LEGAL NOTICE NO. 21

REPUBLIC OF TRINIDAD AND TOBAGO

THE NATIONAL INSURANCE ACT, CHAP. 32:01

ORDER

MADE BY THE PRESIDENT UNDER SECTION 69 OF THE NATIONAL INSURANCE ACT

THE NATIONAL INSURANCE (AGREEMENT AND ADMINISTRATIVE ARRANGEMENT ON SOCIAL SECURITY BETWEEN CANADA AND TRINIDAD AND TOBAGO) ORDER, 1998

1. This Order may be cited as the National Insurance (Agreement and Administrative Arrangement on Social Security between Canada and Trinidad and Tobago) Order, 1998. Citation

2. In this Order— Interpretation

"Agreement" means the Agreement on Social Security between the Republic of Trinidad and Tobago and Canada set out in the First Schedule; First Schedule

"Administrative Arrangement" means the Administrative Arrangement on Social Security between the Republic of Trinidad and Tobago and Canada set out in the Second Schedule. Second Schedule

3. The National Insurance Act and the subsidiary legislation made thereunder, in respect of— Chap. 32:01 amended

(a) retirement benefit;

(b) invalidity benefit;

(c) survivor's benefits;

(d) death benefits; and

(e) funeral grant,

are, to the extent to which they are affected by the Agreement and the Administrative Arrangement, deemed to be amended to give effect to the Agreement and the Administrative Arrangement.

FIRST SCHEDULE

AGREEMENT ON SOCIAL SECURITY

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO hereinafter referred to as "the Parties",

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 PROVISION

ARTICLE I

Definitions

1. For the purposes of this Agreement:

"benefit" means, as regards a Party, any cash benefit, pension or allowance for which provision is made in the legislation of that Party and includes any supplements or increases applicable to such a cash benefit, pension or allowance; however, for the purposes of Articles VIII, IX and X "benefit" does not include a grant payable under the legislation of Trinidad and Tobago;

"competent authority" means, as regards Canada, the Minister or Ministers responsible for the application of the legislation of Canada; and, as regards Trinidad and Tobago, the Minister through whom general directions of the Government are given to the Board as provided in the legislation of Trinidad and Tobago;

"competent institution" means, as regards Canada, the competent authority; and, as regards Trinidad and Tobago, the Board of Management established under the National Insurance Act (Chapter 32:01);

"creditable period" means, as regards a Party, 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 that Party; as regards Canada, it also means a period during which a disability pension is payable under the Canada Pension Plan;

"government employment" means, as regards Trinidad and Tobago, employment in the service of the Government of Trinidad and Tobago including local government authorities and the Tobago House of Assembly, or in the service of any Statutory Boards, State Corporations or Companies registered under the Companies' Act of Trinidad and Tobago being companies in which the Government of Trinidad and Tobago or an agency of the Government of Trinidad and Tobago holds not less than fifty-one percent (51%) of the voting shares; and, as regards Canada, service in the employment of the Government of Canada, a province of Canada or a Canadian municipality;

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

"territory" means, as regards Canada, the territory of Canada; and, as regards Trinidad and Tobago, the territory of Trinidad and Tobago.

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 Trinidad and Tobago:
the *National Insurance Act (Chapter 32:01)* and the regulations made thereunder, as they relate to:

(i) retirement benefit;

(ii) invalidity benefit;

(iii) survivors' benefit;

(iv) death benefit; and

(v) funeral grant.

2. With regard to Part II only, this Agreement shall apply to all aspects of the *National Insurance Act (Chapter 32:01)* of Trinidad and Tobago and the regulations made thereunder.

3. Subject to paragraph 4, this Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraphs 1 and 2.

4. This Agreement shall apply to laws and regulations which extend the legislation of a Party to new categories of beneficiaries or to new benefits unless an objection on the part of that Party has been communicated to the other Party not later than 3 months following the entry into force of such laws and regulations.

ARTICLE III

Persons to Whom the Agreement Applies

This Agreement shall apply to:

(a) any person who is or has been subject to the legislation of one or both of the Parties;

(b) any other person with respect to the rights he or she derives from a person described in subparagraph *(a)*.

