

**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.

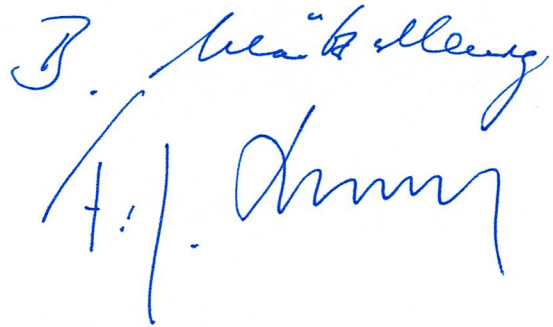
2. In the event that this Agreement shall cease to be in force in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who immediately before the date of termination are subject only to the legislation of one Contracting State by virtue of Articles 4 to 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



**CONCLUDING PROTOCOL  
TO THE AGREEMENT  
BETWEEN  
THE REPUBLIC OF INDIA  
AND  
THE FEDERAL REPUBLIC OF GERMANY  
ON  
SOCIAL INSURANCE**

At the time of signing the Agreement between the Republic of India and the Federal Republic of Germany on Social Insurance concluded this day, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to paragraph 1(a) of Article 2 of the Agreement:
  - (a) If, by virtue of Articles 4 to 7 of the Agreement, German legislation applies to a person working in the territory of the Republic of India, the German laws and regulations in the field of employment promotion shall also be applicable to this person and his or her employer in the same way.
  - (b) If, by virtue of Articles 4 to 7 of the Agreement, Indian legislation applies to a person working in the territory of the Federal Republic of Germany, the German laws and regulations in the field of employment promotion shall not be applicable to this person and his or her employer.

2. With reference to Article 5 of the Agreement:

(a) It shall not be considered a case of detachment to the other Contracting State in particular when:

(i) the work of the detached employee does not correspond to the employer's business operations in the sending State;

(ii) the employer of the detached employee ordinarily does not engage in considerable business activities in the sending State;

(iii) the person recruited for the purpose of detachment is not ordinarily resident in the sending State at that time;

(iv) this constitutes illegal labour leasing under the legislation of one Contracting State; or

(v) the employee has worked in the sending State for less than six months after termination of the last period of detachment.

(b) For persons who are already detached on the day of entry into force of the Agreement the specified period shall begin on that date.

3. With reference to Article 7 of the Agreement:

(a) Where, in application of Article 7 of the Agreement, the legislation of one of the Contracting States applies to a person, the person shall be deemed to be employed or to work at the place where he or she was last employed or working; however, a different arrangement resulting from the previous application of Article 5 of the Agreement shall continue to be effective. If he or she was previously not employed or working in the territory of the respective Contracting State, he or she shall be deemed to be employed or working at the place where the competent authority of the Contracting State whose legislation is to be applied has its seat.

(b) Article 7 of the Agreement shall apply in particular to an employee of an enterprise located in one Contracting State who is temporarily employed in the other Contracting State by an associated enterprise and, during this period, receives remuneration in the state of employment at the expense of the associated enterprise.

AGREEMENT  
BETWEEN  
THE REPUBLIC OF INDIA  
AND  
THE FEDERAL REPUBLIC OF GERMANY  
ON  
SOCIAL SECURITY

**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,

endeavouring to replace the Agreement on Social Insurance between the Federal Republic of Germany and the Republic of India of 8 October, 2008 by a new, more comprehensive Agreement ,

have agreed upon the following:

**Part I**  
**General Provisions**

**Article 1**  
**Definitions**

1. For the purposes of this Agreement,

a) "contracting State" means the Federal Republic of Germany and the Republic of India as the case may be

b) "national" means

as regards the Republic of India, a citizen of India within the meaning of the Constitution of India and the Citizenship Act 1955;

as regards the Federal Republic of Germany, a German citizen within the meaning of the Basic Law (Grundgesetz) for the Federal Republic of Germany;

c) "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;

d) "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;

e) "competent authority" means

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

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

f) "institution" means

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

as regards the Federal Republic of Germany, an 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;

g) "competent body" means

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

h) "employment" means

a gainful activity as defined by the Contracting State whose legislation is applicable;

i) "period of coverage" means

period of contributions or period of employment defined as such by the legislation under which such period has been completed, as well as any other creditable period recognized by that legislation;

j) "benefit" means

a pension or any other cash benefit and includes any supplement, allowance or increase;

k) "ordinary residence" means

the place of a person's actual non-temporary residence. Ordinary residence is determined by a person's actual and lawful stay intended to be permanent and the centre of his or her vital interests.

