

AGREEMENT BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE NEW DEVELOPMENT BANK ON THE HOSTING OF THE NEW DEVELOPMENT BANK AMERICAS REGIONAL OFFICE IN THE FEDERATIVE REPUBLIC OF BRAZIL

Preamble

The Federative Republic of Brazil

and

the New Development Bank
(hereinafter jointly referred to as the "Parties" and in the singular as a "Party");

TAKING INTO ACCOUNT the Agreement on the New Development Bank and its Annex on the Articles of Agreement of the New Development Bank between the Governments of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa, signed in Fortaleza, on 15 July 2014;

RECALLING Article 4 of the Articles of Agreement of the New Development Bank contained in the Annex to the Agreement on the New Development Bank, which stipulates that the New Development Bank may establish offices necessary for the performance of its functions;

FURTHER RECALLING the BRICS Ministerial Meeting held in Fortaleza on 15 July 2014, on which occasion it was decided that the second regional office of the New Development Bank shall be established in Brazil;

DESIROUS THEREFORE to conclude an agreement regarding the hosting of the New Development Bank office in the Federative Republic of Brazil;

HAVE AGREED as follows:

Article 1
Definitions

For the purpose of this Agreement, including all annexes, appendices and all amendments made from time to time, the following terms shall have, unless the context otherwise requires, the meanings ascribed to them as below:

(a) "Americas Regional Office" means the regional office of the New Development Bank in the Federative Republic of Brazil;

- (b) "Agreement on the New Development Bank" means the Agreement on the New Development Bank including its Annex between the Governments of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa, signed on 15 July 2014 at the city of Fortaleza, Brazil and any amendments thereto;
- (c) "Archives of the Bank" means the records, correspondence, documents, manuscripts, still and moving pictures, films, sound recordings, electronic records including email, computer programs, written materials, video tapes or discs, discs or tapes containing data, and any information contained therein stored in electronic form or any other form whatsoever, belonging to, or held by the Bank;
- (d) "Bank" means the New Development Bank, including the Americas Regional Office, unless specifically referred to separately;
- (e) "Brazil" means the Federative Republic of Brazil and its territory;
- (f) "Director-General" means the principal executive officer of the Americas Regional Office, appointed by the Bank, and, during her or his absence or incapacity, the person authorized to act as Director-General;
- (g) "Experts and Consultants" means persons who, not being Staff of the Bank, have been contracted by the Bank via global recruitment process in accordance with the provisions of the Human Resources policies of the Bank for the purpose of providing expertise and performing certain tasks for or on behalf of the Bank;
- (h) "Government" means the Government of the Federative Republic of Brazil;
- (i) "Laws of the Federative Republic of Brazil, or: laws of Brazil" includes the Constitution of the Federative Republic of Brazil and legislative acts, decrees, regulations and orders issued by, or under authority of, the Government or any appropriate authority in the Federative Republic of Brazil;
- (j) "Local Staff" means persons who are locally hired to perform administrative and support activities for the Bank in accordance with the provisions of the Human Resources policies of the Bank;
- (k) "Member" means a member of the Bank as defined in the Agreement on the New Development Bank;
- (l) "Member of the family" means the spouse and dependent children under the age of 18 years, any other dependent family member officially recognized as such by the Bank, and the spouse or life partner of a Staff member officially recognized as such by the Bank, it being understood that the Government may also consider members of the family other persons, in accordance with

applicable legislation and practice;

- (m) "Premises" means the land, building, parts of building and includes access facilities for the official purposes of the Americas Regional Office;
- (n) "President" means the President of the Bank and, during her or his absence or incapacity, the person authorized to act as President; and
- (o) "Staff of the Bank" or "Staff" means persons employed by the Bank, to work at the Americas Regional Office, in accordance with the provisions of the Human Resources policies of the Bank and other relevant internal regulations in force, and excluding the Local Staff and all other persons assigned on hourly rates.

Article 2

Seat of the Americas Regional Office

- (1) The seat of the Americas Regional Office shall be in the city of São Paulo.
- (2) The Bank may establish Premises also in Brasília, and, upon consent by the Government, other cities within Brazil.

Article 3

Functions and activities of the Americas Regional Office

The Americas Regional Office shall undertake such functions and activities pursuant to provisions of the Agreement on the New Development Bank and, in conformity with the said Agreement and this Agreement, other activities as determined by the Bank.

