

**AGREEMENT
ON SOCIAL SECURITY**

BETWEEN

THE REPUBLIC OF INDIA

AND

THE FEDERATIVE REPUBLIC OF BRAZIL

The Republic of India and the Federative Republic of Brazil (hereinafter referred to as the "Contracting Parties"), being desirous of regulating their relationship in the field of social security benefits and coverage,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Agreement:

(a) "**Benefit**" means the pensions or cash benefit, including any supplements or increases provided for under the legislation specified in Article 2 of this Agreement;

(b) "**Competent Authority**" means, as regards the Federative Republic of Brazil (hereinafter Brazil), the Ministry of Economy to the extent that it is responsible for the implementation of this Agreement; and as regards the Republic of India (hereinafter India), the Ministry of External Affairs to the extent that it is responsible for the implementation of this Agreement;

(c) "**Competent Institution**"; means in relation to Brazil, the institution or agency which has the task of implementing the applicable legislation; and in relation to India, the Employees Provident Fund Organisation

(d) "**Liaison body**" refers to the body designated to perform the communication between the Contracting Parties and to ensure the compliance of applications requested under the Agreement, as well as to make the necessary clarifications to interested persons on the rights and obligations arising out of it;

(e) "**Government**" means, in relation to paragraph 2 of Article 7, for Brazil, the direct and indirect public administration of any powers of the Union, the States, the Federal District and the municipalities; and, for India, includes quasi-government authorities, public sector undertakings and wholly owned undertakings;

f) "**Legislation**" means, as regards Brazil, the laws and regulations specified in subparagraph 1 (a) of Article 2 or any norms framed there under; and as regards India, the specified laws and regulations in subparagraph 1 (b) of Article 2 or any rules, schemes, orders or notifications framed there under;

(g) "**Insurance period**" means any period of contributions recognized as such in the legislation under which that period was completed as well as any period recognised as equivalent to a period of contribution under that legislation;

(i) "**Territory**" means, in relation to Brazil, the territory of the Federative Republic of Brazil; and, in relation to India, the territory of the Republic of India;

(j) "**National**" means, in relation to Brazil, a person of Brazilian nationality according to the Federal Constitution and the Brazilian laws; and, in relation to India, a person of Indian nationality according to the applicable Indian legislation;

(k) "**Dependent**" means the persons defined as such according to the law of each Contracting Party;

(l) "**Personal data**" means any information relating to an identified or identifiable natural person;

2. Any terms not defined in this Article shall have the meaning assigned to them in the applicable legislation of each Contracting Party.

Article 2

Legislative Scope

1. For the purpose of this Agreement the applicable legislation is:

(a) as regards Brazil:

i) the laws governing the General Scheme of Social Security regarding old age, survivors and disability insurance benefits; and

ii) the laws governing the Social Security Scheme of Civil Servants regarding old age, survivors and disability insurance benefits; and

(b) in relation to India, all legislation concerning:

- i) old-age and survivors pension; and
- ii) the Permanent Total Disability pension

2. This Agreement shall also apply to any legislation, which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1 of this Article.

Article 3

Personal Scope

Unless otherwise specified, this Agreement shall apply to all persons who are or have been subject to the legislation of one or both Contracting Parties, as well as any person who derives rights from those persons according to the applicable legislation of each Contracting Party.

Article 4

Equality of treatment

Unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations regarding eligibility for and payment of benefits that arise whether directly under the legislation of that Contracting Party or by virtue of this Agreement.

Article 5

Export of Benefits

1. The benefits granted under the legislation of either Contracting Party, under this Agreement, shall be paid to the person who resides or stays in the territory of the other Contracting Party.

2. Benefits under the legislation of one Contracting Party under this Agreement shall be paid to nationals of the other Contracting Party, who resides outside the territory of both the contracting parties under the same conditions and to the same extent as they are paid to the nationals of the first Contracting Party who reside outside the territories of the Contracting Parties

PART II

PROVISIONS ON COVERAGE

Article 6

Purpose and application

1. The purpose of this Part is to ensure that employers and employees who are subject to the legislation of India or Brazil do not have a double liability in respect of the same work contract of an employee.
2. This Part applies only where an employee or the employer would otherwise be subject to the legislation of both Contracting Parties in respect of the work of the employee or remuneration paid for the work.

