

AGREEMENT
BETWEEN JAPAN AND THE REPUBLIC OF INDIA
ON SOCIAL SECURITY

AGREEMENT
BETWEEN JAPAN AND THE REPUBLIC OF INDIA
ON SOCIAL SECURITY

Japan and the Republic of India,

Being desirous of regulating their mutual relations in
the field of social security,

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1
Definitions

1. For the purpose of this Agreement:

- (a) The term "India" means the Republic of India;
- (b) The term "national" means,
 - as regards Japan,
a Japanese national within the meaning of the law
on nationality of Japan,
 - as regards India,
a person of Indian nationality;
- (c) The term "legislation" means,
 - as regards Japan,
the laws and regulations of Japan concerning the
Japanese pension systems specified in paragraph 1
of Article 2,
 - as regards India,
the laws and regulations specified in paragraph 2
of Article 2;
- (d) The term "competent authority" means,
 - as regards Japan,
any of the Governmental organizations competent
for the Japanese pension systems specified in
paragraph 1 of Article 2,
 - as regards India,
the Minister of Overseas Indian Affairs;

- (e) The term "competent institution" means,

as regards Japan,
any of the insurance institutions, or any
association thereof, responsible for the
implementation of the Japanese pension systems
specified in paragraph 1 of Article 2,

as regards India,
the Employees' Provident Fund Organization
(EPFO);
- (f) The term "period of coverage" means a period of
contribution under the legislation of a
Contracting State and any other period taken into
account under that legislation for establishing
entitlement to benefits,

however, a period which shall be taken into
account, for the purpose of establishing
entitlement to benefits under that legislation,
pursuant to other agreements on social security
comparable with this Agreement shall not be
included; and
- (g) The term "benefit" means a pension or any other
cash benefit under the legislation of a
Contracting State.

2. For the purpose of this Agreement, any term not
defined in this Agreement shall have the meaning assigned
to it under the applicable legislation.

Article 2 Scope of the Agreement

This Agreement shall apply,

- 1. as regards Japan, to the following Japanese pension
systems:
 - (a) the National Pension (except the National Pension
Fund);
 - (b) the Employees' Pension Insurance (except the
Employees' Pension Fund);
 - (c) the Mutual Aid Pension for National Public
Officials;

- (d) the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status (except the pension system for members of local assemblies); and
- (e) the Mutual Aid Pension for Private School Personnel;

(the Japanese pension systems specified in (b) to (e) shall hereinafter be referred to as the "Japanese pension systems for employees"),

however, for the purpose of this Agreement, the National Pension shall not include the Old Age Welfare Pension or any other pensions which are granted on a transitional or complementary basis for the purpose of welfare and which are payable wholly or mainly out of national budgetary resources; and

2. as regards India, to all laws and regulations concerning:

- (a) old-age and survivors' pension for employed persons; and
- (b) the permanent total disability pension for employed persons.

Article 3 Persons Covered

This Agreement shall apply to a person who is or has been subject to the legislation of a Contracting State and other persons who derive rights from such person.

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 that Contracting State.

However, the foregoing shall not affect the provisions on complementary periods for Japanese nationals on the basis of ordinary residence outside the territory of Japan under the legislation of Japan.

Article 5
Payment of Benefits Abroad

1. Unless otherwise provided in this Agreement, any provision of the legislation of a Contracting State which restricts entitlement to or payment of benefits solely because the person ordinarily resides outside the territory of that Contracting State shall not be applicable to persons who ordinarily reside in the territory of the other Contracting State.

However, the foregoing shall not affect the provisions of the legislation of Japan which require a person who is aged 60 or over but under 65 on the date of the first medical examination or of death to reside ordinarily in the territory of Japan for the acquisition of entitlement to the Disability Basic Pension or the Survivors' Basic Pension.

2. Benefits under the legislation of a Contracting State shall be paid to nationals of the other Contracting State who ordinarily reside in the territory of a third country, under the same conditions as if they were nationals of the first Contracting State.

3. Payments of benefits under this Agreement to beneficiaries who reside in the territory of the other Contracting State are effected directly in freely convertible currencies.

In case provisions for restricting the exchange of currencies or remittance are introduced by either Contracting State, the Governments of both Contracting States shall immediately consult on the measures necessary to ensure the payments of benefits by that Contracting State under this Agreement.

PART II
PROVISIONS CONCERNING
THE APPLICABLE LEGISLATION

Article 6
General Provisions

Unless otherwise provided in this Agreement, a person who works as an employee in the territory of a Contracting State shall, with respect to that employment, be subject only to the legislation of that Contracting State.

