

## **PART - III**

# ***AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL INSURANCE***

### **1. What are the provisions covered under the Agreement?**

The present agreement covers only the “detachment” provision.

### **2. What does it mean by “detachment”?**

Detachment is a status of exemption from the applicability of host country legislations that applies to employees sent on posting in the, provided he/she is complying under the social security system of the home country.

### **3. What are the conditions governing ‘detachment’?**

- (1) Detachment pursuant to the Agreement is conditional on the sending enterprise ordinarily engaging in considerable business activities in the sending State.
- (2) A vital criterion in this regard is the turnover generated by the sending enterprise within a sufficiently characteristic period of time.
- (3) A turnover amounting to 25% of the total turnover in the sending State is considered a sufficient indication of considerable business activities in that State. If the turnover in the sending State is less than 25%, an assessment of the individual case shall be made.
- (4) Detachment shall not be precluded by the employee concerned having been detached to a third state by his employer immediately prior to detachment to the other Contracting State.

#### **4. What will not be considered a case of detachment?**

The following shall not be considered a case of detachment to the other Contracting State 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) Such a posting constitutes illegal labour leasing under the legislation of one of the Contracting State;
- (v) The employee has worked in the sending State for less than six months after termination of the last period of detachment.

#### **5. What is a detachment certificate?**

A detachment certificate is otherwise a “**Certificate concerning the application of legislation**” issued by one contracting country (indicating the details of coverage/membership under its social security system) that serves as proof of exemption from Social Security contributions/taxes on the same earnings in the other contracting country.

#### **6. What is the period for which a detachment certificate may be issued?**

A detachment certificate may be issued for the entire period of detachment, subject to a maximum of 48 calendar months. However, 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 may upon joint request by the employee and his employer agree to extend the detachment certificate for such an extended period.

#### **7. When does the period of 48 months start on issue of a detachment certificate?**

The period of 48 calendar months starts on the first day of the calendar month in which the employee takes up an employment in the territory of the other Contracting State.

**8. Who are all eligible for applying for a detachment certificate?**

Subject to the maximum period as detailed in the previous paragraphs, there are 2 categories of employees eligible for applying for a detachment certificate.

- a. Those already posted on a pre-determined short-term assignment and working in Germany should apply for a detachment certificate for the period from 1<sup>st</sup> October, 2009 to the date of completion of the detachment.
- b. Those who will be sent to Germany on or after 1<sup>st</sup> October, 2009 should apply for a detachment certificate for the entire period of detachment.

**9. How to obtain a detachment certificate?**

To seek an exemption from coverage under the German system, the employee must be working in an establishment covered or coverable under Employees' Provident Fund Organisation (EPFO), the Indian Liaison agency. Both the employer as well as the employee must jointly request a detachment certificate, in the prescribed format from the jurisdictional Regional Provident Fund Commissioner of EPFO.

**10. I am holding a Certificate of coverage. When does the date of exemption from the other country's social security system start?**

The certificate of coverage carries a provision for indicating the effective date of your exemption (based on the information provided in your joint application) from paying Social Security contributions/taxes in the other country. Normally, this date shall start on the first day of the calendar month in which the employee takes up an employment in the territory of the other Contracting State but cannot be a date earlier than the date of effect of the Agreement.

**11. I have already been deputed to work in Germany. When does the period of detachment start in my case?**

For persons who are already detached on the day of entry into force of the Agreement, if otherwise eligible, the specified period shall begin on that date.

**12. How to ascertain whether an employee is coverable under the Indian or German Social Security system?**

**a. An Indian national working in Germany**

Nature of employment	Coverage under
1. Sent on short-term posting by an Indian employer for an initial period of less than 48 months	Indian system
2. Sent on Long-term posting by an Indian employer for a period of more than 48 months	German system
3. On local employment by an Indian employer directly in Germany	German system
4. On local employment by a Non-Indian employer directly in Germany	German system

**b. A German national working in India**

Nature of employment	Coverage under
1. Sent on short-term posting by a German employer for a period of less than 48 months	German system
2. Sent on Long-term posting by a German employer for a period of more than 48 months	Indian system
3. On local employment by a German employer directly in India	Indian system
4. On local employment by a Non- German employer directly in India	Indian system

**13. When does the agreement take effect from?**

The agreement takes effect from **1<sup>st</sup> October 2009.**

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

EPFO-INDIA

**The Federal Republic of Germany**  
**and**  
**The Republic of India**

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

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

(b) "legislation" means,

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;

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;

(c) "competent authority" means,

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

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

(d) "institution" means,

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;

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

(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 legislations 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. Paragraph 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,  
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 xxx.
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 XXX, in duplicate each in the German, Hindi and English languages, all three texts being authentic. In case of divergent interpretations of the German and Hindi texts, the English text shall prevail.