Article 7

Diplomats and Employees of the Government

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.
2. Employees of the Government, or persons treated as such according to the legislation of one Contracting Party, to whom paragraph 1 of this Article does not apply and who is sent by the Government to work in the territory of the other Contracting Party, are subject only to the legislation of the sending Contracting Party.

Article 8

People employed in maritime transportation

A person employed as a member of crew on a vessel, which flies the flag of one of the Contracting Parties, shall be subject only to the legislation of that Contracting Party.

Article 9

Crew member of air transportation companies

Crew members of air transportation companies who work on the territories of both Contracting Parties shall be subject only to the legislation of the

Contracting Party in which territory the company's headquarter is located. However, if that company has a subsidiary, a permanent representative, a branch or liaison agency in the territory of the other Contracting Party, the crew members hired by that subsidiary, representative, branch or liaison agency shall be subject to the legislation of the Contracting Party where the subsidiary, representative, branch or liaison agency is located.

Article 10

The accompanying Spouse, Partner or Children

Dependents accompanying a person who is sent or detached to work in the territory of one Contracting Party and who is subject to the legislation of the other Contracting Party shall be subject to the legislation of the latter Contracting Party unless they are themselves gainfully occupied in the territory of the first Contracting Party"

Article 11

Avoidance of Double Coverage

1. Unless otherwise provided in paragraphs 2 or 4 of this Article, if an employee works in the territory of one Contracting Party, the employer and the employee shall in respect of the work and the remuneration paid for the work, be subject only to the legislation of that Contracting Party.

2. If an employee:

(a) is covered by the legislation of one Contracting Party ('the first Contracting Party'); and

(b) was sent by an employer who is subject to the legislation of the first Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and

(c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and

(d) is not working permanently in the territory of the second Contracting Party; and

(e) a period of thirty six months, with or without split, from the time the employee was sent to work in the territory of the second Contracting Party has not elapsed; the employer and the employee will be subject only to the legislation of the first Contracting Party in relation to the work performed and the remuneration paid for that work.

3. The period of thirty six months referred to in subparagraph 2 (e) of this Article may be extended for twenty-four months, with or without split, by mutual written consent of the Competent Authorities of both Contracting Parties.

4. A person who was already subject to the provisions of paragraph 2 and 3 of this Article after a period of sixty months, with or without split, shall not be subject again to those provisions, unless one year has elapsed since the end of the preceding detachment.

Article 12

Exceptions

The Competent Authorities or the Competent Institutions designated by them may agree in writing to modify the application of the provisions of this Part in respect to a particular person or particular category of persons.

Article 13

Certificate of Coverage

1. The Competent Authority of the Contracting Party or their Competent Institution shall issue, upon request of the employer, a certificate stating that the employee (including employees of public sector undertakings and wholly owned undertakings) is subject to the legislation of that Contracting Party and indicating the duration for which the certificate shall be valid in the case of paragraphs 2 and 3 of Article 11.

2. The Competent Institution of the other Contracting Party shall be entitled to receive a copy on request.

PART III

Provisions relating to benefits

SECTION 1

General Provisions

Article 14

Totalization of periods of coverage

1. Unless otherwise provided in this Agreement, if a person is not eligible for a benefit considering the periods of coverage completed under the legislation of one of the Contracting Party, the periods of coverage completed under the legislation of the other Contracting Party shall be considered for the purpose of allowing that person to become eligible to a benefit, insofar as the periods of coverage do not overlap and the person has not opted for the lump sum benefit.

2. "If a person is not eligible for a benefit on the basis of the insurance periods completed under the legislation of the Contracting parties, aggregated as provided in paragraph 1 of this Article, the eligibility of that person for that benefit shall be determined by aggregating these coverage periods and coverage periods completed under the legislation of a third State with which both Contracting Parties are bound by social security agreements which provide for the totalization of periods, provided that those periods do not overlap"

Article 15

Provision on the calculation of benefits

Where entitlement to a benefit exists under the legislation of one Contracting Party without the application of Article 14, the Competent Institution of that Contracting Party shall determine the amount of the benefit exclusively based on the periods of coverage to be taken into account under that legislation.