Article 7
Special Provisions

1. Where a person who is covered under the legislation of a Contracting State and employed in the territory of that Contracting State by an employer with a place of business in that territory is sent by that employer, either from that territory or from a territory of a third country, to work on that employer's behalf in the territory of the other Contracting State, the employee shall be subject only to the legislation of the first Contracting State as if that employee were working in the territory of the first Contracting State, provided that the period of such detachment is not expected to exceed five years.

2. If the detachment referred to in paragraph 1 of this Article continues beyond five years, the competent authorities or the competent institutions of both Contracting States may agree that the employee remains subject only to the legislation of the first Contracting State.

Article 8
Employees on Board a Sea-Going Vessel
or on an Aircraft

1. Where a person works as an employed person on board a sea-going vessel flying the flag of a Contracting State and would otherwise be subject to the legislation of both Contracting States, that person is subject only to the legislation of that Contracting State.

Notwithstanding the foregoing, that person shall be subject only to the legislation of the other Contracting State, if that person is employed by an employer with a place of business in the territory of that other Contracting State.

2. A person who works as an employee on an aircraft in international traffic shall, with respect to that employment, be subject only to the legislation of the Contracting State in whose territory the employer is located.

Article 9
Members of Diplomatic Missions,
Members of Consular Posts and Civil Servants

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or the Vienna Convention on Consular Relations of April 24, 1963.

2. Subject to paragraph 1 of this Article, where any civil servant of a Contracting State or any person treated as such in the legislation of that Contracting State is sent to work in the territory of the other Contracting State, that person shall be subject only to the legislation of the first Contracting State as if that person were working in the territory of the first Contracting State.

Article 10 Exceptions to Articles 6 to 9

At the request of an employee and an employer, the competent authorities or the competent institutions of both Contracting States may agree to grant an exception to Articles 6 to 9 in the interest of particular persons or categories of persons, provided that such persons or categories of persons shall be subject to the legislation of one of the Contracting States.

Article 11 Spouse and Children

While a person works in the territory of Japan and is subject only to the legislation of India in accordance with Article 7, paragraph 2 of Article 9 or Article 10, the spouse or children coming with that person shall be exempted from the legislation of Japan concerning the Japanese pension system specified in paragraph 1(a) of Article 2 provided that the requirements specified in the legislation of Japan concerning the enforcement of the agreements on social security are fulfilled. However, when those spouse or children so request, the foregoing shall not apply.

Article 12 Compulsory Coverage

Articles 6 to 8, paragraph 2 of Article 9 and Article 11 shall apply only to compulsory coverage under the legislation of each Contracting State.

PART III
PROVISIONS CONCERNING BENEFITS

Chapter 1
Provisions concerning Japanese Benefits

Article 13
Totalization

1. Where a person does not have sufficient periods of coverage to fulfill the requirement for entitlement to Japanese benefits, the competent institution of Japan shall take into account, for the purpose of establishing entitlement to those benefits under this Article, the periods of coverage under the legislation of India insofar as they do not coincide with the periods of coverage under the legislation of Japan.

However, the foregoing shall not apply to the additional pension for specified occupations under the mutual aid pensions and the lump-sum payments equivalent to the refund of contributions.

2. In applying paragraph 1 of this Article, the periods of coverage under the legislation of India shall be taken into account as periods of coverage under the Japanese pension systems for employees and as corresponding periods of coverage under the National Pension.

Article 14
Special Provisions concerning Disability Benefits
and Survivors' Benefits

1. Where the legislation of Japan requires for entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) that the date of the first medical examination or of death lies within specified periods of coverage, this requirement shall be deemed to be fulfilled for the purpose of establishing entitlement to those benefits if such a date lies within the periods of coverage under the legislation of India.

However, if entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) under the National Pension is established without applying this Article, this Article shall not be applied for the purpose of establishing entitlement to disability benefits or survivors' benefits (except the lump-sum payments equivalent to the refund of contributions) based on the same insured event under the Japanese pension systems for employees.

2. In applying paragraph 1 of this Article, as regards a person who possesses periods of coverage under two or more Japanese pension systems for employees, the requirement referred to in that paragraph shall be deemed to be fulfilled for one of those pension systems in accordance with the legislation of Japan.

Article 15 Calculation of the Amount of Benefits

1. Where entitlement to a Japanese benefit is established by virtue of paragraph 1 of Article 13 or paragraph 1 of Article 14, the competent institution of Japan shall calculate the amount of that benefit in accordance with the legislation of Japan, subject to paragraphs 2 to 6 of this Article.