Article 4

Legal personality

- (1) The Government recognizes the international legal personality and capacity of the Bank for the purposes of exercising its functions in Brazil including to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.
- (2) The Americas Regional Office shall have the independence and freedom of action similar to those available to other international organizations operating in Brazil.
- (3) The Americas Regional Office shall have the right to display the Bank's flag and its emblem on the Premises and the motor vehicles belonging to or in use by the Bank for the President and the Director-General.

Article 5

Premises and facilities

(1) The Government shall provide or arrange for suitable office accommodation to serve as the seat of the Americas Regional Office in São Paulo and its sub-office in Brasília, as well as such other facilities as required for the operations of the Americas Regional Office and its sub-office. The terms of such support, including its duration, shall be agreed upon by the pertinent authorities of Brazil and the Bank. The Government shall be responsible for maintenance and repairs of a non-recurring nature of the Americas Regional Office and its sub-office, as well as for their accommodation, furniture, equipment and other facilities required for the operation of the Americas Regional Office and its sub-office. The terms of such support, including its duration, shall also be agreed upon by the pertinent authorities of Brazil and the Bank.

(2) The office accommodation, its furniture and equipment and the other facilities referred to in paragraph (1) above shall be determined in consultation with the Bank.

(3) The Bank shall be responsible for the day-to-day maintenance of the Premises, furniture and equipment other than on account of normal wear and tear, and making arrangements for any other services as may be required by it.

(4) As the operations of the Americas Regional Office evolve, the Bank and the Government will consider building and furnishing a suitable office building to serve as permanent seat of the Americas Regional Office. The Government shall provide a suitable plot of land, subject to availability, and facilitate the construction of the building to be undertaken by the Bank, it being understood that the Government will not be required to cover the expenses related to construction.

Article 6

Immunity of property, funds and assets

(1) The Bank and its property, funds and assets, wherever located and by whomsoever held, shall enjoy the status, immunities and privileges as provided for by Chapter VI of the Annex of the Agreement on the New Development Bank, except:

- (a) to the extent that the Bank shall have expressly waived such immunity in any particular case in accordance with the provisions of Article 36 of the Annex of "Articles of Agreement of the New Development Bank";
- (b) in respect of every form of legal process in Brazil, which, for the purposes of this paragraph, include administrative procedures, arising out of or in connection with its powers to raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities;
- (c) in respect of a civil action brought by a third party for damages arising from an accident caused by a vehicle belonging to the Bank or operated on its behalf;
- (d) in respect of the enforcement of an arbitration award made against the Bank as a result of an express submission to arbitration by or on behalf of the Bank;

or

(e) in respect of any counter-claim directly connected with court proceedings initiated by the Bank.

(2) The property of the Bank shall be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

(3) The property, funds and assets of the Bank wherever situated in Brazil and by whomsoever held, shall be immune from seizure, search, requisition, foreclosure, confiscation, expropriation and any other form of interference whether by executive, administrative, judicial or legislative action. To the extent necessary for the operation of the Americas Regional Office in Brazil and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

(4) No action shall be brought against the Bank by the Government, or by any of its agencies or instrumentalities or by any entity or person directly or indirectly acting for or deriving claims from the Government or from any of its agencies or instrumentalities.

Article 7

Inviolability of the premises and archives and immunity of property and assets

(1) The Premises shall be inviolable and under the exclusive control and authority of the Americas Regional Office. The property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

(2) The Archives of the Bank shall be inviolable, wherever located and by whomsoever held within Brazil.

(3) The authorities of Brazil shall not enter the Premises for any reason, including the performance of any official duties therein or execution of any legal process or to perform any ancillary act such as the seizure of private property. All entries shall be subject to the consent and conditions agreed to by the Director-General.

(4) The Director-General and the Government shall agree on the circumstances under and the manner in which the authorities of Brazil may enter the Premises. In the event of natural disaster, fire or any other emergency, constituting an immediate threat to human life, the consent of the Bank to enter the Premises is presumed. The entry into the Premises under these conditions shall be immediately communicated to the Director-General by the appropriate authorities.

(5) The Bank shall have the power to make rules and regulations operative within the Premises for the full independent exercise of its operations, administration and performance of its activities and functions. Except as otherwise provided in this Agreement, or in the Agreement on the New Development Bank, the laws of Brazil shall apply within the Premises. The Bank, its Staff, Local Staff, Experts and Consultants shall respect the laws of Brazil.

