

## **AGREEMENT ON SOCIAL SECURITY**

### **BETWEEN**

### **THE REPUBLIC OF AUSTRIA**

### **AND**

### **THE REPUBLIC OF INDIA**

The Republic of Austria and the Republic of India (hereinafter referred to as “the Contracting States”), resolved to regulate the mutual relations between the two States in the field of social security, have agreed as follows:

#### **Part I**

#### **General Provisions**

#### **Article 1**

#### **Definitions**

1. For purposes of this Agreement,
  - a) “Austria” means the Republic of Austria and “India” means the Republic of India;
  - b) “legislation” means the laws, regulations and statutory provisions made thereunder specified in Article 2;
  - c) “national” means, in relation to Austria, an Austrian citizen, and, in relation to India, an Indian citizen;
  - d) “competent authority” means, in relation to Austria, the Federal Ministers responsible for the administration of the legislation of Austria, and in relation to India, the Minister for Overseas Indian Affairs;
  - e) “competent agency” means, in relation to Austria, the agency, the institution, the organization, or body responsible in full or in part for the implementation of the legislation specified in Article 2, and in relation to India, the Employees’ Provident Fund Organisation;
  - f) “period of coverage” means periods of contribution or any period treated as such insofar as it is considered equivalent to a period of coverage by the relevant legislation;
  - g) “benefit” means any pension or benefit in cash, including any supplements or increases applicable under the legislation specified in Article 2 with the exception of single payments to maintain purchasing power.
2. Any other expression used in this Agreement shall have the meaning respectively assigned to it in the applicable legislation.



## **Article 2**

### **Material scope**

1. This Agreement shall apply:
  - (a) in relation to Austria,
    - (i) to the legislation concerning pension insurance, with the exception of the insurance for notaries and
    - (ii) with regard to Part II only, to the legislation concerning sickness insurance and accident insurance.
  - (b) in relation to India, to the 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 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 either of the Contracting States, and other persons who derive rights from such persons.

## **Article 4**

### **Equal treatment**

1. Unless otherwise provided in this Agreement, nationals of the other Contracting State and their dependants and survivors shall, in the application of the legislation of one Contracting State, receive equal treatment with the nationals of this Contracting State:
2. In relation to Austria, Paragraph 1 of this Article shall also apply for the application of the Agreement to:
  - (a) Nationals of a State in which Regulation (EC) No 883/2004 applies;
  - (b) Refugees as defined in Article 1 of the Convention relating to the status of refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967, resident in the territory of one Contracting State;
  - (c) Stateless persons as defined in Article 1 of the Convention relating to the status of stateless persons dated September 28, 1954, resident in the territory of one Contracting State;
  - (d) Any other person who is a dependant or survivor and resides in the territory of one Contracting State with respect to his/her rights derived from the person specified in this paragraph.
3. Paragraph 1 of this Article shall not apply to the provisions of Austrian legislation concerning:
  - (a) the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;

- (b) the apportionment of insurance burdens resulting from agreements with third States;
- (c) the insurance of persons employed at a diplomatic mission or consular post of Austria in a third State or by a member of such a mission or post.

4. As regards Austrian legislation concerning the crediting of periods of war service and periods considered as equivalent, Indian nationals who were Austrian nationals immediately before March 13, 1938, shall receive equal treatment with Austrian nationals.

## **Article 5**

### **Export of benefits**

1. Unless otherwise specified in this Agreement, a Contracting State shall not reduce or modify benefits acquired under its legislation solely on the ground that the beneficiary stays or resides in the territory of the other Contracting State.

2. Benefits under the legislation of one Contracting State shall be awarded to nationals of the other Contracting State, who reside outside the territories of both Contracting States, under the same conditions and to the same extent as they are awarded to the nationals of the first Contracting State who reside outside the territories of the Contracting States.

3. As regards Austrian legislation, paragraph 1 of this Article shall not apply to the compensatory supplement.

## **Part II**

### **Provisions which determine the legislation applicable**

## **Article 6**

### **General Provisions**

Subject to the provisions of Articles 7 to 9, an employed or self-employed person who works in the territory of one Contracting State shall, in respect of that work, be subject only to the legislation of that Contracting State. In the case of an employed person, this shall also apply if the employer's place of business is in the territory of the other Contracting State.

