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Sommaire

**CONVENTION DE SÉCURITÉ SOCIALE:
LUXEMBOURG – INDE**

Loi du 18 avril 2010 portant approbation de la Convention de sécurité sociale entre le Grand-Duché de Luxembourg et la République de l'Inde, signée à Luxembourg, le 30 septembre 2009 . . . page [1252](#)

Loi du 18 avril 2010 portant approbation de la Convention de sécurité sociale entre le Grand-Duché de Luxembourg et la République de l'Inde, signée à Luxembourg, le 30 septembre 2009.

Nous Henri, Grand-Duc de Luxembourg, Duc de Nassau,

Notre Conseil d'Etat entendu;

De l'assentiment de la Chambre des Députés;

Vu la décision de la Chambre des Députés du 17 mars 2010 et celle du Conseil d'Etat du 23 mars 2010 portant qu'il n'y a pas lieu à second vote;

Avons ordonné et ordonnons:

Article unique. Est approuvée la Convention de sécurité sociale entre le Grand-Duché de Luxembourg et la République de l'Inde, signée à Luxembourg, le 30 septembre 2009.

Mandons et ordonnons que la présente loi soit insérée au Mémorial pour être exécutée et observée par tous ceux que la chose concerne.

Le Ministre des Affaires étrangères,

Jean Asselborn

Château de Berg, le 18 avril 2010.

Henri

Le Ministre de la Sécurité sociale,

Mars Di Bartolomeo

Doc. parl. 6106; sess. ord. 2009-2010.

**AGREEMENT ON SOCIAL SECURITY
between the Grand Duchy of Luxembourg
and the Republic of India**

The Grand Duchy of Luxembourg

and

the Republic of India,

wishing to arrange the mutual relations between the two countries in the field of social security, decided to conclude an Agreement for this purpose and agreed as follows:

PART I

General provisions

Article 1

Definitions

1. For the implementation of this Agreement:

- a) The term «Luxembourg» means: The Grand Duchy of Luxembourg;
the term «India» means: the Republic of India.
- b) The term «national» means:
as regards Luxembourg: a person of Luxembourg nationality;
as regards India: a person of Indian nationality.
- c) The term «legislation» means: the laws specified in Article 2 or any rules, regulations, schemes, orders or notifications framed thereunder.
- d) The term «authority» means:
the Ministers, each to the extent that he is responsible for the implementation of the legislation specified in paragraph 1 of Article 2.
- e) The term «agency» means:
the institution, the organization or the authority responsible in full or in part for the implementation of the legislation specified in paragraph 1 of Article 2.
- f) The term «insurance period» means: any period of contributions recognized as such in the legislation under which that period was completed, as well as any period recognized as equivalent to a period of contribution under that legislation.
- g) The term «benefit» means: any pension or benefit in cash, including any supplements or increases applicable under the legislation specified in Article 2.

- h) The term «family members» means: any person defined or recognized as a family member or designated as a member of the household by the legislations of Luxembourg and India respectively.
 - i) The term «residence» means: habitual residence.
2. Any term not defined in paragraph 1 of this Article shall have the meaning assigned to it in the applicable legislation.

Article 2

Legislative Scope

1. This Agreement shall apply:
- a) as regards Luxembourg, to the legislations concerning:
 - (i) pension insurance in case of old-age, invalidity and survivorship;
 - (ii) Articles 2 and 173 of the Social security Code, for the purpose of Article 7
 and, as regards Part II only, to the legislations concerning:
 - (iii) the social security for employed persons (sickness insurance, accidents at work and occupational diseases insurance, unemployment benefits and family benefits);
 - b) as regards India, to all legislations concerning:
 - (i) old-age and survivors' pension for employed persons;
 - (ii) the Permanent Total Disability pension for employed persons
 and, as regards Part II only, to the legislations concerning:
 - (iii) the social security for employed persons.
2. This Agreement shall also apply to all legislation which will amend or extend the legislation specified in paragraph 1 of this Article.

It shall apply to any legislation which will extend the existing schemes to new categories of beneficiaries, unless, in this respect, the Contracting State which has amended its legislation notifies within six months of the official publication of the said legislation the other Contracting State of its objections to the inclusion of such new categories of beneficiaries.