(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

1. the German legislation concerning
  - a) the Statutory Pension Insurance,
  - b) the Steelworkers' Supplementary Insurance (Hüttenknappschaftliche Zusatzversicherung) as regards the export of benefits,
  - c) Farmers' Old Age Security (Alterssicherung der Landwirte);
2. the Indian legislation concerning
  - a) old-age and survivors' pension for employed persons;
  - b) 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**

Unless otherwise specified in this Agreement, this Agreement shall apply to all persons who are or have been subject to the legislation of either or both of the Contracting States and other persons to the extent they derive rights from such persons.

**Article 4**  
**Equality of Treatment**

Unless otherwise provided in this Agreement, the persons specified in Article 3, who ordinarily reside in the territory of a Contracting State, shall receive equal treatment with nationals of that Contracting State in the application of the legislation of a Contracting State.

**Article 5**  
**Equal status of territories and export of benefits**

- (1) Restrictive legislation of one Contracting State according to which the acquisition of entitlement to benefits, the provision of benefits or the payment of benefits is dependent on ordinary residence in the territory of that Contracting State shall not apply to nationals of either Contracting State, and other persons to the extent they derive rights from the above-mentioned persons and have their ordinary residence in the territory of the other Contracting State.
- (2) Benefits under the legislation of one Contracting State shall be paid to nationals of the other Contracting State who have their ordinary residence outside the territories of the Contracting States under the same conditions as they are paid to the nationals of the first Contracting State who have their ordinary residence outside the territories of the Contracting States.
- (3) Persons who ordinarily reside in the territory of the Republic of India shall receive a pension under German legislation on account of reduced earning capacity only if the entitlement exists irrespective of the labour market situation.
- (4) German legislation on benefits based on periods of coverage not completed within the territory of the Federal Republic of Germany shall remain unaffected.
- (5) German legislation on benefits to facilitate participation provided by the institutions of the Statutory Pension Insurance and the Farmers' Old Age Security shall remain unaffected.
- (6) German legislation providing for the suspension of claims for pension insurance benefits for persons who go abroad to evade criminal proceedings against them shall not be affected.

**PART II**  
**Applicable Legislation**

**Article 6**  
**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. If an enterprise has a registered office, a branch office or a permanent representation in each Contracting State, the person employed shall

be subject to the legislation of the Contracting State in whose territory the crew member normally starts and ends a duty period or a series of duty periods.

(3) A person who habitually 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 7** **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) It shall not be considered a case of detachment to the other Contracting State in particular when:

- a) the work of the detached employee does not correspond to the employer's business operations in the sending State;
- b) the employer of the detached employee ordinarily does not engage in considerable business activities in the sending State;
- c) the person recruited for the purpose of detachment is not ordinarily resident in the sending State at that time;
- d) this constitutes illegal labour leasing under the legislation of one Contracting State; or
- e) the employee has worked in the sending State for less than six months after termination of the last period of detachment.

- (4) For persons who are already detached on the day of entry into force of this Agreement, the agreed period of 48 calendar months shall begin on the day of detachment, but not earlier than on the date of coming into force of the Agreement of 8 October 2008 between the Federal Republic of Germany and the Republic of India on Social Insurance, i.e. on 1 October 2009.
- (5) Paragraphs 1 and 4 shall apply analogously to self-employed persons.
- (6) This Article shall also apply where a person who has been sent by his employer from the territory of one Contracting State to the territory of a third country is subsequently sent by that employer to the territory of the other Contracting State.