SECTION 2

Provisions relating to benefits of Brazil

Article 16

Totalization of periods of coverage and calculation of the Brazilian benefits

1. If a person is not eligible for a benefit considering only the periods of coverage fulfilled under the Brazilian legislation, the periods of coverage under the Indian legislation will also be considered for the entitlement to the benefit, observing the following:

(a) calculate the theoretical benefit that would be paid as if the totalized periods of coverage had been completed under the Brazilian legislation; and

(b) the benefit shall be established, pro rata, by compounding the periods of coverage completed under the Brazilian legislation and the periods of coverage completed under the legislation of both Contracting Parties.

2. The theoretical benefit referred to in sub-paragraph (a) of paragraph 1 of this Article shall not, under any circumstances, be inferior to the minimum amount guaranteed by Brazilian legislation.

SECTION 3

Provisions relating to benefits of India

Article 17

Totalisation of Insurance Period

Where the legislation of India makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of insurance accrued and before the person reaches retirement age as specified in the Employees' Pension Scheme 1995 of India, the periods of insurance in Brazil shall be taken into account, when necessary, as long as these periods do not overlap with periods of insurance.

Article 18

Calculation of Indian benefits

1. If a person is entitled to a benefit under the Indian legislation without necessarily proceeding to totalisation, the Competent Institution in India shall calculate the benefit entitlement directly on the basis of the period of insurance completed in India and only under the Indian legislation.
2. If a person is entitled to a benefit by virtue of the Indian legislation, with his right being created solely by taking the totalisation of the period of insurance completed in both Contracting Parties into account pursuant to Article 17, the following rules apply:
 - (a) the Competent Institution shall calculate the theoretical amount of the benefit due as if all the periods completed according to the two Contracting Parties' legislation were exclusively completed under the Indian legislation; and
 - (b) the Competent Institution shall then calculate the amount due, on the basis of the amount specified under (a), in proportion to the duration of the periods under its legislation, in relation to the duration of all periods accounted under (a).
3. Lump sum payments and withdrawals shall be granted to Brazilian nationals as provided for the International Workers in accordance with the legislation of India.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 19

Lodgement of documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 23 of this Agreement.

2. The date on which a claim, notice or appeal referred to in paragraph 1 of this Article is lodged with the Competent Institution of one Contracting Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.

3. A claim for a benefit from one Contracting Party shall be considered as a claim for the corresponding benefit from the other Contracting Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Contracting Party.

Article 20

Payment of benefits

1. If a Contracting Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Contracting Party shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of that Contracting Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.

2. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party in accordance with the respective legislation of the Contracting Parties governing payment of administrative fees and other charges for processing and payment of that benefit.

3. Where, under the legislation of one Contracting Party, documents submitted to a Competent Authority or Competent Institution of that Contracting Party are partly or fully exempt from administrative charges, including consular fees, this exemption shall also apply to documents which are submitted to a Competent Authority or Competent Institutions of the other Contracting Party.

4. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from legalization as well as the Apostille as provided in the Hague Convention of 5 October 1961 (Apostille Convention) abolishing the Requirement of Legalization for Foreign Public Documents as

long as they are processed by the Competent Authorities, Competent Institutions and Liaison Bodies.

Article 21

Exchange of Information and Mutual Assistance

1. The Competent Authorities, Competent Institutions and Liaison Bodies responsible for the application of this Agreement shall to the extent permitted by their national laws:

(a) communicate to each other any information necessary for the application of this Agreement or for the purposes of their legislation;

(b) provide assistance to one another, including the communication to each other of any information necessary, with regard to the determination or payment 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; and

(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 insofar as these changes affect the application of this Agreement.

2. The assistance referred to in paragraph 1 of this Article shall be provided free of charge, subject to the Administrative Arrangement made pursuant to Article 23 of this Agreement.

3. Unless disclosure is required under the laws of a Contracting Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Contracting Party by a Competent Authority or a Competent Institution of the other Contracting Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraph 1 and 3 of this Article be construed so as to impose on the Competent Authority or competent Institution of a Contracting Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or

(b) to supply information which is not ordinarily obtainable under the laws or in the normal administrative practice of either Contracting Party.

5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting Party may communicate with the other in any of the official languages of the Contracting Parties or in English.

6. Documents submitted to a Competent Authority or Competent institution of a Contracting Party shall not be rejected solely on the ground that they are written in the official language of the other Contracting Party or in English.

7. The Competent Institutions of the Contracting Parties will supply to each other, on a schedule as agreed, in an agreed format, relevant information, including but not limited to, death, change of address, change of relationship status and changes in the amount of benefits for mutual beneficiaries.

Article 22

Administrative Provisions Relating to Benefits for Disability

1. To determine the reduction of work capacity or disability condition for the purposes of, the Competent institution of each Contracting Party shall perform their own evaluation in accordance with the applicable legislation.

2. The Competent Institution of the Contracting Party where the applicant resides shall provide the Competent institution of the other Contracting Party, upon request from this Contracting Party and without any charges, with reports and medical documents available, in accordance with the respective domestic law relating to medical confidentiality.

3. In case of medical examinations carried out under the legislation of one or both Contracting Parties, such examinations shall be arranged or carried out by the Competent Institution or by a Liaison Body of the place of stay or residence, free of charge.

4. At the request of the Competent Institution of one Contracting Party, the Competent Institution of the other Contracting Party where the applicant resides shall perform additional medical tests required to assess the health

condition of the applicant. Those medical exams that are of the exclusive interest of the requesting Institution shall be fully financed by the requesting Competent institution, as referred in the Administrative Arrangement.

5. The Competent Institutions could agree on the procedures to carry out such examinations and for other ways of reimbursement including a waiver of the reimbursement.

Article 23

Administrative Arrangement

The Competent Authorities of the Contracting Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.

Article 24

Exchange of Statistics

1. The Competent Institutions of the Contracting Parties shall exchange annual statistics on the payments granted to beneficiaries pursuant to this Agreement.
2. These statistics shall include the number of beneficiaries and total amount of benefits paid and shall be furnished in a form to be agreed upon by the Competent Institutions.

Article 25

Resolution of Disputes

1. The Competent Authorities of the Contracting Parties shall resolve, to the extent possible, any difficulties that arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Contracting Parties shall consult promptly at the request of either Contracting Party concerning matters that have not been resolved by the Competent Authorities in accordance with paragraph 1 of this Article.

Article 26

Review of Agreement

1. Where a Contracting Party requests the other Contracting Party to meet to review this Agreement, the Contracting Parties shall meet for that purpose at any mutually agreed place.
2. Amendments to this Agreement shall enter into force according to the procedure stated in Article 28.
3. The Parties may change their Competent Authorities, their Competent Institutions and their Liaison bodies through diplomatic channels.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 27

Transitional provisions

1. Any period of coverage completed before the date of entry into force of this Agreement shall be taken into account for the purposes of determining the right to a benefit under this Agreement and its amount.
2. The provisions of this Agreement shall not 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 into force of this Agreement.

Article 28

Entry into force

This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Contracting Parties through the diplomatic channel notifying each other that procedures needed for this Agreement to enter into force have been completed.

Article 29

Termination

1. Subject to paragraph 2 of this Article, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.

2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:

- (a) at the date on which termination takes effect, are in receipt of benefits; or
- (b) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or
- (c) immediately before the date of termination are subject only to the legislation of one Contracting Party by virtue of paragraph 2 of Article 7 and paragraph 2 of Article 11 of Part II of the Agreement, provided the employee continues to satisfy the criteria of those Articles.

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

DONE at New Delhi on the 25th day of January 2020, in two originals, each in English, Hindi and Portuguese languages, each version being equally authentic. In case of divergence in interpretation, the English text shall prevail.


FOR THE REPUBLIC
OF INDIA
SECRETARY (EAST)
MINISTRY OF EXTERNAL AFFAIRS


FOR THE FEDERATIVE
REPUBLIC
OF BRAZIL