(6) Without prejudice to the terms of this Agreement, the Bank shall prevent the Premises from becoming a refuge for fugitives from justice, or for persons subject to extradition, or persons avoiding service of legal process or judicial proceedings under the laws of Brazil.

Article 8

Protection of the premises

The Government shall exercise due diligence to ensure the safety and tranquility of the Premises. The Government shall accord to it the same protection and provide security to it on the same basis as is provided to other international organizations and diplomatic missions operating in Brazil in accordance with the Vienna Convention on Diplomatic Relations, 1961.

Article 9

Public utility services

(1) The Government undertakes to assist the Bank for the purposes of the operation of the Americas Regional Office, to the extent necessary, in making available necessary public services, including but not limited to water, electricity, telephone, fax, internet and other facilities at rates or charges not less favorable than those charged to other comparable international organizations, and in the case of interruption or threatened interruption of service, to give, as far as within its powers, the same priority to the needs of the Bank as to other comparable international organizations and shall take appropriate measures to ensure that the operations of the Americas Regional Office are not prejudiced.

(2) The Americas Regional Office shall allow duly authorized representatives of public utilities to inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the Premises in accordance with the procedures established in consultation with the Bank.

Article 10

Facilities in respect of communications

(1) The Bank shall enjoy, in respect of their official communications and the transfer of documents, treatment no less favorable than that accorded by the Government to other international organizations or any other government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mail, cablegrams, telephotos, telephone, telegraph, telex, telefax, internet and other modes of communication.

(2) The official communications and correspondence to, from and between the Bank and/or the Americas Regional Office, in whatever form transmitted, shall be inviolable and shall not be subject to any censorship or any form of interference. For the purposes of this Article, "communications" shall include, but not be limited to, publications, documents, still and moving pictures, films and sound recordings, and electronic and other modes of communication.

(3) The Bank shall have the right to use codes and to dispatch and receive correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Article 11

Exemption from taxation, customs duties, prohibitions or restrictions on imports and exports

(1) With respect to all official activities, operations and transactions, the Bank, its assets, income and property in Brazil shall be:

(a) exempt from all forms of direct and, subject to the laws of Brazil, indirect taxation, in a manner not less favorable than the one applicable to other international organizations in Brazil; it being understood, however, that it will not claim exemption from taxes which are, in fact, no more than charges for public utility services paid by other international organizations in Brazil;

(b) exempt from all customs duties, prohibitions and restrictions on goods and articles, including motor vehicles and spare parts, publications, films, still and moving pictures, imported or exported for its official purposes. It is understood, however, that goods imported under such exemption shall be limited to a reasonable quantity and will only be sold in accordance with the laws of Brazil.

(2) While the Bank will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, when the Americas Regional Office makes important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will make, in accordance with the laws of Brazil, appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article 12

Financial transactions

The Bank may hold and use funds or negotiable instruments of any kind. The Government recognizes the right of the Bank to maintain and operate accounts in any currency and convert any currency held by it into any other currency. The Bank may freely transfer its funds into Brazil and, through a non-resident bank account, may also at any time freely transfer all or part of the balance thereof out of Brazil, which for that purpose may be switched into any foreign currency.

Article 13

Immunities and privileges of the Director-General and Staff

(1) The Government shall accord to Director-General and members of his or her

family, the same privileges and immunities, exemptions and facilities, including those related to tax exemption, as accorded to heads of diplomatic missions.

(2) The Government shall accord to the Staff, as applicable, the following status, immunities and privileges:

- (a) immunity from jurisdiction and all forms of legal process in respect of words spoken or written and all acts performed by them in their official capacity, which shall continue after their termination of service;
- (b) immunity from personal arrest or detention for all acts performed by them in their official capacity, which shall continue after their termination of service;
- (c) exemption from taxation in respect of salaries and emoluments paid by the Bank;
- (d) immunity from national service obligations;
- (e) immunity, together with members of their family, from immigration restrictions and alien registration and from formalities for the purposes of immigration control;
- (f) the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
- (g) the same treatment in respect of travelling facilities as it is generally accorded to officials of comparable rank of diplomatic missions;
- (h) together with members of their family, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic missions;
- (i) freedom of movement, within or from Brazil to the extent necessary for carrying out their activities and functions for and on behalf of the Bank and for the purpose of their official communications, to use codes and receive papers and correspondence by courier or sealed in bags;
- (j) the same immunities and facilities, including immunity from inspection and seizure of their official baggage, as are accorded to officials in diplomatic missions;
- (k) refund of indirect taxes on purchase of goods and services procured or chargeable in Brazil, when such possibility is provided for under the laws of Brazil;
- (l) the right for personal use, free of duty or other levies, prohibitions and restrictions (i) to import at the time of first taking up their post and within a period of 6 (six) months and (ii) to export, upon termination of their services with the Bank, within a period of 1 (one) year;

