accordance with international law, the Republic of India has sovereign rights; and

as regards Canada, the territory of Canada, including its land territory, internal waters and territorial sea, and includes the air space above these areas, as well as the exclusive economic zone and the continental shelf, as determined by its domestic law, consistent with international law.

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

ARTICLE 2

Legislative Scope

1. This Agreement shall apply to the following legislation:
 - (a) with respect to India, all legislation concerning:
 - (i) old-age and survivors' pension for employed persons;
 - (ii) the Permanent Total Disability pension for employed persons;
 - (b) with respect to Canada:
 - (i) the *Old Age Security Act* and the regulations made thereunder;
 - (ii) the *Canada Pension Plan* and the regulations made thereunder.

2. For the application of Part II of this Agreement, all creditable periods under the legislation of India shall apply and as regards Part III of this Agreement, only creditable periods relating to pension programmes shall apply.

3. This Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation referred to in paragraph 1.

4. This Agreement shall further apply to laws and regulations which extend the legislation of a Contracting State to new categories of beneficiaries or to new benefits unless an objection on the part of that Contracting State has been communicated to the other Contracting State not later than six months following the entry into force of such laws and regulations.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who is or who has been subject to the legislation of India or Canada, and to persons who derive rights from such a person within the meaning of the applicable legislation of either Contracting State.

ARTICLE 4

Equality of Treatment

Any person described in Article 3 shall have the same rights and obligations under that legislation as nationals of that Contracting State.

ARTICLE 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits paid under the legislation of a Contracting State to any person described in Article 3, including benefits acquired by virtue of this Agreement, shall not be subject to any reduction, modification, suspension or cancellation by reason only of the fact that the person is in the territory of the other Contracting State.

2. Benefits payable under this Agreement to a person who is or who has been subject to the legislation of both Contracting States, or to a person who derives rights from such a person, shall be paid when that person, or a person who derives rights from such a person, resides in the territory of a third State.

3. As regards Canada, an allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

PART II
PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

ARTICLE 6
**General Rules regarding Coverage for Employed
and Self-Employed Persons**

Subject to Articles 7 to 10:

1. An employed person who works in the territory of a Contracting State shall, in respect of that work, be subject only to the legislation of that Contracting State.

2. A self-employed person who resides in the territory of a Contracting State and who works for his or her own account in the territory of the other Contracting State, or in the territory of both Contracting States, shall, in respect of that work, be subject only to the legislation of the first Contracting State.

ARTICLE 7
Detachments

An employed person who is subject to the legislation of a Contracting State and who is sent by his or her employer to work in the territory of the other Contracting State shall, in respect of that work, be subject only to the legislation of the first Contracting State as though that work was performed in its territory. This coverage may be extended for more than 60 months with the mutual consent of the competent authorities of both Contracting States.

ARTICLE 8
Crews of Ships

A person who, but for this Agreement, is subject to the legislation of both Contracting States in respect of employment as a member of the crew of a ship shall, in respect of that employment, be subject only to the legislation of the Contracting State in which he or she resides. Where the circumstances of the previous sentence do not apply, the person shall be subject only to the legislation of India if the ship flies the flag of India.

ARTICLE 9
Government Employment

1. Notwithstanding any provision of this Agreement, the provisions regarding social security of the *Vienna Convention on Diplomatic Relations* of 18 April 1961 and the *Vienna Convention on Consular Relations* of 24 April 1963 shall continue to apply.

2. A person engaged in government employment for a Contracting State who is posted to work in the territory of the other Contracting State shall, in respect of that employment, be subject only to the legislation of the first Contracting State.

ARTICLE 10

Exceptions

The competent authorities of the Contracting States may by common decision modify the application of the provisions of Articles 6 to 9 with respect to any person or categories of persons.

ARTICLE 11

Definition of Certain Periods of Residence with respect to the Legislation of Canada

1. 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 presence or residence in India, that period shall be considered as a period of residence in Canada for that person; it shall also be considered to be a period of residence in Canada for that person's spouse or common-law partner and dependants who reside with him or her and who are not subject to the legislation of India by reason of employment;
 - (b) if a person is subject to the legislation of India during any period of presence or residence in Canada, that period for that person, and for that person's spouse or common-law partner and dependants who reside with him or her, shall be determined according to the provisions of Canadian legislation.
2. In the application of paragraph 1:
 - (a) a person shall be considered to be subject to the legislation of India during a period of presence or residence in Canada only if that person makes compulsory contributions pursuant to that legislation during that period by reason of employment;

- (b) a person shall be considered to be subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during a period of presence or residence in India only if that person makes contributions pursuant to the plan concerned during that period by reason of employment or self-employment.