## **Article 7**

### **Special Provisions**

1. An employed person who, being in the service of an employer with an office on which he normally depends in the territory of one of the Contracting States and paying contributions under the legislation of that Contracting State, is posted by that employer in the territory of the other Contracting State to work on its account, shall remain subject to the legislation of the former Contracting State and continue to pay contributions under the legislation of this Contracting State, as if he continued to be employed in his territory on the condition that the foreseeable duration of his work does not exceed 60 months.

2. Paragraph 1 of this Article shall 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 from the territory of the third country to the territory of the other Contracting State.

3. When an employed person is sent to perform services in the territory of a Contracting State for an air transport organization which has its place of business in the territory of the other Contracting State, paragraph 1 of this Article shall be applied without reference to the sixty-month time limit.

4. 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.

## **Article 8**

### **Civil Servants, Members of Diplomatic Missions and Consular Posts**

1. Nothing in this Agreement shall affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. A person employed by the government or other public employer of a Contracting State and sent to perform services in the territory of the other Contracting State shall, in respect of those services remain subject to the legislation of the former Contracting State.

## **Article 9**

### **Exceptions from the provisions on applicable legislation**

1. At the request of an employed person and his employer, or of a self-employed person, the competent authorities of both Contracting States or the agencies designated by them may provide, by mutual consent, exceptions in the application of Articles 6 to 8, taking into account the nature and circumstances of the work.

2. Where, in accordance with paragraph 1 of this Article, a person is subject to Austrian legislation, that legislation shall apply to him as if he were employed in the territory of Austria.

## **Part III**

### **Provisions concerning benefits**

## **Article 10**

### **Totalisation of periods of coverage**

1. If a person has completed periods of coverage under the legislation of both Contracting States, these periods, insofar as they do not overlap, if necessary, shall be added together for the purpose of acquiring entitlement to a benefit, as if they were periods of coverage in the relevant Contracting State.

2. The periods of coverage of a person completed in a third country, with which the concerned Contracting State has a Social Security Agreement of the same kind, shall be taken into account for the purpose of acquiring entitlement to a benefit under the respective legislation.

3. If the total duration of the periods of coverage to be taken into account for the determination of the benefit under the legislation of one Contracting State is less than 12 months and due to these periods of coverage entitlement to a benefit does not exist under the legislation referred in Article 2, no benefit will be provided under the legislation of this Contracting State.

## **Article 11**

### **Calculation of benefits where totalisation is not required**

Where entitlement to a benefit exists under the legislation of one Contracting State without the application of paragraph 1 of Article 10, the competent agency of that Contracting State shall determine the amount of the benefit exclusively on the basis of the periods of coverage to be taken into account under that legislation.

## **SECTION 1**

### **BENEFITS UNDER THE LEGISLATION OF AUSTRIA**

## **Article 12**

### **Special provision relating to Austria**

When a person who has completed periods of coverage under the legislation of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine, in accordance with Austrian legislation, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10, and taking into account the following provisions:

- (a) Where Austrian legislation makes the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage under the legislation of India completed in the same occupation or the same employment shall be taken into account for the award of such benefits.
- (b) Where Austrian legislation provides that the period of payment of a pension shall prolong the reference period during which periods of coverage must be completed until the relevant date, periods during which a pension has been awarded under the legislation of India shall also prolong up to the aforesaid reference period.

## **Article 13**

### **Calculation of the Austrian benefits**

1. Where entitlement to a benefit exists under Austrian legislation only by totalising periods under paragraph 1 of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Regulation (EC) No. 883/2004, with periods of coverage in India, to be deemed periods of coverage in another Member State of the European Union.

2. As an exception from paragraph 1 of this Article, child raising periods shall be taken into account for the determination of the benefit only in accordance with the Austrian legislation.

## SECTION 2

### BENEFITS UNDER THE LEGISLATION OF INDIA

#### Article 14

##### Special provisions relating to India

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 Austrian legislation concerning such benefits shall be totalised, 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 old-age, survivors' and disability benefits to the condition that the periods of coverage are to be completed in a given occupation, only periods of coverage completed or recognised as equivalent in the same occupation in Austria shall be totalised for admission to entitlement to these benefits.

3. 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.

4. If a person is entitled to an old age, survivor's or disability benefit under the Indian legislation without necessarily proceeding to totalisation, the competent Indian agency shall calculate the benefit entitlement directly on the basis of the periods of coverage completed in India and only under the Indian legislation.