This Agreement shall not apply to legislations that establish a new social security branch, unless the competent authorities of the Contracting States agree on this application.

Article 3

Personal Scope

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

Equality of Treatment

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.

Article 5

Export of Benefits

1. 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. The old-age, disability/invalidity and survivors' benefits due by virtue of the legislation of one Contracting State are paid to the nationals of the other Contracting State residing in the territory of a third State, under the same conditions as if they were nationals of the first Contracting State.

Article 6

Reduction or Suspension Clauses

The reduction or suspension clauses provided for in the legislation of one Contracting State, in case one benefit coincides with other social security benefits or with other professional incomes, shall be applied to the beneficiaries, even if these benefits were acquired by virtue of a scheme of the other Contracting State, or if the related professional activities are exercised in the territory of the other Contracting State. However, this provision shall not apply when benefits of the same nature coincide.

Article 7

Admission to Optional Continued Insurance

1. The provisions of the legislation of one Contracting State which make the admission to optional continued insurance conditional upon residence in the territory of that State, shall not apply to persons resident in the territory of the other Contracting State, provided that at some time in their past working life they were subject to the legislation of the first Contracting State as employed persons.
2. Where under the legislation of one Contracting State admission to optional continued insurance is conditional upon completion of insurance periods, the insurance periods completed under the legislation of the other Contracting State shall be taken into account, to the extent necessary, as if they were completed under the legislation of the first Contracting State.
3. Beneficiaries of an old-age, invalidity or survivors' pension solely under the legislation of India and who reside in Luxembourg, may contract an optional continued sickness insurance, according to the provisions of the legislation of Luxembourg.

PART II

Provisions concerning the applicable legislation

Article 8

General Provisions

Subject to Articles 9 to 11, the applicable legislation is determined according to the following provisions:

- a) 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;
- b) 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;
- c) 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 the State in which he/she has his/her residence.

Article 9

Posted Workers

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. The family members who accompany the employed person will be subject to the legislation of that former Contracting State unless they exercise professional activities.
2. If the detachment referred to in paragraph 1 of this Article continues beyond 60 months, the competent authorities of the two Contracting States or the competent agencies designated by those competent authorities may agree to extend the period of posting.
3. 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.

Article 10

Civil Servants, Members of Diplomatic Missions and Consular Posts

1. Civil servants and equivalent personnel are subject to the legislation of the Contracting State whose administration employs them. These persons, as well as their family members are, for this purpose, considered to be residing in that Contracting State, even if they are in the territory of the other Contracting State.
2. 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.

Article 11

Modification Provision

In the interest of certain insured persons or certain categories of insured persons, the competent authorities can, by mutual agreement, specify modifications to the provisions of Articles 8 to 10 provided that the affected persons shall be subject to the legislation of one of the Contracting States.

PART III

Provisions concerning benefits

Chapter 1 – General Principles

Article 12

Totalization

For the acquisition, retention or recovery of the right to old-age, disability/invalidity and survivors' benefits, the insurance periods completed pursuant to the legislation of one Contracting State are totalized, when necessary and to the extent that they do not overlap, with the insurance periods completed pursuant to the legislation of the other Contracting State.

Article 13

Extension of the Reference Period

If the legislation of one Contracting State makes the entitlement to benefits conditional upon the completion of a minimum insurance period during a specified period preceding the insured contingency (reference period), and lays down that certain facts or circumstances shall extend this reference period, those facts and circumstances have the same effect when they occur on the territory of the other Contracting State.

**Chapter 2 – Provisions concerning Luxembourg Old-age,
Invalidity and Survivors' Benefits**

Article 14

Calculation of Benefits

1. If a person is entitled to an old-age, invalidity or survivors' benefit under the Luxembourg legislation without applying Articles 12 and 17 of this Agreement, the Luxembourg institution shall calculate, according to the Luxembourg legislation, the benefit on the basis of the total duration of insurance periods to be taken account of by virtue of the Luxembourg legislation.

That institution shall also calculate the amount of the old-age, invalidity or survivors' benefit that would be obtained by applying the rules specified in paragraph 2.

Only the higher of these two amounts shall be taken into consideration.