PART III
PROVISIONS CONCERNING BENEFITS

CHAPTER 1
TOTALIZING

ARTICLE 12
Periods under the Legislation of India and Canada

1. If a person is not eligible for a benefit because he or she has not accumulated sufficient creditable periods under the legislation of a Contracting State, the eligibility of that person for that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap.
2. For purposes of determining eligibility for an old age benefit under the legislation of India:
 - (a) a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as 12 months which are creditable under the legislation of India;
 - (b) a month 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 month which is creditable under the legislation of India.

3. For purposes of determining eligibility for a disability or survivor's benefit under the legislation of India, a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as 12 months which are creditable under the legislation of India.

4. (a) For purposes of determining eligibility for a benefit under the *Old Age Security Act* of Canada, a creditable period under the legislation of India shall be considered as a period of residence in Canada;

(b) For purposes of determining eligibility for a benefit under the *Canada Pension Plan*, a calendar year including at least three months which are creditable under the legislation of India shall be considered as a year which is creditable under the *Canada Pension Plan*.

ARTICLE 13

Periods under the Legislation of a Third State

If a person is not eligible for a benefit on the basis of the creditable periods under the legislation of the Contracting States, totalized as provided in Article 12, the eligibility of that person for that benefit shall be determined by totalizing these periods and creditable periods completed under the legislation of a third State with which both Contracting States are bound by social security instruments which provide for the totalizing of periods.

ARTICLE 14

Minimum Period to be Totalized

Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Contracting State is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation of that Contracting State, the competent institution of that Contracting State shall not be required to pay a

benefit to that person in respect of those periods by virtue of this Agreement. These creditable periods shall, however, be taken into consideration by the competent institution of the other Contracting State to determine eligibility for the benefits of that Contracting State through the application of Chapter 1.

CHAPTER 2
BENEFITS UNDER THE LEGISLATION OF CANADA

ARTICLE 15
Benefits under the Old Age Security Act

1. If a person is eligible for a pension or allowance under the *Old Age Security Act* solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of that Act governing the payment of a partial pension or allowance exclusively on the basis of the periods of residence in Canada which may be considered under that Act.
2. Paragraph 1 shall also apply to a person outside Canada who would be eligible for a full pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for the payment of a pension outside Canada.
3. Notwithstanding any other provision of this Article, an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, when totalized as provided in Chapter 1, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for the payment of a pension outside Canada.

ARTICLE 16

Benefits under the Canada Pension Plan

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

- (a) the earnings-related portion of the 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;
- (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 eligibility for that benefit, but in no case shall that fraction exceed the value of one.

CHAPTER 3

BENEFITS UNDER THE LEGISLATION OF INDIA

ARTICLE 17

Calculating the Amount of Benefits Payable

1. If a person is entitled to a benefit under the legislation of India without taking into account the creditable periods completed under the legislation of Canada, the competent institution of India shall determine the amount of the

benefit payable on the basis of the creditable periods completed under its legislation.

2. The competent institution of India shall also calculate the amount of old age, survivors' or disability benefit by applying the rules specified in subparagraphs 3(a) and (b).

3. If a person is entitled to a benefit solely through the application of the totalization provisions of Chapter 1, the competent institution of India:

- (a) shall calculate the theoretical amount of the benefit which would be paid if the totalized creditable periods accumulated under the legislation of both Contracting States had been accumulated under the legislation of India alone; and
- (b) on the basis of the theoretical amount calculated in accordance with subparagraph (a), shall determine the amount of the benefit payable by applying the ratio of the duration of the creditable periods completed under the legislation of India to the total aggregate of creditable periods accumulated under the legislation of both Contracting States.

PART IV

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

ARTICLE 18

Administrative Arrangement

1. The competent authorities of the Contracting States shall conclude an administrative arrangement which establishes the measures necessary for the application of this Agreement.