5. 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 totalisation of the periods of coverage into account, the following rules shall apply:

- a) the competent Indian agency 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 competent Indian agency shall then calculate the amount due, on the basis of the amount specified under (a), in proportion to the duration of the periods of coverage under its legislation.

6. 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, in the following circumstances:

- a) on ceasing to be an employee in an establishment, and
- b) on leaving the territory of India or not being employed in an establishment.

7. 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**

#### **Article 15**

##### **Cooperation between the competent authorities and administrative assistance**

1. The competent authorities of the Contracting States shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.

2. The competent authorities and competent agencies of the Contracting States shall, within the scope of their respective authorities:

(a) inform each other of all measures taken for the application of this Agreement, and

(b) inform each other of all changes in legislation, which affect the application of this Agreement.

3. The competent authorities and competent agencies of the two Contracting States shall assist each other in applying this Agreement as if they were applying their own legislation. Such assistance shall be provided free of charge.

4. The authorities and agencies of the Contracting States may contact each other or involved persons or their representatives directly.

5. The authorities and agencies of one Contracting State may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Contracting State.

6. If the competent agency of one Contracting State requires an applicant or beneficiary who stays or resides in the territory of the other Contracting State to undergo a medical examination, such examination shall, at the request of that agency and at its expense, be arranged or carried out by the competent agency of the latter Contracting State. In case of medical examinations carried out under the legislation of both Contracting States, such examinations shall be arranged or carried out by the agency of the place of stay or residence at its expense.

#### **Article 16**

##### **Liaison agencies**

The competent authorities of the Contracting States shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the agencies concerned, establish liaison agencies.

#### **Article 17**

##### **Exemptions from Charges and authentication**

1. Any exemption from or reduction of taxes, stamp duty, legal dues or registration fees provided for in the legislation of one Contracting State in respect of certificates or documents which have to be submitted for the application of this legislation shall be extended also to similar certificates or documents

which must be submitted for the application of this Agreement or the legislation of the other Contracting State.

2. All statements, documents and certificates of any kind which must be submitted for the application of this Agreement shall not require any authentication by diplomatic or consular authorities.

## **Article 18**

### **Equal status of applications, notices or appeals**

1. Any claim, declaration or appeal which, for the application of this Agreement or of the legislation of a Contracting State, is submitted to a competent authority or competent agency of one Contracting State shall be considered as a claim, declaration or appeal submitted to a competent authority or competent agency of the other Contracting State.

2. Any claim for a benefit under the legislation of one Contracting State shall be considered to be a claim for the corresponding benefit under the legislation of the other Contracting State, provided that the claimant at the time of application provides information indicating that periods of coverage have been completed under the legislation of the other Contracting State. This shall not apply, however, when the claimant expressly requests that the determination of an old age benefit under the legislation of the other Contracting State be deferred.

3. Any claim, declaration or appeal which, under the legislation of one Contracting State, must be submitted within a specified time to a competent authority or competent agency of that Contracting State, may be submitted within the same time to the corresponding authority or agency of the other Contracting State.

4. In the cases to which paragraphs 1 to 3 of this Article apply, the authority or agency to which the submission is made shall forward the claim, declaration or appeal without delay to the corresponding competent body of the other Contracting State, indicating the date of receipt of the document.

## **Article 19**

### **Payments**

1. The competent agency may make payment of benefits under this Agreement in the currency of either Contracting State.

2. Reimbursements according to this Agreement shall be made in the currency of that Contracting State in which the competent agency which has carried out the service is seated.

3. Payments according to this Agreement shall be carried out in accordance with the arrangements or practices which are in force in this field in both of the Contracting States at the time of payment.

4. In the event that a Contracting State imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting State, it shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the other Contracting State.

## Article 20

### Data protection

1. Insofar as personal data are communicated pursuant to this Agreement and in conformity with domestic law, the following provisions shall apply taking into consideration other binding provisions of the respective Contracting States:

