

No. 23457

**SPAIN
and
PERU**

**Administrative Agreement on social security. Signed at
Lima on 24 November 1978**

Authentic text: Spanish.

Registered by Spain on 29 July 1985.

**ESPAGNE
et
PÉROU**

**Accord administratif de sécurité sociale. Signé à Lima le
24 novembre 1978**

Texte authentique : espagnol.

Enregistré par l'Espagne le 29 juillet 1985.

[TRANSLATION — TRADUCTION]

ADMINISTRATIVE AGREEMENT¹ ON SOCIAL SECURITY BETWEEN SPAIN AND PERU

The Kingdom of Spain and the Republic of Peru, signatories to this Administrative Agreement,

Considering that the Ibero-American Convention on Social Security of 26 January 1978, signed at Quito by both States, has the purpose of bringing about closer unity between the countries to which that instrument applies, in particular by accelerating efforts for international co-operation,

Considering that the Ibero-American Convention on Social Security provides, in article 17, that the Contracting Parties may draw up administrative agreements defining the area of application of that Convention and the scope, between two or more States, of the protective action envisaged in it,

Affirming the principle of equality of treatment among persons affiliated to the social security systems of the States which have signed the Convention, and the principle of preserving the rights or expectations of those persons deriving from the social security legislation in cases of movement of protected persons from the territory of one Contracting Party to that of another Party to the Convention,

Have agreed as follows:

TITLE I. GENERAL PROVISIONS

Article 1

1. For the purposes of this Agreement:

(a) "Contracting Parties" means the Kingdom of Spain and the Republic of Peru;

(b) "Legislation" means the laws, regulations and other provisions specified in article 2 which are in force in the territory of either of the Contracting Parties;

(c) "Competent authority" means, in relation to Spain, the Ministry of Health and Social Security; in relation to Peru, the Ministry of Labour;

(d) "Administrative agency" means the institution which in each case and in accordance with the applicable legislation is responsible for the administration of one or more social security, social welfare or social insurance schemes;

(e) "Liaison body" means the institution responsible for identification, referral and information activities between the administrative agencies of the Contracting Parties for the purpose of facilitating implementation of the Agreement, and for the provision of information to the persons concerned on their rights and obligations under the Agreement;

¹ Came into force on 14 May 1985 by the exchange of the instruments of ratification, which took place at Madrid, with retroactive effect from 9 June 1969, the date of entry into force of the Agreement on social security of 24 July 1964,* in accordance with the provisions of the said Agreement.

* See p. 67 of this volume.

- (f) "Insurance period" means a period of contribution or equivalent period;
- (g) "Contribution period" means a period for which contributions to cover the corresponding benefits have been paid or are treated as having been paid under the legislation of either Contracting Party;
- (h) "Equivalent period" means a period regarded as equivalent to a contribution period under the legislation of either Party;
- (i) "Pension, allowance, annuity, compensation" mean the cash benefits designated as such by the applicable legislation, including payments made from public funds and all supplements and increments specified in that legislation, as well as lump-sum payments in lieu of pensions or annuities.
2. Any other expressions and terms used in this Agreement have the meanings assigned to them in the pertinent legislation.

Article 2

1. This Agreement shall apply:
- (A) In Spain:
- (1) To the legal provisions governing the general social security scheme relating to:
- (a) Maternity, ordinary sickness or occupational diseases, temporary incapacitation for work, and industrial or other accidents;
 - (b) Temporary and permanent invalidity;
 - (c) Old-age benefits;
 - (d) Death and survivors' benefits;
 - (e) Family allowances;
 - (f) Unemployment;
 - (g) Retraining and rehabilitation of invalids;
 - (h) Social welfare and social services.
- (2) With respect to the contingencies referred to in subparagraph (A) (1), to the legal provisions governing the following special schemes relating to:
- (a) Agricultural workers;
 - (b) Seamen;
 - (c) Coal-miners;
 - (d) Railway workers;
 - (e) Domesticity;
 - (f) Independent self-employed workers;
 - (g) Commercial travellers;
 - (h) Students;
 - (i) Artists;
 - (j) Authors of books;
 - (k) Bullfighters.