2. The competent authorities shall designate the liaison agencies of the Contracting States in that arrangement.

ARTICLE 19

Exchange of Information and Mutual Assistance

1. The competent authorities and institutions responsible for the application of this Agreement shall:

- (a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement and the legislation to which the Agreement applies;
- (b) provide assistance to one another for the purpose of determining eligibility for, or the amount of, any benefit under this Agreement, or under the legislation to which this Agreement applies, as if the matter involved the application of their own legislation;
- (c) 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 in so far as these changes affect the application of this Agreement.

2. The assistance referred to in subparagraph 1(b) shall be provided free of charge, subject to any provision contained in an administrative arrangement concluded pursuant to Article 18 for the reimbursement of certain types of expenses.

3. Unless disclosure is required under the laws of a Contracting State:

- (a) any information about a person which is transmitted in accordance with this Agreement to that Contracting State by the sending Contracting State is confidential and shall be used only for purposes

of implementing this Agreement and the legislation to which this Agreement applies;

- (b) any information about a person obtained by the receiving Contracting State shall not be disclosed subsequently to any other person, body or country unless the sending Contracting State is notified and considers it advisable and the information is disclosed only for the same purpose for which it was originally disclosed.

ARTICLE 20

Exemption or Reduction of Dues, Fees and Charges

1. Any exemption from or reduction of legal dues, consular fees and administrative charges for which provision is made in the legislation of a Contracting State 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 Contracting State.

2. Any document 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 or any similar formality.

ARTICLE 21

Language of Communication

For the application of this Agreement, the competent authorities and institutions of the Contracting States may communicate directly with one another in any official language of either Contracting State.

ARTICLE 22

Submitting a Claim, Notice or Appeal

1. Claims, notices and appeals concerning eligibility for, or the amount of, a benefit under the legislation of a Contracting State which should, for the purposes of that legislation, have been presented within a prescribed period to a competent institution of that Contracting State, but which are presented within the same period to the competent institution of the other Contracting State, shall be treated as if they had been presented to the competent institution of the first Contracting State. The date of presentation of claims, notices and appeals to the competent institution of the other Contracting State shall be deemed to be the date of their presentation to the competent institution of the first Contracting State.

2. Subject to the second sentence of this paragraph, a claim for benefit under the legislation of a Contracting State made after the date of entry into force of this Agreement shall be deemed to be a claim for the corresponding benefit under the legislation of the other Contracting State, provided that the applicant at the time of application:

- (a) requests that it be considered an application under the legislation of the other Contracting State, or
- (b) provides information indicating that creditable periods have been completed under the legislation of the other Contracting State.

The preceding sentence shall not apply if the applicant requests that the claim to the benefit under the legislation of the other Contracting State be delayed.

3. In any case to which paragraph 1 or 2 applies, the competent institution to which the claim, notice or appeal has been submitted shall transmit it without delay to the competent institution of the other Contracting State.

ARTICLE 23
Payment of Benefits

1. The competent institutions of the Contracting States shall pay benefits under this Agreement to beneficiaries who reside outside their territories in a freely convertible currency according to the legislation which they apply.
2. Benefits shall be paid to beneficiaries free from any deduction for administrative expenses that may be incurred in paying the benefits.

ARTICLE 24
Resolution of Differences

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

ARTICLE 25
Understandings with a Province of Canada

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

PART V
TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 26
Transitional Provisions

1. 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 this Agreement and its amount.
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 this 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 this Agreement.
4. In applying Article 7, in the case of a person who was sent to a Contracting State prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on the date of entry into force of this Agreement.

ARTICLE 27
Duration and Termination

1. This Agreement shall remain in force without any limitation on its duration. It may be terminated at any time by either Contracting State giving 12 months' notice in writing to the other Contracting State.
2. In the event of the termination of this Agreement, any right acquired by a person in accordance with its provisions shall be maintained. The Agreement shall

continue to have effect in relation to any person who, prior to its termination, has applied for, and would acquire rights by virtue of the Agreement.

ARTICLE 28
Entry into Force

The Contracting States shall notify each other, through diplomatic channels, of the completion of their respective constitutional and legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the fourth month following the date of receipt of the last notification.

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

DONE in duplicate at *New Delhi* this *5th* day of *November*, *2012*, in the English, Hindi and French languages, each version being equally authentic.



FOR THE REPUBLIC OF INDIA



FOR CANADA