2. If a person is entitled to an old-age, invalidity or survivors' benefit by virtue of the Luxembourg legislation only by taking into account the totalization pursuant to Articles 12 and 17 of this Agreement, the following rules apply:

- a) the Luxembourg institution shall calculate the theoretical amount of the pension due as if all the insurance periods completed according to the two Contracting States' legislations were exclusively completed under the Luxembourg legislation;
- b) for determining the theoretical amount referred to under a), the calculation basis is established by reference only to those insurance periods completed under Luxembourg legislation;
- c) the Luxembourg institution shall then calculate the amount due, on the basis of the amount specified under a), in proportion to the duration of the insurance periods under its legislation, in relation to the total duration of insurance periods completed under both Contracting States' legislations.

3. Where the conditions required for the entitlement to an old-age, invalidity or survivors' benefit are satisfied only after application of Article 17 of this Agreement, the insurance periods completed under the legislation of a third State are considered for the application of paragraph 2.

Article 15

Particular Provision of Luxembourg Legislation (baby-years)

When calculating a pension, the provisions of Article 12 of this Agreement shall apply for the acknowledgement of the baby-years provided by the Luxembourg legislation, under the condition that the person concerned last completed insurance periods under Luxembourg legislation before the birth or adoption of the child.

**Chapter 3 – Provisions concerning Indian Old-age,
Survivors' and Disability Benefits**

Article 16

Calculation of Benefits

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

2. If a person is entitled to an old-age, survivors' or disability benefit by virtue of the Indian legislation, with his right being created solely by taking the totalization of the insurance periods into account pursuant to Article 12, the following rules apply:

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

Chapter 4 – Common Provisions

Article 17

Totalization of Insurance Periods completed in a Third State

If a person is not entitled to a benefit on basis of the insurance periods completed under the legislations of both Contracting States, totalized as foreseen by this Agreement, the right to the said benefit is determined by totalizing those periods with the insurance periods completed under the legislation of a third State, with whom both Contracting States are bound by a bilateral or multilateral agreement on social security, providing for the totalization of insurance periods.

Article 18

Recalculation of Benefits

1. If, because of the rising cost of living, the variation of the wage levels or other adaptation clauses, the old-age, survivors', invalidity or disability benefits of either Contracting State are changed with a given percentage or amount, that percentage or amount should be directly applied to the old-age, survivors', invalidity or disability benefits of that Contracting State, without the other Contracting State having to proceed to a new calculation of the old-age, survivors', invalidity or disability benefits.
2. On the other hand, in case of modification of the rules or of the computation process with regard to the establishment of the old-age, survivors', invalidity or disability benefits a new computation shall be performed according to Article 14 or 16.

PART IV

Miscellaneous provisions

Article 19

Responsibilities of the Competent Authorities

The competent authorities:

- a) shall take, by means of an administrative arrangement the measures required to implement this Agreement, including measures concerning taking into account of insurance periods, and shall designate the liaison agencies and the competent agencies;
- b) shall define the procedures for mutual administrative assistance, including the sharing of expenses associated with obtaining medical, administrative and other evidence required for the implementation of this Agreement;
- c) shall directly communicate to each other any information concerning the measures taken for the application of this Agreement;
- d) shall directly communicate to each other, as soon as possible, all changes in their legislation to the extent that these changes might affect the application of this Agreement.

Article 20

Administrative Collaboration

1. For the implementation of this Agreement, the competent authorities as well as the competent agencies of both Contracting States shall assist each other with regard to the determination of entitlement to or payment of any benefit under this Agreement as they would for the application of their own legislation. In principle, this assistance shall be provided free of charge; however, the competent authorities may agree on the reimbursement of some expenses.
2. The benefit of the exemptions or reductions of taxes, of stamp duties or of registration or recording fees provided for by the legislation of one Contracting State in respect of certificates or other documents which must be produced for the application of the legislation of that State shall be extended to certificates and similar documents to be produced for the application of the legislation of the other State.

3. Documents and certificates which must be produced for the implementation of this Agreement shall be exempt from authentication by diplomatic or consular authorities.

Copies of documents which are certified as true and exact copies by an organization of one Contracting State shall be accepted as true and exact copies by the organization of the other Contracting State, without further certification.

4. For the implementation of this Agreement, the competent authorities and agencies of the Contracting States may communicate directly with each other as well as with any person, regardless of the residence of such persons. Such communication may be made in one of the languages used for the official purposes of the Contracting States.