(B) In Peru:

- (1) To the legal provisions governing the social security systems or schemes managed by the Peruvian Social Security Administration with respect to the following:
 - Sickness and maternity benefits, and funeral expenses;
 - Disability, old-age, survivors' and death benefits; and
 - Industrial accidents and occupational diseases;
- (2) To the legal provisions governing the special social security schemes in effect.

2. This Agreement shall apply also to any legal provisions which supplement or amend those referred to in paragraph 1 of this article.

3. However, it shall not apply to legal provisions which extend existing schemes to new occupational categories or which establish new social security schemes not envisaged in the Agreement, if one of the Contracting Parties notifies the other of its objection not later than three months from the date of the official publication of the legal provisions concerned.

Article 3

The rules laid down in this Agreement shall be applicable to workers who are or have been subject to the social security legislation of either Contracting Party, and to their family members and survivors.

Article 4

If a person is gainfully employed, his liability to contribute to the social security system shall be determined by the legislation of the Contracting Party in whose territory he is employed; a worker employed in the territory of one Party shall be subject to the legislation of that Party.

Article 5

1. Unless otherwise provided in this Agreement, the pensions, allowances, annuities and monetary compensation, with the exception of unemployment benefits, received by virtue of the legislation of one Contracting Party shall not be subject to any reduction, modification, suspension or withholding by reason of the fact that the beneficiary resides in the territory of the other Party.

2. Social security benefits due from one of the Contracting Parties shall be paid to beneficiaries who are nationals of the other Party and reside in a third country, on the same conditions and to the same extent as to beneficiaries who are nationals of the first Party and reside in that third country.

Article 6

1. The principle established in the preceding article shall be subject to the following exceptions:

(a) Workers who are employed by an enterprise having its principal place of business in the territory of one of the Contracting Parties and are sent to the territory of the other Party for a limited period of time shall remain subject to the legislation of the first Party, provided that their stay there does not exceed a period of 12 months. On an exceptional basis, the legislation in force in the

territory of the Party in which the enterprise has its main office may continue to apply for an additional 12 months, at the most, subject to the express consent of the competent authority of the other Party;

(b) The itinerant personnel of transport companies shall be subject solely to the legislation in force in the territory of the Contracting Party in which the company has its principal place of business;

(c) The crew members of a ship registered in one of the Contracting States shall be subject to the provisions in force in that State. Any other person employed by the ship for the tasks of loading and unloading, repair and caretaking in port, shall be subject to the legal provisions of the Party which has jurisdiction over the ship.

2. The competent authorities of the two Contracting Parties may, by mutual agreement, establish exceptions to the rules set forth in paragraph 1 of this article and, in individual cases for specific occupational groups, amend the exceptions set forth therein.

Article 7

1. Career officials of diplomatic and consular missions shall be subject to the legal provisions of the Contracting Party which they represent.

2. Workers employed by diplomatic or consular missions or in the private employ of one of their members shall be subject to the legal provisions of the Party in whose territory they are rendering services, provided that within three months of the date they are hired, they do not opt to be subject to the legal provisions of the Party employing them, with the authorization of the competent authority of that Party, where appropriate. If they are already employed on the date that this Administrative Agreement enters into force, the three-month period shall commence on that date.

3. The competent authorities of the two Contracting Parties may decide, in each individual case, on the option which may be exercised by the persons referred to in the preceding paragraph of this article, beyond the time-limit set forth therein.

TITLE II. SPECIAL PROVISIONS

Chapter 1. SICKNESS AND MATERNITY BENEFITS, AND FUNERAL EXPENSES

Article 8

For the purpose of the acquisition, maintenance or recovery of the right to benefits, where a worker has been subject successively or alternately to the legislation of both Contracting Parties, the insurance and equivalent periods completed under the legislation of each one shall be aggregated, provided that they do not overlap.

Article 9

1. Beneficiaries who are entitled to health benefits in one of the Contracting States shall be paid such benefits in the event of sickness, whatever the cause, maternity, and industrial or other accidents, when they move to the territory of the other Party, either to work or to reside temporarily, provided that the com-

petent administrative agency in the place of origin has recognized the entitlement to benefits and authorized the transfer.

2. The administrative agency in the place of residence which provides the health benefits granted in accordance with the provisions of this Agreement shall be reimbursed by the competent administrative agency for the costs incurred.

3. The provisions of paragraphs 1 and 2 above shall apply, *mutatis mutandis*, to pensioners who are entitled to health benefits. The cost of these benefits shall be covered, depending on the circumstances, in the following manner:

- (a) Where the pension is payable by the social security system of one of the two Parties, the health benefit shall be payable by the Party which is liable for the pension;
- (b) Where the pension awarded has been prorated between the two Parties, the health benefit shall be payable solely by the competent administrative agency in the pensioner's place of residence.

Article 10

1. In cases of temporary transfers, the administrative agency in the place of residence shall, either on its own initiative or at the request of the competent administrative agency, conduct periodic medical examinations of the beneficiary in order to determine whether health care is being provided to him effectively and on a regular basis.

2. Where the administrative agency in the place of residence finds that the person concerned can resume work, it shall notify him of the termination date of his disability status and shall send a copy of this notification to the competent administrative agency forthwith. Payments shall cease to be made on the date that disability status terminates, as established by the administrative agency in the place of residence.

Article 11

In cases where family members change their residence to the territory of the Contracting Party in which the worker is employed, they shall receive health benefits in accordance with the legal provisions of that Party. If the legislation applicable by the competent administrative agency provides for a maximum length of time that such benefits may be awarded, the period during which they were received prior to the change of residence shall be taken into account.

Article 12

Payments shall be made directly by the competent administrative agency to the insured person resident in the territory of the other State. None the less, the competent authorities may agree that payment of these benefits shall be made through the administrative agency in the place of residence.

Article 13

1. Funeral expenses or death benefits shall be governed by the legislation that applied to the insured person on the date of death.

Where appropriate, benefits shall be approved and calculated by aggregating insurance periods completed by the insured person in the other State.

2. In cases of entitlement to the benefit under the legislation of both Contracting Parties, approval of the benefit shall be governed by the legislation of the Party in whose territory the insured person was residing.

3. If the residence of the insured person was in a third country, the applicable legislation in cases where he was entitled to the benefit in both Contracting Parties shall be the legislation of the Party in whose territory he was last insured.

Chapter 2. OLD-AGE BENEFITS

Article 14

For the purposes of the acquisition, maintenance or recovery of the old-age benefit envisaged under this Agreement, where a worker has been subject to the legislation of both Contracting Parties, the insurance periods completed under the legislation of each Party shall be aggregated, provided that they do not overlap, and subject to the following rules:

First. Where a period of compulsory contribution completed in one Contracting State coincides with a period of voluntary contribution credited in the other State, the latter period shall not be aggregated.

Second. Where a period of compulsory or voluntary contribution completed in one Contracting State coincides with an equivalent period credited in the other State, only the contribution period shall be taken into consideration.

Third. If two periods of voluntary contribution which were completed, respectively, in each of the Contracting States coincide, only the one corresponding to the legislation under which a previous compulsory insurance period has been reported shall be aggregated.

Where compulsory insurance periods have been reported in both Contracting States, the voluntary insurance period to be aggregated from among concurrent periods shall be the one completed under the same legislation which governed the compulsory insurance period nearest in time to that voluntary period.

Where no previous compulsory contribution periods have been reported in either Contracting State, the voluntary contribution period to be aggregated from among concurrent periods shall be the one completed under the same legislation under which a compulsory contribution period is first completed following that voluntary period.

Fourth. If two equivalent periods which were completed, respectively, in each of the Contracting States coincide, only the one credited in the State under whose legislation a contribution period was previously completed shall be aggregated.

Where previous contribution periods have been reported in both Contracting States, the equivalent period to be aggregated from among concurrent periods shall be the one completed under the same legislation which governed the insurance period nearest in time to that equivalent period.

Where no previous contribution periods have been reported in either Contracting State, the equivalent period to be aggregated from among concurrent periods shall be the one completed under the legislation under which a contribution period is first completed following that equivalent period.

Article 15

1. The benefits referred to in the preceding article to which an insured person may be entitled in accordance with the legislation of the Contracting Parties under which the insured person has completed the insurance periods or equivalent periods shall be provided in the following way:

(a) The competent administrative agency of each Contracting Party shall determine, in accordance with its national legislation, whether the person concerned satisfies the requirements for entitlement to the benefits provided for under that legislation, bearing in mind, as appropriate, the aggregated periods referred to in the preceding article;

(b) If the right has been acquired by virtue of the provisions of the preceding paragraph, the competent administrative agency shall separately determine the amount of benefits to which the person concerned would be entitled if all the insurance periods or aggregated equivalent periods had been completed exclusively under its national legislation. The agency shall reduce that amount on the basis of the proportion which the periods covered by the contributor under that legislation bear to the aggregated periods credited in the two Contracting States;

(c) If at any time the person concerned, taking into account the aggregated periods referred to in the preceding article, does not fulfil the conditions required by the legislation of the two Parties and satisfies the conditions required by the legislation of one Party only, the amount of the benefit shall be determined in accordance with the provisions of this article.

Article 16

A claimant who has been duly informed in advance may waive application of the provisions of this Agreement regarding aggregation and prorating. If so, the benefits shall be determined separately by the administrative agency, in accordance with its national legislation, regardless of insurance periods completed in the other State.

This shall be a one-time option and shall have effect for all claims deriving from that in respect of which the option was exercised.

Article 17

1. Benefits approved under the rules of this chapter shall be revalued at the same intervals and, except in the cases for which provision is made in the two paragraphs which follow, in the same amount as the benefits specified in the respective national legislation.

2. Where the amount of the theoretical pension referred to in article 15 is less than that of the minimum pension established at any time by the legislation of the Party that has recognized it, that minimum shall also serve as the basis for establishing the prorated pension.

3. The prorated pensions referred to in article 15 shall be brought up to date by each competent administrative agency in accordance with its national legislation, but the amount of the revaluation shall be reduced by applying the *pro rata* rule referred to in that article.

Article 18

The competent administrative agency may make an advance payment to the insured person while his claim is being processed, which payment it may subsequently recover.

The payment of this advance shall be discretionary and shall be based principally on the need of the person concerned, on evidence of his probable entitlement to the benefit requested and on the time it takes to process his claim before a final determination is made in the case.

Chapter 3. DISABILITY BENEFITS

Article 19

Chapter 2 shall apply, *mutatis mutandis*, to any disability benefits to be awarded under the legal provisions of the two Contracting Parties.

Chapter 4. SURVIVORS' BENEFITS

Article 20

Chapter 2 shall apply, *mutatis mutandis*, to any pensions and other survivors' benefits to be awarded under the legal provisions of either Contracting Party.

Article 21

Where a claimant dies without exercising the option provided for in this Agreement, the option may be exercised by the surviving spouse or, otherwise, by a family member who has been accorded the right to draw the amounts accrued and not collected which were payable to the claimant.

TITLE III. INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

Article 22

Any benefit resulting from an industrial accident shall be payable solely by the competent administrative agency of the Contracting State in which the claimant was insured on the date of the accident.

Article 23

1. In the assessment of reduced capacity for work resulting from an accident or occupational disease, the consequences of any previous industrial accidents or occupational diseases that the insured person may have sustained in the other Contracting State shall be taken into account.

2. If the new accident or occupational disease aggravates the incapacity to work of the insured person, the payment of benefits in accordance with the legislation applicable under paragraph 1 shall automatically mean the discontinuance of the insurance coverage provided to the disabled person by the competent administrative agency of the other Party.

However, if the new benefits amount to less than the benefits discontinued in accordance with the above paragraph, the competent administrative agency of the other Party shall continue to provide benefits to make up the difference.

TITLE IV. MISCELLANEOUS PROVISIONS

Article 24

Where the legal provisions of one Contracting Party stipulate that recognition of the entitlement or the award and payment of benefits within the scope of this Agreement is dependent on the person concerned being insured by or having joined its social security system and being a full contributor or an equivalent to such system, this condition shall be deemed to have been fulfilled if the beneficiary has such status in the other Contracting State.

Article 25

1. In determining the basis on which to calculate benefits, each competent administrative agency shall apply its national legislation.

2. Where all or part of the contribution period chosen by the claimant for the calculation of the basis governing his benefits was completed in the other Contracting State, the competent administrative agency shall determine that basis by reference to the minimum wage prevailing during that period, or to the basis chosen by the worker, if applicable, for the purpose of contribution.

In no case may the basis for calculating benefits for salaried workers be lower than the average amounts of the standard minimum wage prevailing during the period chosen.

Article 26

1. For the purpose of implementing this Agreement, the authorities and competent administrative agencies of both Parties shall provide their good offices and the necessary reciprocal technical and administrative collaboration, acting, for such purposes, as if they were applying their national legislation. This assistance shall be free of charge, except as expressly provided by mutual agreement.

2. The competent authorities of the two Parties shall:

- (a) Establish rules for the implementation of this Agreement;
- (b) Decide on the respective liaison offices;
- (c) Notify each other of any legislative and regulatory provisions that modify those specified in article 2;
- (d) Settle, by negotiation, disputes concerning the interpretation of this Agreement and the rules for its implementation.

If a dispute cannot be resolved through negotiation within a period of three months from the opening of negotiations, it shall be submitted to an arbitral commission whose composition and procedures shall be established by common agreement between the Contracting Parties.

The decision of the arbitral commission shall be considered binding and final.

3. The competent administrative agencies of the two Parties shall:

- (a) Exercise technical and administrative control over the acquisition, suspension, recovery, modification or termination of the benefits referred to in this Agreement;
- (b) Collaborate in ensuring the payment of benefits on behalf of the administrative agency of the other Party in the prescribed form;

- (c) Accept and transmit to the competent administrative agency of the other Party any notifications, claims, notices, appeals or other documents related to the application of this Agreement and submitted to them for that purpose; and
- (d) Collaborate in any other way conducive to the application of this Agreement.

Article 27

1. The claims, notices, appeals or other documents which must be submitted within a prescribed period to the authorities or bodies of one Party in order for its legislation to be applied shall be considered to have been submitted to them if they have been delivered to an authority or body of the other Party within the same period.

2. Any claim for a benefit submitted under the legislation of one Party shall be deemed, where appropriate, to be a claim to the corresponding benefit under the legislation of the other Party.

Article 28

1. Where the legislation of one Contracting Party provides that any certificate or other document submitted under the legislation of that Party shall be exempt, wholly or partly, from any taxes, legal dues, consular fees, administrative charges or similar payments, this exemption shall apply to any certificate or other document submitted under the legislation of the other Party or under this Agreement.

2. Any certificate, document or written statement to be submitted under this Agreement shall be exempt from legalization or authentication.

FINAL AND TRANSITIONAL PROVISIONS

First. This Agreement shall enter into force on the date of exchange of the respective instruments of ratification, and shall be retroactive to 9 June 1969, the date on which the Agreement on social security between Spain and Peru of 24 July 1964¹ entered into force.

Second. This Agreement shall remain in force for an indefinite period and may be denounced by either Contracting Party.

Notice of denunciation shall be given at least three months before the end of a year, in which case the Agreement shall cease to have effect at the end of that year.

Third. In the event of the termination of this Agreement, its provisions shall continue to apply to the rights acquired there under. The Contracting Parties shall agree on provisions for guaranteeing the rights acquired on the basis of insurance periods completed prior to the date of termination of the Agreement.

Fourth. In the application of this Agreement, insurance periods completed before its entry into force shall also be taken into account.

Fifth. Under the provisions of this Agreement, claims filed or processed in accordance with the provisions of the Agreement on social security between Spain and Peru of 24 July 1964 may be reviewed.

¹ See p. 67 of this volume.

DONE at Lima on 24 November 1978 in duplicate in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

[Signed]

MARCELINO OREJA AGUIRRE
Minister for Foreign Affairs

For the Republic of Peru:

[Signed]

JOSÉ DE LA PUENTE RABILL
Minister for Foreign Affairs
