

**Administrative Arrangement  
for the Implementation of Article 6 to 10 of the Agreement  
between  
the Federal Republic of Germany  
and  
the Republic of India  
on Social security  
of 12<sup>th</sup> October 2011**

The Spitzenverband Bund der Krankenkassen (GKV-Spitzenverband), Deutsche Verbindungsstelle Krankenversicherung - Ausland (DVKA), (National Association of Statutory Health Insurance Funds, German Liaison Agency Health Insurance - international), Bonn, and the Employees Provident Fund Organisation (EPFO), New Delhi,

- on the basis of paragraph 4 and paragraph 5 of Article 20 of the Agreement
- with participation of the competent authorities, the Bundesministerium für Arbeit und Soziales (Federal Ministry of Labour and Social Affairs), Berlin, and the Ministry of Overseas Indian Affairs, New Delhi,
- for implementation of the provisions on the applicable legislation of the Agreement

have agreed upon the following:

**Article 1  
Definitions**

- (1) This Administrative Arrangement uses the terms contained in the Agreement in accordance with the definitions stipulated therein.
- (2) Agreements in accordance with Article 9 of the Agreement are referred to as "exceptional exemption agreements" in the present Administrative Arrangement.

## **Article 2 Detachment**

- (1) Detachment pursuant to Article 7 of the Agreement shall, inter alia, be conditional on the sending enterprise ordinarily engaging in considerable business activities in the sending State. A vital criterion in this regard is that the sending enterprise does not only employ administrative staff in the sending state.
- (2) Pursuant to paragraph 6 of Article 7 of the Agreement 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.
- (3) The procedure for exceptional exemption agreements shall apply mutatis mutandis where detachment is extended in accordance with paragraph 2 of Article 7 of the Agreement.
- (4) Periods of detachment to which the legislation of the Sending State continued to apply pursuant to Article 5 of the Agreement of 08 October 2008 between the Federal Republic of Germany and the Republic of India on Social Insurance shall be taken into account when calculating the agreed period of 48 calendar months pursuant to paragraph 4 of Article 7 of the Agreement.
- (5) in case of employment in an associated enterprise located in other Contracting State it is considered a case of detachment pursuant to Article 7 only if all the following conditions are met:
  - (i) Only one employment contract has been entered into with the employer in the sending state;
  - (ii) The economic value of the work performed by the employee exclusively accrues to the company/employer in the sending state;
  - (iii) Taxation of the remuneration takes place exclusively in the sending state; and
  - (iv) Remuneration of the employee is exclusively borne by the enterprise in the sending state.

## **Article 3 Exceptional exemption agreement**

- (1) Exceptional exemption agreements under Article 9 of the Agreement are decisions which are to consider the type and the circumstances of employment. These include the special know-how and skills of the employee.

- (2) Exceptional exemption agreements primarily aim to enable employees, who are ordinarily employed in one Contracting State and sent by their employer domiciled in that State to the other Contracting State for a pre-defined, limited period, to maintain their insurance in the first Contracting State without interruption. If, however, detachment of the employee to the other Contracting State is planned for more than five years from the outset, conclusion of an exceptional exemption agreement shall not come into question as a matter of principle.
- (3) During the period of his/her employment in the other Contracting State, the employee must remain committed to his/her former employer by an employment contract.
- (4) An employment contract in Germany which has been suspended with the guarantee to fully revive and continue in Germany the employment relationship on termination of the employment in India shall constitute a sufficient legal commitment within this meaning.

#### **Article 4** **Duration of exceptional exemption agreements**

- (1) Where the preconditions laid down in Article 3 of the present Arrangement apply, exceptional exemption agreements are as a matter of principle concluded for periods of employment of up to five years.
- (2) If a detachment to the other Contracting State initially planned for a maximum period of five years is extended, an additional exemption agreement may be concluded for a maximum period of three years, on condition that the special circumstances of the individual case, to be reasoned by the employer and the employee, justify such extension. Over and above this, an exceptional exemption agreement shall as a matter of principle be considered in cases where, for instance, the return to the first Contracting State or the retirement of the employee has been irrevocably determined to take place within a period of one year.
- (3) In case of repeated employment of the employee in the other Contracting State, a new exceptional exemption agreement shall only be considered on condition that the employee has in the meantime worked in the first Contracting State for a period of at least 12 months. Otherwise, the period for which an exceptional exemption agreement had already been concluded previously shall be deducted from the maximum agreement duration mentioned above.

## **Article 5**

### **Exceptional exemption agreements in Special Cases**

To promote culture, science, research and education, exceptional exemption agreements can be conducted for individuals employed in these even in deviation from Article 3 and 4 of the present Arrangement.

## **Article 6**

### **Application procedure for exemption agreements**

The joint application of the employee and the employer for conclusion of an exceptional exemption agreement shall be addressed to the designated body of the Contracting State whose legislation is to remain applicable (see paragraph 3 of Article 9 of the Agreement). This body shall reach a decision on said application in agreement with the competent body of the other Contracting State. Prior consultation shall not be required in this regard if the following preconditions apply cumulatively:

- employment of the employee in the other Contracting State is with an affiliated local company (e.g. subsidiary) of the employer domiciled in the first Contracting State,
- the employee was subject to the legislation of the first Contracting State immediately prior to the employment in the other Contracting State,
- the employee continues to be committed to his/her employer domiciled in the first Contracting State,
- employment of the employee in the other Contracting State has been limited in advance a maximum of five years,
- the employer domiciled in the first Contracting State has undertaken to meet the local registration and contribution obligations to social insurance in respect of this employee,
- and
- application for the exceptional exemption agreement was submitted to the competent body of the first Contracting State within six months of commencing of employment or of applied agreement period.

If the abovementioned preconditions are met, the competent body of the other Contracting State shall simply receive information to this effect. Such information must include the Personal data of the employee (last name, first name, date of birth and address), names and addresses of the employer in the first Contracting State and of the place of employment in the other Contracting State, the applicable Articles of the Agreement for further application of the legislation of the first Contracting State, as well as the period for which the legislation of the first Contracting State is to remain applicable.

This information shall be exchanged at the beginning of each quarter for the past quarter in the form of lists.

**Article 7**  
**Certificate on the applicable legislation**

- (1) In the circumstances mentioned in Article 4 of the Administrative Arrangement for implementation of the Agreement, the bodies mentioned therein are required to issue a certificate stating the applicable legislation. The respective forms agreed for these purposes shall be part of the present Arrangement.
- (2) Changes to the content of the forms may only be effected by mutual agreement.
- (3) Any change to these forms shall not affect the validity of the present Arrangement.

**Article 8**  
**Entry into force and termination**

- (1) The present Arrangement shall enter into force on the same day as the Agreement enters into force and shall be effective for the same period.
- (2) With the entry into force of the present Arrangement the Administrative Arrangement for the Implementation of the Agreement between the Federal Republic of Germany and the Republic of India on Social Insurance of 08 October 2008, signed at Munich on 25 June 2009, shall terminate.
- (3) Decisions on the applicable legislation made under the Agreement of 08 October 2008 and under the Administrative Arrangement of 25 June 2009 continue to be effective. This also applies to certificates on the applicable legislation issued on this basis.

Done at Bonn and New Delhi, the 22 January 2014 and \_\_\_\_\_ 2014, in duplicate 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**



GKV Spitzenverband,  
DVKA

For the **Republic of India**



Employee's Provident Fund  
Organization (EPFO)