#### **Article 8**

#### **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 9**

#### **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, 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) Paragraph 1 shall apply in particular to an employee of an enterprise located in one Contracting State who is temporarily employed in the other Contracting State by an associated enterprise and, during this period, receives remuneration in the state of employment at the expense of the associated enterprise.
- (3) The application shall be filed in the Contracting State whose legislation is to apply.
- (4) Where, on the basis of a mutual agreement under paragraph 1, the legislation of one of the Contracting States applies to a person, the person shall be deemed to be employed or to work at the place where he or she was last employed or working; however, a different arrangement resulting from the previous application

of Article 7 of the Agreement shall continue to be effective. If he or she was previously not employed or working in the territory of the respective Contracting State, he or she shall be deemed to be employed or working at the place where the competent authority of the Contracting State whose legislation is to be applied has its seat.

#### **Article 10**

##### **Impact of applicable legislation on other branches of social security**

(1) If, by virtue of Articles 6 to 9 of the Agreement, German legislation applies to a person working in the territory of the Republic of India, the German laws and regulations governing the field of employment promotion shall also be applicable to this person and his or her employer in the same way.

(2) If, by virtue of Articles 6 to 9 of the Agreement, Indian legislation applies to a person working in the territory of the Federal Republic of Germany, the German laws and regulations governing the field of employment promotion shall not be applicable to this person and his or her employer.

#### **Part III**

##### **Special provisions Pension insurance**

#### **Article 11**

##### **Totalization of periods of coverage and calculation of pensions**

(1) In determining eligibility for benefits under the applicable legislation, periods of coverage which are creditable under the legislation of the other Contracting State shall also be taken into account provided the periods do not overlap. The extent to which the periods of coverage are to be taken into account shall be determined by the legislation of the Contracting State under which they were completed.

(2) Where, under the legislation of one Contracting State, not only the conditions for the application of this Agreement but also the conditions for the application of another agreement or of a supranational arrangement are satisfied, that other agreement or the supranational arrangement shall not be taken into account by the institution of this Contracting State in the application of this Agreement unless otherwise provided.

(3) Paragraph 2 shall apply with the proviso that periods of coverage of a person completed in a third country with which both countries have concluded social security agreements of same kind shall be taken into account. This shall also apply to periods of coverage completed in a country in which Regulation (EEC) No. 1408/71 or Regulation (EC) No. 883/2004 is to be applied provided the

Republic of India has concluded such social security agreements with the countries concerned.

(4) If an entitlement to benefits requires the completion of certain periods of coverage, only comparable periods of coverage under the legislation of the other Contracting State shall be taken into account for this purpose.

(5) The calculation of the pension shall be determined by the applicable legislation of the respective Contracting State unless otherwise provided in this Agreement.

#### **Article 12** **Special provisions for the German institution**

(1) Personal earning points shall be determined on the basis of the earning points acquired under German legislation.

(2) The provision on the totalization of periods of coverage shall apply analogously to benefits which are granted at the discretion of an institution.

(3) Periods of coverage completed under Indian legislation shall be taken into account for the Miners' Pension Insurance if they were completed in a mining enterprise in underground operations. If, under German legislation, an entitlement to benefits requires that permanent work underground or equivalent work was performed, the German institution shall take into account periods of coverage completed under Indian legislation only in so far as activities of the same kind were performed during these periods.

(4) If German legislation provides that an entitlement to benefits requires the completion of certain periods of coverage within a specified time, and if the legislation provides further that this time is extended by certain circumstances or periods of coverage, periods of coverage under the legislation of the other Contracting State or comparable circumstances in the other Contracting State shall also be taken into account for such an extension. Comparable circumstances are periods during which disability or old-age pensions or benefits on account of sickness, unemployment or occupational accidents (with the exception of pensions) were paid under the legislation of the Republic of India as well as periods of child-raising in the Republic of India.

(5) Periods of coverage to be taken into account according to the provision on the totalization of periods of coverage shall be taken into account only to the extent to which they were actually completed.

(6) Persons who ordinarily reside outside the Federal Republic of Germany and who are nationals of a country in which Regulation (EEC) No.1408/71 or Regulation (EC) No. 883/2004 is to be applied shall be entitled to voluntary coverage under the German pension insurance only as provided in these Regulations.

(7) Indian nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be entitled to voluntary coverage under the German pension insurance if they have completed periods of contributions of at least sixty months under the said insurance; more favourable domestic legislation shall remain unaffected.

**Article 13**  
**Special provisions for the Indian institution**

(1) Notwithstanding the provisions in this Agreement for the acquisition, retention or recovery of the right to old age, survivor's and disability benefits, the periods of coverage completed pursuant to the German legislation concerning such benefits shall be totalized, when necessary and to the extent that they do not overlap, with the periods of coverage completed pursuant to the Indian legislation.

(2) If the Indian legislation subordinates the granting of certain benefits to the condition that the periods of coverage are to be completed in a given occupation and when these periods did not result in entitlement to the said benefits, the said periods shall be considered for the determination of the benefits provided for in the general scheme for employed persons.

(3) If a person is entitled to an old age, survivors' or disability benefit under the Indian legislation without necessarily proceeding to totalization, the Indian institution shall calculate the benefit entitlement directly on the basis of the periods of coverage completed in India and only under the Indian legislation.

(4) If a person is entitled to an old age, survivor's or disability benefit by virtue of the Indian legislation, with his right being created solely by taking the totalization of the periods of coverage into account, the following rules shall apply:

- a) the Indian institution shall calculate the theoretical amount of the benefit due as if all the periods of coverage completed according to the two Contracting States' legislations were exclusively completed under the Indian legislation.
- b) the Indian institution shall then calculate the amount due, on the basis of the amount specified under subparagraph a), according to the proportion of the duration of the periods of coverage completed under its legislation in relation to the duration of all periods of coverage accounted under subparagraph a).

(5) A person is entitled to withdraw the full amount standing to his credit in the Employees' Provident Fund under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 under the following conditions:

- a) on ceasing to be an employee in an establishment, and

b) on leaving the territory of the Republic of India or not being employed in an establishment.

(6) A person is entitled to withdrawal benefit under the Employees' Pension Scheme, 1995 if the requirement of eligible service for monthly members' pension is not fulfilled even after including the totalisation benefit as provided in the Agreement."

**Part IV**  
**Miscellaneous provisions**

**Chapter 1**  
**Administrative assistance**

**Article 14**  
**Administrative assistance and medical examinations**

(1) The institutions, associations of institutions and authorities of the Contracting States shall provide mutual assistance to each other in the implementation of the legislation covered by the legislative scope of this Agreement and in the implementation of this Agreement as if they were applying their own legislation. The assistance shall be provided free of charge. Payments to third parties with the exception of expenses for communication shall be reimbursed, however.

(2) The administrative assistance shall also comprise medical examinations. The costs of the examinations, the travel expenses, the loss of earnings, the costs of in-patient observation and other payments to third parties with the exception of expenses for communication shall be reimbursed by the requesting body. The costs shall not be reimbursed if the medical examination is in the interest of the competent institutions of both Contracting States.

**Article 15**  
**Claims in insolvency and litigation proceedings**

Claims of institutions in the territory of one Contracting State that are based on contribution arrears shall have the same priority in execution proceedings as well as in insolvency and litigation proceedings in the territory of the other Contracting State as corresponding claims in the territory of that Contracting State.

**Article 16**  
**Charges**

An exemption from or reduction of taxes or administrative charges including consular fees provided in the legislation of one Contracting State as well as the refund of expenditures for documents to be submitted in the

application of this legislation shall also apply to corresponding documents **to be** submitted in the application of this Agreement or of the legislation of the other Contracting State covered by the legislative scope of this Agreement.

#### **Article 17** **Notification and languages of communication**

(1) In implementing this Agreement and the legislation covered by the legislative scope of this Agreement, the institutions, associations of institutions and authorities of the Contracting States may communicate in the German, Hindi or the English language directly with each other as well as with persons concerned and their representatives. Any legislation on the recourse to interpreters shall remain unaffected.

(2) Notifications or other documents may be communicated directly by simple letter to persons residing in the territory of the other Contracting State. Notifications and other documents requiring service that are issued in the implementation of the German law on assistance to war victims and of legislation declaring it analogously applicable may be communicated to persons residing in the territory of the other Contracting State directly by registered mail with return receipt.

(3) The institutions, associations of institutions and authorities of the Contracting States may not reject documents, especially applications and certifications, in the German, Hindi or the English language.

#### **Article 18** **Equal status of applications**

(1) If an application for a benefit payable under the legislation of one Contracting State has been filed with an institution in the other Contracting State which is competent to receive an application for a corresponding benefit under the legislation applicable to it, that application shall be deemed to have been filed with the competent institution. This shall apply analogously to other applications, declarations and appeals.

(2) The applications, declarations, information or appeals received by an institution of one Contracting State shall be forwarded to the competent institution of the other Contracting State without delay.

(3) An application for benefits payable under the legislation of one Contracting State shall be deemed to be also an application for a corresponding benefit under the legislation of the other Contracting State provided the application reveals that periods of coverage have been completed under the legislation of the other Contracting State. This shall not apply if the applicant explicitly requests

that the determination of entitlement to old-age pensions acquired under the legislation of the other Contracting State be deferred.

### **Article 19** **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. Moreover, the use of this data is permissible for the purposes of preventing or prosecuting criminal offences of substantial significance and of warding off substantial dangers to public security.

b) 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. There shall be no obligation to supply such information when a weighing of interests reveals that the public interest not to supply the information outweighs the interest of the person concerned to obtain the information. 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) Where a competent body of one Contracting State transmitted personal data on the basis of this Agreement, the receiving body of the other Contracting State may, in the framework of its liability according to national law, not claim relief vis-à-vis the aggrieved party by arguing that the data transmitted was incorrect or was data the transmission of which was not permissible. If the receiving body pays compensation for damage caused by the use of incorrect data or data the transmission of which was not permissible, the transmitting body shall refund to the receiving body the full amount of the compensation paid.

f) 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.

g) The transmitting and the receiving bodies shall document the transmission and the receipt of personal data.

h) 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.

## **Chapter 2 Implementation and Interpretation of this Agreement**

### **Article 20 Implementation of this Agreement**

(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 shall be:

1. in the Federal Republic of Germany

a) for the Statutory Pension Insurance

the German Pension Insurance North, Lübeck (Deutsche Rentenversicherung Nord, Lübeck)

the German Federal Pension Insurance (Deutsche Rentenversicherung Bund), Berlin,

the German Pension Insurance Mining-Railways-Seafaring (Deutsche Rentenversicherung Knappschaft-Bahn-See), Bochum,

- b) for the Steelworkers' Supplementary Insurance (Hüttenknappschaftliche Zusatzversicherung)  
the German Pension Insurance Saarland (Deutsche Rentenversicherung Saarland), Saarbrücken,
- c) for the Farmers' Old-Age Security (Alterssicherung der Landwirte)  
the Central Association of Agricultural Social Insurance (Spitzenverband der landwirtschaftlichen Sozialversicherung), Kassel,
- d) in so far as health insurance funds are involved in the implementation of this Agreement,  
the National Association of Statutory Health Insurance, German Liaison Agency Health Insurance – International (Spitzenverband Bund der Krankenkassen (GKV-Spitzenverband), Deutsche Verbindungsstelle Krankenversicherung - Ausland (DVKA)), Bonn;

2. in the Republic of India  
the Employees Provident Fund Organization, New Delhi.

(3) Where German legislation does not already make provision to this effect, the German Pension Insurance North, Lübeck shall be responsible, in the context of the assignment of German pension insurance tasks to a regional institution, for all procedures including the determination and award of benefits, provided that

- 1. periods of coverage have been completed or are to be credited under German legislation and under Indian legislation, or
- 2. the person entitled to a benefit ordinarily resides in the territory of the Republic of India, or
- 3. the person entitled is an Indian national who ordinarily resides outside the territories of both Contracting States.

This shall apply to benefits to facilitate participation only if they are provided in the context of ongoing pension procedures.

(4) The liaison agencies shall be authorised to agree, within their respective areas of jurisdiction and with the participation of the competent authorities, upon the administrative measures necessary and appropriate for the implementation of this Agreement, including procedures for the reimbursement and the payment of benefits. The provisions of paragraph 1 shall remain unaffected.