2. With regard to the Disability Basic Pension and other benefits, the amount of which is a fixed sum granted regardless of the periods of coverage, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 13 or paragraph 1 of Article 14, the amount to be granted shall be calculated according to the proportion of the sum of the periods of contribution and the premium-exempted periods under the pension system from which such benefits will be paid to the theoretical period of coverage referred to in paragraph 4 of this Article.

3. With regard to disability benefits and survivors' benefits under the Japanese pension systems for employees, insofar as the amount of those benefits to be granted is calculated on the basis of the specified period determined by the legislation of Japan when the periods of coverage under those systems are less than that specified period, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 13 or paragraph 1 of Article 14, the amount to be granted shall be calculated according to the proportion of the periods of coverage under the Japanese pension systems for employees to the theoretical period of coverage referred to in paragraph 4 of this Article. However, when the theoretical period of coverage exceeds that specified period, the theoretical period of coverage shall be regarded as equal to that specified period.

4. For the purpose of paragraphs 2 and 3 of this Article, "theoretical period of coverage" means the sum of the following periods (except that it shall not include the period after the month in which the day of recognition of disability occurs or the period beginning with the month in which the day following the day of death occurs):

- (a) the period from the month in which the day of attainment of age 20 occurs through the month preceding the month in which the day of attainment of age 60 occurs, except the period before April 1, 1961;
- (b) periods of contribution under the legislation of Japan which do not coincide with the period referred to in subparagraph (a) of this paragraph; and
- (c) periods of coverage under the legislation of India which do not coincide with periods referred to in subparagraph (b) of this paragraph, in case the month in which the day of recognition of disability occurs or the month preceding the month in which the day following the day of death occurs is before the period referred to in subparagraph (a) of this paragraph.

5. With regard to the calculation of the amount of benefits under the Japanese pension systems for employees in accordance with paragraphs 2 and 3 of this Article, if the person entitled to the benefits possesses periods of coverage under two or more such pension systems, the periods of contribution under the pension system from which such benefits will be paid referred to in paragraph 2 of this Article or the periods of coverage under the Japanese pension systems for employees referred to in paragraph 3 of this Article shall be the sum of the periods of coverage under all such pension systems.

However, when the sum of the periods of coverage equals or exceeds the specified period determined by the legislation of Japan within the meaning of paragraph 3 of this Article, the method of calculation stipulated in paragraph 3 of this Article and this paragraph shall not apply.

6. With regard to the Additional Pension for Spouses which is included in the Old-age Employees' Pension and any other benefits that may be granted as a fixed sum in cases where the periods of coverage under the Japanese pension systems for employees equal or exceed the specified period determined by the legislation of Japan, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 13, the amount to be granted shall be calculated according to the proportion of those periods of coverage under the Japanese pension systems for employees from which such benefits will be paid to that specified period.

Chapter 2
Provisions concerning Indian Benefits

Article 16
Totalization

Notwithstanding the provisions of the legislation of India for the acquisition, retention or recovery of the right to old-age, survivors' and disability benefits, the periods of coverage under the legislation of Japan concerning such benefits are totalized, when necessary and to the extent that they do not overlap, with the periods of coverage under the legislation of India.

Article 17
Calculation of the Amount of Benefits

1. If a person is entitled to an old-age, survivors' or disability benefit under the legislation of India without necessarily proceeding to totalization, the competent institution of India shall determine the benefit entitlement directly on the basis of periods of coverage in India and only under the legislation of India.

2. If a person is entitled to an old-age, survivors' or disability benefit by virtue of the legislation of India, with his right being created solely by taking the totalization of the periods of coverage into account pursuant to Article 16, the following rules apply:

- (a) the competent institution of India 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 legislation of India; and
- (b) the competent institution of India 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 the legislation of India, in relation to the duration of all the periods of coverage accounted under (a).

Chapter 3
Common Provision

Article 18
Lump-sum Payments

A person specified in Article 3 may claim the following benefits;

1. as regards Japan, the person may claim the lump-sum payments upon withdrawal for persons other than Japanese nationals in accordance with the legislation of Japan; and

2. as regards India,

- (a) the person is entitled to withdraw the full amount standing to the person's credit under the Employees' Provident Funds Scheme, 1952, on ceasing to be an employee in an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and
- (b) the person is entitled to withdrawal benefit under the Employees' Pension Scheme, 1995, if the requirement of eligible services for monthly members' pension is not fulfilled even after including the totalization benefit as provided in the Agreement.

This paragraph shall also be applied to a person who had been subject to the legislation of India prior to the entry into force of this Agreement.

PART IV MISCELLANEOUS PROVISIONS

Article 19 Administrative Collaboration

1. The competent authorities of both Contracting States shall:

- (a) agree on the administrative measures necessary for the implementation of this Agreement;
- (b) designate liaison agencies for the implementation of this Agreement; and
- (c) communicate to each other, as soon as possible, all information about changes to their respective legislation insofar as those changes affect the implementation of this Agreement.

2. The competent authorities and competent institutions of both Contracting States, within the scope of their respective authorities, shall provide any assistance necessary for the implementation of this Agreement. This assistance shall be provided free of charge.

Article 20
Charges or Fees and Legalization

1. Insofar as the legislation and other relevant laws and regulations of a Contracting State contain provisions on an exemption or reduction of administrative charges or consular fees for documents to be submitted under the legislation of that Contracting State, those provisions shall also apply to documents to be submitted in the application of this Agreement and the legislation of the other Contracting State.

2. Documents which are presented for the purpose of this Agreement and the legislation of a Contracting State shall not require legalization or any other similar formality by diplomatic or consular authorities.

Article 21
Communication

1. In implementing this Agreement, the competent authorities and competent institutions of both Contracting States may communicate directly in Japanese, Hindi or English language with each other and with any concerned person wherever the person may reside.

2. In implementing this Agreement, the competent authorities and competent institutions of a Contracting State may not reject applications or any other documents for the reason that they are written in the language of the other Contracting State.

Article 22
Transmission and
Confidentiality of Information

1. The competent authorities or competent institutions of a Contracting State shall, in accordance with its laws and regulations, transmit to the competent authorities or competent institutions of the other Contracting State information about a person collected under the legislation of that Contracting State insofar as that information is necessary for the implementation of this Agreement. Unless otherwise required by the laws and regulations of that other Contracting State, that information shall be used exclusively for the purpose of implementing this Agreement.

2. Information referred to in paragraphs 1 of this Article received by a Contracting State shall be governed by the laws and regulations of that Contracting State for the protection of confidentiality of personal data.

Article 23
Submission of
Applications, Appeals and Declarations

1. When a written application for benefits, an appeal or any other declaration under the legislation of a Contracting State is submitted to a competent authority or competent institution of the other Contracting State which is competent to receive similar applications, appeals or declarations under the legislation of that other Contracting State, that application for benefits, appeal or declaration shall be deemed to be submitted on the same date to the competent authority or competent institution of the first Contracting State and shall be dealt with, according to the procedure and legislation of the first Contracting State.

2. The competent authority or competent institution of a Contracting State shall send the application for benefits, appeal or any other declaration submitted in accordance with paragraph 1 of this Article to the competent authority or competent institution of the other Contracting State without delay.

Article 24
Resolution of Disagreement

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Contracting States.

Article 25
Joint Committee

The Contracting States may establish a Joint Committee composed of representatives of the competent authorities and competent institutions of both Contracting States. This Joint Committee shall be responsible for monitoring the application of this Agreement. This Joint Committee shall meet when necessary either in Japan or India upon request by either Contracting State.

Article 26
Headings

The headings of Parts, Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

PART V
TRANSITIONAL AND FINAL PROVISIONS

Article 27
Events and Determinations prior
to the Entry into Force

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.
2. In the implementation of this Agreement, periods of coverage completed before its entry into force as well as other legally relevant events occurring before its entry into force shall also be taken into account.
3. In applying paragraph 1 of Article 7, in the case of a person who has been working in the territory of a Contracting State prior to the entry into force of this Agreement, the periods of detachment referred to in paragraph 1 of Article 7 shall be considered to begin on the date of entry into force of this Agreement.
4. Determinations concerning entitlement to benefits made before the entry into force of this Agreement shall not affect any rights to be established by virtue of this Agreement.
5. The application of this Agreement shall not, for a beneficiary, result in any reduction in the amount of benefits to which entitlement was established before the entry into force of this Agreement.
6. This Agreement shall not apply to rights settled by a lump-sum payment or a refund of contributions.

Article 28
Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which the Contracting States shall have completed an exchange of diplomatic notes informing each other that their respective constitutional requirements necessary for the entry into force of this Agreement have been fulfilled.

Article 29
Duration and Termination

1. This Agreement shall remain in force for an indefinite period. Either Contracting State may give to the other Contracting State, through diplomatic channels, written notice of termination of this Agreement. In that event, this Agreement shall remain in force until the last day of the twelfth month following the month in which the termination was notified.

2. If this Agreement is terminated in accordance with paragraph 1 of this Article, rights regarding entitlement to and payment of benefits acquired under this Agreement shall be retained.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Tokyo on November 16, 2012, in duplicate in the English language.

For Japan:

玄葉光一郎

For the Republic of India:

Deepa Gopalan Wadhwa