ARTICLE IV

Equality of Treatment

Any person described in Article III who is or has been subject to the legislation of a Party shall be subject to the obligations of the legislation of the other Party and shall be eligible for the benefits of that legislation under the same conditions as citizens of the latter Party.

ARTICLE V

Exports 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 described in Article III in the territory of the other Party shall also be payable in the territory of a third State.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

ARTICLE VI

Rules Regarding Coverage

1. Subject to the following provisions of this Article:
   (a) an employed person who works in the territory of one 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 one Party and who works for his or her 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 first Party.

2. An employed person who is subject to 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 first 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 60 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 shall, in respect of that employment, be subject only to the legislation of Canada if he or she ordinarily resides in the territory of Canada and only to the legislation of Trinidad and Tobago in any other case.

5. An employed person shall, in respect of the duties of a government employment performed in the territory of the other Party, 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 first 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

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 the territory of Trinidad and Tobago, 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 Trinidad and Tobago by reason of employment or self-employment;

(b) if a person is subject to the legislation of Trinidad and Tobago during any period of presence or 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 or self-employment; and

(c) if a person who is ordinarily resident in the territory of Trinidad and Tobago is present and employed in the territory of Canada and, in respect of that employment, is subject to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada, the period of presence and employment in Canada shall, only for purposes of this Agreement, be considered as a period of residence in Canada.

2. In the application of paragraph 1:

(a) 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 the territory of Trinidad and Tobago only if that person makes contributions pursuant to the plan concerned during that period by reason of employment or self-employment;

(b) a person shall be considered to be subject to the legislation of Trinidad and Tobago during a period of presence or residence in the territory of Canada only if that person makes compulsory contributions pursuant to that legislation during that period by reason of employment or self-employment; and

(c) subparagraph 1(c) shall apply only in respect of periods after the date of entry into force of this Agreement.

PART III

PROVISIONS CONCERNING BENEFITS

CHAPTER 1

Totalizing

ARTICLE VIII

Periods under the Legislation of Canada and Trinidad and Tobago

1. Subject to paragraphs 5 and 6, if a person is not entitled to the payment of a benefit because he or she has not completed sufficient creditable periods under the legislation of a Party, the entitlement of that person to the payment of that benefit shall be determined by totalizing these periods and those specified in paragraphs 2, 3 and 4, provided that the periods do not overlap.

2. *(a)* For the purposes of determining entitlement to the payment of a benefit under the Old Age Security Act of Canada, a creditable period under the legislation of Trinidad and Tobago shall be considered as a period of residence in the territory of Canada;

(b) For purposes of determining entitlement to the payment of a benefit under the Canada Pension Plan, a calendar year including at least thirteen weeks which are creditable under the legislation of Trinidad and Tobago shall be considered as a year for which contributions have been made under the Canada Pension Plan.

3. For purposes of determining entitlement to the payment of a retirement benefit under the legislation of Trinidad and Tobago:

(i) when the calendar year 1972 is a creditable period under the Canada Pension Plan, it shall be considered as forty weeks for which contributions have been paid under the legislation of Trinidad and Tobago;

(ii) a year commencing on or after January 1, 1973 which is a creditable period under the Canada Pension Plan shall be considered as fifty-two weeks for which contributions have been paid under the legislation of Trinidad and Tobago;

(iii) a week commencing on or after April 10, 1972 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 for which contributions have been paid under the legislation of Trinidad and Tobago.

4. For the purposes of determining entitlement to the payment of a survivors' benefit under the legislation of Trinidad and Tobago:

(i) when the calendar year 1972 is a creditable period under the Canada Pension Plan, it shall be considered as forty weeks for which contributions have been paid under the legislation of Trinidad and Tobago;

(ii) a year commencing on or after January 1, 1973 which is a creditable period under the Canada Pension Plan shall be considered as fifty-two weeks for which contributions have been paid under the legislation of Trinidad and Tobago.

5. In any case to which paragraph 3 or 4 applies, creditable periods under the legislation of Canada shall be taken into account only to the extent necessary to establish entitlement to the payment of a benefit under the legislation of Trinidad and Tobago.