- (a) For the implementation of this Agreement and the legislation referring thereto, personal data may be communicated to the responsible bodies of the receiving State. The respective receiving bodies shall not use these data for other purposes. Onward transmission of personal data within the territory of the receiving State to other bodies is admissible in conformity with the domestic law of the receiving State insofar as it serves social security purposes including related court procedures.
- (b) Any personal data communicated in whatsoever form between the responsible authorities, institutions and other bodies concerned pursuant to this Agreement or to any arrangement implementing this Agreement are treated as a confidential information received from the other Contracting State in the same manner as like information obtained under the domestic law of the receiving State. These obligations shall apply to all persons fulfilling tasks under this Agreement and also to persons bound themselves by the obligation of secrecy.
- (c) In specific cases the receiving body shall give information upon request of the communicating body about both the use of the data received and the results, which had been achieved by this data.
- (d) The communicating body shall guarantee that the personal data communicated are accurate and up-to-date. Before initiating any communication of personal data the communicating body has to examine whether or not the communication is necessary and proportionate with regard to the purpose of the communication in question. This is to be done with due consideration to prohibitions on communication existing in the relevant domestic laws. In the case of communication of inaccurate data or data which should not have been communicated under the domestic law of the communicating State the receiving body must be informed thereof without undue delay. The latter shall carry out the necessary deletion or correction of the data immediately. If the receiving body has reason to suppose that communicated data might be inaccurate or should be deleted, this body shall immediately inform the communicating body thereof.
- (e) Every person concerned, who proves his identity in an appropriate manner, shall be provided by the body responsible for the data processing with information about the data relating to him which have been communicated or processed, about their origin, the recipients or categories of recipients of communications, the purpose of the use of data as well as its legal basis in an understandable form. The information shall be given without undue delay and - in principle - free of charge. Moreover the person concerned shall have the right to correction of incomplete or inaccurate data and to deletion of unlawfully processed data. Further procedural details relating to the enforcement of these rights are subject to domestic law.
- (f) In the event of breach of rights related to data protection, the affected persons shall be entitled to legal remedy, including in a court of law, in accordance with the respective national legislations of the Contracting States.
- (g) Personal data communicated shall be deleted, if found to be inaccurate, or unlawfully obtained or communicated, or if lawfully communicated data have to be deleted at a later date pursuant to the domestic law of the communicating State, or if data are no longer needed for the fulfilment of the task and if there is no reason to suppose that the deletion could endanger a person's interests deserving protection in the field of social security.

- (h) Both the communicating body and the receiving body shall be obliged to register purpose, subject and date of any communication of personal data as well as the communicating and receiving body.
  - (i) Both the communicating body and the receiving body shall be obliged to effectively protect the received personal data against accidental or unauthorized destruction, accidental loss, unauthorized access, unauthorized or accidental modification and unauthorized disclosure.
2. The provisions of paragraph 1 of this Article shall apply accordingly to trade and business secrets.

## **Article 21**

### **Refunds**

1. Where the competent agency of one Contracting State has made an overpayment of a benefit, the amount of the overpayment may be deducted from the arrears of a corresponding benefit payable under the legislation of the other Contracting State to the account of that agency.
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 agency had paid out the benefit before becoming aware of the benefits paid by the welfare institution.

## **Article 22**

### **Resolution of Disputes**

1. The competent authorities of the Contracting States shall resolve, to the extent possible, any difficulties which arise in the interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Contracting States shall consult each other promptly at the request of either Contracting State concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1 of this Article.

## **Part V**

### **Transitional and final provisions**

## **Article 23**

### **Transition provisions**

1. This Agreement shall not establish any entitlement for payment of a benefit for a period before its entry into force.
2. Any period of coverage completed under the legislation of a Contracting State before the entry into force of this Agreement, shall also be taken into consideration for the determination of rights acquired under this Agreement.

3. Subject to paragraph 1 of this Article, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not given rise to lump-sum payments.

4. The amount of a benefit due only by virtue of this Agreement shall be determined from the date of entry into force of this Agreement at the request of the beneficiary. Where the claim is submitted within two years from the entry into force of this Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Contracting State.

5. Benefits determined before the entry into force of this Agreement shall not be reviewed.

6. In applying paragraph 1 of Article 7, in case of persons who were sent to a Contracting State prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on the date of entry into force of this Agreement.

## **Article 24**

### **Entry into force, Period of Duration and Termination**

1. This Agreement shall enter into force on the first day of the third month following the month in which each Contracting State receives from the other Contracting State written notification that it has complied with all requirements for the entry into force of this Agreement.

2. This Agreement shall remain in force for an indefinite period. Either Contracting State may terminate it in writing, with twelve months previous notice.

3. In the event of termination of this Agreement, any right acquired under its provisions shall be maintained.

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

DONE at ....., on ....., in two originals each in the German, Hindi and English languages, all texts being equally authentic.

For the Republic of Austria:

For the Republic of India: