

AGREEMENT BETWEEN

THE REPUBLIC OF INDIA

AND

THE FEDERAL REPUBLIC OF GERMANY

ON

SOCIAL INSURANCE

The Republic of India

and

The Federal Republic of Germany,

Desiring to strengthen their friendly relations and resolving to further their mutual cooperation in the field of social security and to facilitate the performance of work in the other Contracting State and, in particular, to avoid that an employee is subject to the legislation of both Contracting States at the same time,

have agreed upon the following:

Article 1
Definitions

1. For the purposes of this Agreement,

(a) "territory" means,

as regards the Republic of India,
the territory of the Republic of India;

as regards the Federal Republic of Germany,
the territory of the Federal Republic of Germany;

(b) "legislation" means,

as regards the Republic of India,
the laws and any rules, regulations, orders or notifications framed thereunder
that are covered by the legislative scope of this Agreement;

as regards the Federal Republic of Germany,
the laws, regulations, by-laws and other general legislative acts related to the
branches of social security covered by the legislative scope of this Agreement;

(c) "competent authority" means,

as regards the Republic of India,
the Minister of Overseas Indian Affairs;

as regards the Federal Republic of Germany,
the Federal Ministry of Labour and Social Affairs
(*Bundesministerium für Arbeit und Soziales*);

(d) "institution" means,

as regards the Republic of India,
the Employees' Provident Fund Organization, New Delhi;

as regards the Federal Republic of Germany,
the insurance institution responsible for the implementation of the legislation
covered by the legislative scope of this Agreement and the body designated by
the competent authority;

(e) "competent body" means,

a body specified as such under the legislation of either of the Contracting
States.

2. Any term not defined in paragraph 1 has the meaning assigned to it in the
applicable legislation of the respective Contracting State.

Article 2
Legislative scope

1. This Agreement shall apply to the following legislation:
 - (a) as regards the Federal Republic of Germany,
the legislation concerning the Statutory Pension Insurance;
 - (b) as regards the Republic of India,
all legislation concerning
 - (i) old-age and survivors' pension for employed persons;
 - (ii) the Permanent Total Disability pension for employed persons.

2. This Agreement shall also apply to laws, regulations and other general legislative acts in so far as they amend, supplement or replace the legislation of the Contracting States specified in paragraph 1.

Article 3
Personal scope

This Agreement shall apply in respect of all persons who are ordinarily resident or employed in the territory of either Contracting State.

Article 4
Applicable legislation for economically active persons

1. Unless otherwise provided in this Agreement, an employee shall be subject only to the legislation of the Contracting State in whose territory he or she is actually performing the work.

2. Persons who are members of the travelling or flying personnel of an enterprise which, for hire or reward or on its own account, operates international transport

services for passengers or goods and has its registered office in the territory of a contracting State shall be subject to the legislation of that Contracting State.

3. A person who works as an employee on board a ship that flies the flag of a Contracting State shall be subject to the legislation of that Contracting State.

4. Paragraphs 1 to 3 shall apply analogously to self-employed persons.

Article 5

Applicable legislation in case of detachment

1. When an employee who is habitually employed in one Contracting State is sent by his employer, who ordinarily engages in considerable business activities in the sending State, to the territory of the other Contracting State in the context of that employment to perform services there for this employer that are known to be time-limited beforehand, only the legislation of the first Contracting State shall continue to apply with regard to that employment during the first 48 calendar months as though the employee were still employed in the territory of the first Contracting State. The period of 48 calendar months shall start on the first day of the calendar month in which the employee takes up employment in the territory of the other Contracting State.

2. If the duration of detachment exceeds the period of 48 calendar months by not more than 12 calendar months, the competent authority of the Contracting State to which the employee has been posted, or the body designated by it, may upon joint request by the employee and his employer exempt the employee from the application of the legislation of that Contracting State for such extended period.

3. Paragraphs 1 and 2 shall apply analogously to self-employed persons.

Article 6

Applicable legislation for persons employed with diplomatic missions or consular posts

This Agreement shall not affect the application of the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.

Article 7

Exceptions from the provisions on the applicable legislation

1. At the joint request of the employee and the employer or at the request of a self-employed person, the competent authorities of the Contracting States or the bodies designated by them may, by mutual agreement, may make exceptions from the provisions of this Agreement in relation to the applicable legislation provided that the person concerned continues to be subject or will be subjected to the legislation of either Contracting State. In this regard, the nature and the circumstances of the employment shall be taken into account.
2. The application shall be filed in the Contracting State whose legislation is to apply.

Article 8

Administrative assistance

The competent authorities and the institutions of the Contracting States shall provide mutual assistance to each other in the implementation of this Agreement as if they were applying their own legislation. The assistance shall be provided free of charge.

Article 9

Languages of communication and legalisation

1. In implementing this Agreement, the competent authorities and the institutions of the Contracting States may communicate in the German or the English language directly with each other as well as with persons concerned and their representatives.
2. Documents, especially applications and certifications, in the German or the English language may not be rejected.
3. Documents, especially certifications, to be submitted in application of this Agreement shall not require legalisation or any other similar formality.

Article 10

Data protection

1. Where personal data is transmitted under this Agreement, the following shall apply whilst the legislation applicable to each Contracting State shall be duly observed:
 - (a) The data may, for the purposes of implementing this Agreement and the legislation to which it applies, be transmitted to the competent bodies in the receiving State. The receiving body may only use the data for these purposes. The passing on of this data to other bodies within the receiving State or the use of this data in the receiving State for other purposes is permissible in the framework of the law of the receiving State provided this serves social insurance purposes including related judicial proceedings. However, the foregoing shall not prevent the passing on of that data in cases where doing so is mandatory under the laws and regulations of the receiving State for the purposes of preventing or prosecuting criminal offences of substantial significance and of warding off substantial dangers to public security.

- (b) In individual cases the receiving body of the data shall, at the request of the transmitting body, inform that body of the use of the transmitted data and the results obtained thereof.
- (c) The transmitting body shall ensure that the data to be transmitted is correct and that its transmission is necessary and proportionate with regard to the purposes pursued with the transmission of the data. In this context, any prohibition to transmit data under the respective national law has to be respected. Data shall not be transmitted if the transmitting body reasonably assumes that doing so would violate the purpose of a national law or injure any interests of the person concerned that are worthy of protection. If it becomes evident that incorrect data or data the transmission of which was not permissible under the law of the transmitting State has been transmitted, the receiving body has to be immediately notified of this fact. The receiving body is obliged to correct or delete this data without delay.
- (d) Upon request, the person concerned shall be informed of any personal data transmitted and the intended use of that data. In all other cases, the right of the person concerned to receive information about any personal data held in relation to that person shall be determined by the national law of the Contracting State whose body requests the information.
- (e) Transmitted personal data shall be deleted as soon as it is no longer required for the purpose for which it was transmitted, and if there is no reason to assume that social insurance interests of the person concerned which are worthy of protection will be affected by the deletion of the data.
- (f) The transmitting and the receiving bodies shall document the transmission and the receipt of personal data.
- (g) The transmitting and the receiving bodies shall protect transmitted personal data effectively against unauthorized access, unauthorized modification and unauthorized disclosure.

2. The provisions of paragraph 1 shall apply analogously to business and industrial secrets.

Article 11

Implementing arrangements

1. The Governments of the Contracting States or the competent authorities may conclude arrangements necessary for the implementation of this Agreement. The competent authorities shall inform each other of any amendments and additions to their legislation which is covered by the legislative scope of this Agreement.

2. The liaison agencies hereby set up for the implementation of this Agreement are:

(a) in the Federal Republic of Germany,

National Association of Statutory Health Insurance, German Liaison Agency Health Insurance – International (*Spitzenverband Bund der Krankenkassen (GKV-Spitzenverband)*), *Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA)*), Bonn;

(b) in the Republic of India,

the Employees' Provident Fund Organization (EPFO), New Delhi.

3. The liaison agencies may, within their respective areas of jurisdiction and with the participation of the competent authorities, agree upon the administrative measures necessary and appropriate for the implementation of this Agreement. The provisions of paragraph 1 shall remain unaffected.

Article 12

Resolution of disputes

1. Disputes regarding the interpretation or application of this Agreement shall be resolved, to the extent possible, by the competent authorities.

2. If a dispute cannot be resolved in this way, it shall, if necessary, be settled by a joint ad hoc commission set up by mutual agreement.

Article 13
Concluding Protocol

The attached Concluding Protocol shall form an integral part of this Agreement.

Article 14
Ratification and entry into force

1. This Agreement shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible in **Berlin**.
2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification have been exchanged.

Article 15
Duration of the Agreement

1. This Agreement shall be concluded for an indefinite period of time. Either Contracting State may terminate it through diplomatic channels at the end of the calendar year giving three months' written notice. The relevant date for calculating the period of notice shall be the day on which the notice is received by the other Contracting State.
2. In the event that this Agreement shall cease to be in force in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who immediately before the date of termination are subject only to the legislation of one Contracting State by virtue of Articles 4 to 7 provided the person continues to meet the corresponding requirements.

Done at **New Delhi on the eighth day of October 2008**, in duplicate in the Hindi, English and German languages, all three texts being authentic. In case of divergent interpretations of the Hindi and the German texts, the English text shall prevail.

For the
Republic of India

For the
Federal Republic of Germany