6. For greater certainty, paragraph 1 shall not apply for determining entitlement of a person to a disability pension under the Canada Pension Plan or an invalidity benefit under the legislation of Trinidad and Tobago.

ARTICLE IX

Periods under the Legislation of a Third State

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

ARTICLE X

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 Party is less than one year and if, taking into account only those periods, no right to a benefit exists under that legislation, the competent institution of that Party shall not be required to award benefits to that person in respect of those periods by virtue of this Agreement.

CHAPTER 2

BENEFITS UNDER THE LEGISLATION OF CANADA

ARTICLE XI

Benefits under the Old Age Security Act

1. If a person is entitled to the payment of an Old Age Security pension or a spouse's allowance solely through the application of the totalizing provisions of Chapter 1, 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 outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the Old Age Security Act for entitlement to the payment of a pension outside Canada.

3. Notwithstanding any other provision of this Agreement:

(a) 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 entitlement to a pension outside Canada; and

(b) a spouse's 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.

ARTICLE XII

Benefits under the Canada Pension Plan

If a person is entitled to the payment of a benefit solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of the benefit payable to that person 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 TRINIDAD AND TOBAGO

ARTICLE XIII

Calculating the Amount of Benefit Payable

1. If a person is not entitled to a retirement pension or a survivors' benefit solely on the basis of the periods creditable under the legislation of Trinidad and Tobago, but is entitled to that pension or benefit through the application of the totalizing provisions of Chapter 1, the competent institution of Trinidad and Tobago shall calculate the value of benefit payable in the following manner:

(a) it shall first establish the rate of a retirement pension or a survivors' benefit which would be payable if the person qualified for the benefit on the basis of creditable periods completed under the legislation of Trinidad and Tobago alone;

(b) it shall then multiply that rate by the fraction which represents the ratio of the actual creditable periods under the legislation of Trinidad and Tobago in relation to the minimum creditable period required to establish entitlement to that benefit under that legislation; that is to say,

$$\frac{\text{Actual creditable periods under the legislation of Trinidad and Tobago}}{\text{Minimum creditable periods required for benefit under the legislation of Trinidad and Tobago}} \times \text{Rate of Benefit established at subparagraph } (a) = \text{Value of benefit payable}$$

2. Notwithstanding any other provision of this Agreement, where a retirement grant is payable under the legislation of Trinidad and Tobago, but entitlement to a retirement pension under that legislation can be established through the application of the totalizing provisions of Chapter 1, the pension shall be paid in lieu of the grant.

3. Where a retirement grant was paid under the legislation of Trinidad and Tobago in respect of an event which happened before the date of entry into force of this Agreement, and where entitlement to a retirement pension under that legislation is subsequently established through the application of the totalizing provisions of Chapter 1, the competent institution of Trinidad and Tobago shall deduct from any retirement pension payable any amount previously paid in the form of a retirement grant.

4. Notwithstanding any provision of the legislation of Trinidad and Tobago regarding the time for submission of a claim for benefit, a retirement pension shall be payable provided that:

(a) the entitlement to the payment of that pension is established solely through the application of the totalizing provisions of Chapter 1; and

(b) the claim is submitted within one year of the date of entry into force of this Agreement or of the date of entitlement to a retirement pension, whichever is later.

PART IV

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

ARTICLE XIV

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 XV

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 of entitlement to, 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 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 XIV for the reimbursement of certain types of expenses.

3. Unless disclosure is required under the laws of a Party, any information about a person 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 XVI

Exemption or Reduction 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.

Any 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 of the 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 a competent 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. Subject to the second sentence of this paragraph, a claim for a benefit under the legislation of a Party made after the coming into force of the Agreement shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant at the time of application:

(a) requests that it be considered an application under the legislation of the other Party; or

(b) provides information indicating that creditable periods have been completed under the legislation of the other Party.

The preceding sentence shall not apply if the applicant requests that his or her claim to the benefit under the legislation of the other Party be delayed.

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. *(a)* The competent institution of Canada shall discharge its obligations under this Agreement in the currency of Canada.

(b) The competent institution of Trinidad and Tobago shall discharge its obligations under this Agreement:

(i) in respect of a beneficiary resident in Trinidad and Tobago, in the currency of Trinidad and Tobago;