An application or document may not be rejected by the competent authority or organizations of a Contracting State solely because it is in an official language of the other Contracting State.

Article 21

Claims, Notices and Appeals

1. Claims, notices or appeals which, according to the legislation of one of the Contracting States, should have been submitted within a specified period to the authority or agency of that Contracting State, are acceptable if they are presented within the same specified period to an authority or agency of the other Contracting State. In this case, the claims, notices or appeals must be sent without delay to the authority or agency of the former Contracting State, either directly or through the competent authorities of the Contracting States.

The date on which these claims, notices or appeals have been submitted to an authority or agency of the second Contracting State shall be considered to be the date of submission to the authority or agency authorized to accept such claims, notices or appeals.

2. An application for benefits under the legislation of one Contracting State shall be deemed to be also an application for a benefit of same nature under the legislation of the other Contracting State provided that the applicant so wishes and provides information indicating that insurance periods have been completed under the legislation of the other Contracting State.

Article 22

Confidentiality of Information

Unless otherwise required by the national laws and regulations of a Contracting State, information about an individual which is transmitted in accordance with this Agreement to the competent authority or agency of that Contracting State by the competent authority or agency of the other Contracting State shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a competent authority or agency of a Contracting State shall be governed by the national laws and regulations of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 23

Payment of Benefits

1. Payments of benefits under this Agreement may be made in the currency of either Contracting State.

2. 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 24

Resolution of Disputes

Disputes which arise in interpreting or applying this Agreement shall be resolved, to the extent possible, by the competent authorities.

PART V

Transitional and final provisions

Article 25

Events prior to the Entry into Force of the Agreement

1. This Agreement shall also apply to events which occurred prior to its entry into force.

2. This Agreement shall not create any entitlement to benefits for any period prior to its entry into force.

3. All insurance periods completed under the legislation of one of the Contracting States prior to the date on which this Agreement enters into force shall be taken into consideration in determining entitlement to any benefit in accordance with the provisions of this Agreement.

4. This Agreement shall not apply to rights that were liquidated by the granting of a lump sum payment or the reimbursement of contributions.

5. Before the date of entry into force of this Agreement, persons sent to a Contracting State are considered to be under the legislation of that State and Article 9 would be applied only after the date of entry into force of this Agreement.

Article 26

Revision, Prescription, Forfeiture

1. Any benefit that was not paid or that was suspended by reason of the nationality of the interested person or by reason of his residence in the territory of a Contracting State other than that in which the agency responsible for payment is located, shall, on application by the interested person, be paid or restored from the entry into force of this Agreement.

2. The entitlement of interested persons who, prior to the entry into force of this Agreement, obtained the payment of a benefit may be revised upon application by those persons, in accordance with the provisions of this Agreement. In no case shall such a revision result in a reduction of the prior entitlement of the interested persons.

3. If the application referred to in paragraph 1 or 2 of this Article is made within two years of the date of the entry into force of this Agreement, any entitlement arising from the implementation of this Agreement shall be effective from that date, and the legislation of either Contracting State concerning the forfeiture or the prescription of rights shall not be applicable to such interested persons.

4. If the application referred to in paragraph 1 or 2 of this Article is made after two years following the entry into force of this Agreement, the entitlements which are not subject to forfeiture or which are not yet prescribed shall be acquired from the date of the application, unless more favourable legislative provisions of the Contracting State concerned are applicable.

Article 27

Duration

This Agreement is concluded without any limitation on its duration. It may be terminated by either Contracting State giving twelve months' notice in writing to the other State.

Article 28

Guarantee of Rights that are acquired or in the course of Acquisition

In the event of termination of this Agreement, any rights and payment of benefits acquired by virtue of the Agreement shall be maintained. The Contracting States shall make arrangements regarding the rights in the course of acquisition.

Article 29

Entry into Force

This Agreement shall enter into force on the first day of the third month following the date of receipt of the note through which the last of both Contracting States will have given notice to the other Contracting State that all domestic requirements have been accomplished.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Luxembourg on the 30th September 2009 in English language in two originals.

For the Grand Duchy of Luxembourg:

Mars DI BARTOLOMEO

Minister of Social Security

For the Republic of India:

Vayalar RAVI

Minister of Overseas Indian Affairs