**For the Federal Republic of Germany**

**For the Republic of India**

**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.

**ARRANGEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF INDIA**  
**AND**  
**THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY**  
**FOR**  
**THE IMPLEMENTATION OF THE AGREEMENT OF XXX**  
**BETWEEN**  
**THE FEDERAL REPUBLIC OF GERMANY**  
**AND**  
**THE REPUBLIC OF INDIA**  
**ON**  
**SOCIAL INSURANCE**

The Government of the Federal Republic of Germany  
and  
the Government of the Republic of India

on the basis of paragraph 1 of Article 11 of the Agreement of xx.xx.xxxx between the Federal Republic of Germany and the Republic of India on Social Insurance, have agreed as follows:

**Section I**  
**General provisions**

**Article 1**  
**Definitions**

Where terms which appear in the Agreement are used in this Arrangement, they shall have the same meaning as defined in the Agreement.

**Article 2**  
**Duty to inform**

The liaison agencies set up pursuant to paragraph 2 of Article 11 of the Agreement and the bodies designated by the competent authorities pursuant to Article 7 of the Agreement shall, within their respective areas of jurisdiction, be responsible for generally informing the persons concerned about the Agreement.

**Article 3**  
**Duty to communicate facts**

1. The bodies referred to in paragraph 2 of Article 11, in Article 7 and in Article 8 of the Agreement shall, within their respective areas of jurisdiction, communicate to each other and to the persons concerned the facts and transmit the evidence necessary to secure the rights and obligations that follow from the legislation specified in paragraph 1 of Article 2 of the Agreement and from the Agreement and this Arrangement.

2. Where a person is obliged, under the legislation specified in paragraph 1 of Article 2 of the Agreement, under the Agreement or under this Arrangement, to communicate to the institution or another body, certain facts, this obligation shall also apply with regard to corresponding facts obtaining in the territory of the other

Contracting State or under its legislation. This shall also apply if a person has to transmit certain evidence.

3. Article 10 of the Agreement shall also be applied to the duty to communicate facts under paragraphs 1 and 2.

#### **Article 4**

##### **Certificate on the applicable legislation**

1. In the circumstances described in Articles 5 and 7 of the Agreement, the competent authority or the competent body of the Contracting State whose legislation is applicable shall, on request, issue a certificate stating, in respect of the employment in question, that this legislation is applicable to the employee and the employer. A specific period of validity must be given on the certificate.

2. Where German legislation is applicable, the certificate shall, in the circumstances described in Article 5 of the Agreement, be issued by the health insurance institution to which the pension contributions are paid, and by the *Deutsche Rentenversicherung Bund* (German Federal Pension Insurance), Berlin, in any other case. In the circumstances described in Article 7 of the Agreement, the *Spitzenverband Bund der Krankenkassen (GKV- Spitzenverband)*, *Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA)* – (National Association of Statutory Health Insurance, German Liaison Agency Health Insurance – International), *Bonn*, shall issue the certificate.

3. Where Indian legislation is applicable, the certificate shall be issued by the Employees Provident Fund Organization (EPFO), New Delhi.

4. If there are doubts as to whether the legislation referred to in the certificate is actually applicable, or if the facts certified therein differ from the actual circumstances, the body that has issued the certificate shall, on request, review and correct it, if necessary.

**Section II**  
**Final Provision**

**Article 5**

**Entry into force and duration of the Arrangement**

1. This Arrangement shall enter into force on the date on which both Governments have informed each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. This Arrangement is to be applied from the date of the entry into force of the Agreement and shall have the same period of duration.

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

**For the Government of the  
Federal Republic of Germany**

**For the Government of the Republic  
of India**