(5) The provisions of paragraph 4 shall apply analogously to the bodies designated by the competent authorities under Article 9 of this Agreement.

**Article 21**  
**Currency and exchange rates**

(1) Benefits may be validly paid by an institution of one Contracting State to a person ordinarily residing in the territory of the other Contracting State in the currency of the latter Contracting State. In the relationship between the institution and the person entitled, the conversion rate shall be the rate of exchange prevailing on the date on which the remittance of the benefits is made.

(2) If an institution has to make payments to an institution of the other Contracting State, such payments shall be made in the currency of the latter Contracting State.

**Article 22**  
**Refunds**

(1) Where the institution of one Contracting State has made an overpayment of a benefit, the amount of the overpayment may be deducted from a corresponding benefit payable under the legislation of the other Contracting State to the account of that institution.

(2) Where, under the legislation of one Contracting State, a person is entitled to a benefit for a period for which he or she or any family member received benefits from a welfare institution of the other Contracting State, such benefit shall be recovered, at the request and for the account of the welfare institution entitled to a refund, as if that welfare institution were a welfare institution based in the territory of the first Contracting State. There shall be no obligation of recovery if the institution had paid out the benefit before becoming aware of the benefits paid by the welfare institution.

**Article 23**  
**Resolution of disputes**

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

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.

**Part V**  
**Transitional and final provisions**

**Article 24**  
**Benefit entitlements under this Agreement**

(1) This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.

(2) In the application of this Agreement, periods of coverage completed under the legislation of the Contracting States before its entry into force and other legally relevant events that occurred before its entry into force shall also be taken into consideration.

(3) Decisions taken prior to the entry into force of this Agreement shall not preclude the application of this Agreement.

(4) If an application for the determination of a pension, to which a person is only entitled by virtue of this Agreement, is filed within twelve months after its entry into force, the pension shall commence with the calendar month at the beginning of which the eligibility criteria were met, at the earliest with the entry into force of this Agreement.

(5) Pensions determined before the entry into force of this Agreement may be newly determined upon application if a change results solely from the provisions of this Agreement. As regards the Federal Republic of Germany, pensions determined before the entry into force of the Agreement may also be newly determined ex officio. In these cases the date on which the institution initiates the procedure is deemed to be the date of application under the legislation of the other Contracting State.

(6) If the new determination under paragraph 5 results in no entitlement or in an entitlement to a lesser amount of pension than that paid for the last period prior to the entry into force of this Agreement, the same amount of pension as previously paid shall continue to be paid.

**Article 25**  
**Ratification**

This Agreement shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible in Berlin.

**Article 26**  
**Entry into force and termination**

(1) This Agreement shall enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged.

(2) With the entry into force of this Agreement the following instruments shall cease to have effect:

- the Agreement of 8 October 2008 between the Federal Republic of Germany and the Republic of India on Social Insurance, and
- the Arrangement of 8 October 2008 between the Government of the Federal Republic of Germany and the Government of the Republic of India for the Implementation of the Agreement of 8 October 2008 between the Government of the Federal Republic of Germany and the Government of the Republic of India on Social Insurance.

(3) Notwithstanding paragraph 2, decisions as to the applicable legislation taken prior to the coming into force of this Agreement on the basis of the Agreement of 8 October 2008 between the Federal Republic of Germany and the Republic of India on Social Insurance shall remain valid.

**Article 27**  
**Duration**

(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 6 to 9 provided the person continues to meet the corresponding requirements.

(3) In the event of termination by giving notice, the provisions of this Agreement shall continue to apply in respect of claims to benefits acquired up to that date. Restrictive legislation regarding the exclusion of an entitlement or the suspension or withdrawal of benefits on the grounds of residence abroad shall not be applicable to such claims.

Done at Berlin on 12<sup>th</sup> October 2011 in duplicate in the German, Hindi and English languages, all three texts being authentic. In case of divergent interpretations of the German and the Hindi texts, the English text shall prevail.

For the  
Republic of India



For the  
Federal Republic of Germany