- a. their furniture and personal effects; and
- b. 1 (one) motor vehicle.

(3) Articles imported under such exemptions will not be sold in Brazil except under conditions agreed upon with the Government and in any case not being less favorable than those extended to officials of comparable ranks of other international organizations in Brazil.

(4) Nationals or permanent residents of Brazil who are appointed as the Director-General or employed as Staff shall be entitled only to the immunities set out in paragraph 2 (a), (c) and (j) of this Article.

(5) The Bank shall communicate to the Government the names of Staff and members of their family to whom the provisions of the present Article are applicable.

(6) The Government shall provide the Director-General, Staff and members of the family with a special identity card which shall serve to identify the holder to the authorities of Brazil and to certify that the holder enjoys the privileges and immunities specified in this Agreement. Upon the termination of employment or reassignment from Brazil, the special identity card shall be returned promptly to the Government for cancellation.

(7) The Government shall authorize and facilitate the registration of vehicles utilized by the Director-General and Staff as vehicles of similar status of comparable international organizations accredited in Brazil, and issue them with license plates.

(8) The Director-General and the Staff shall be subject to Brazilian social security legislation, except if covered by another social security system.

Article 14

Immunities and privileges of Governors, Directors and representatives of Members of the bank

All Governors, Directors and representatives of Members of the Bank shall have the following immunities and privileges when travelling to Brazil on official missions:

- (a) immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity;
- (b) when not Brazilian nationals, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange provisions as are accorded by Brazil to the representatives, officials, and employees of comparable rank of other members;
- (c) the same privileges in respect of traveling facilities as are accorded by Brazil to representatives, officials and employees of comparable rank or other members.

Article 15

Immunities and privileges of Experts and Consultants

(1) Experts and Consultants performing functions for the Bank shall have the following immunities and privileges as are necessary for the independent exercise of their functions during the period of their mission or contract, including time spent on journeys in connection with their functions:

- (a) immunity from jurisdiction and legal process, including detention and arrest, even after termination of their mission or service, in respect of acts performed by them in their official capacity, including words written or spoken by them;
- (b) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (c) the same protection and repatriation facilities with respect to themselves, and members of their families, as are accorded in time of international crisis to persons of comparable rank of diplomatic missions;
- (d) for the purpose of their communication with the Bank, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) exemption from taxation in respect of salaries and emoluments paid by the Bank; and
- (f) the right for personal use, free of duty or other levies, prohibitions and restrictions (i) to import at the time of first taking up their post and within a period of 6 (six) months and (ii) to export, upon termination of their services with the Bank, within a period of 1 (one) year, their furniture and personal effects.

(2) Experts and Consultants who are Brazilian nationals shall be afforded the immunities and privileges referred to in paragraph (1), except immunity from detention and arrest, provided that they do not permanently reside in Brazil at the time that they are hired and that they are sent to Brazil to perform a temporary mission for or on behalf of the Bank.

(3) Experts and Consultants who, being either Brazilian or foreign nationals, permanently reside in Brazil at the time that they are hired shall be afforded only the immunities and privileges referred to in paragraphs 1(a), except immunity from detention and arrest, and 1 (d).

Article 16

Local staff

(1) Members of the local staff of the Bank in Brazil shall be hired under the Brazilian labor legislation and shall not be exempted from tax or social security payments on the salaries paid to them by the Bank, as well as from any other legal obligation arising from their employment.

(2) The Bank shall not be exempted from collecting the applicable taxes, as well as social security or any other payments in accordance with Brazilian legislation, in respect of the salaries paid to the local staff. Such obligation may be fulfilled through a service provider retained by the Bank for this purpose.

Article 17

Employment of spouses

Employment of spouses of Staff shall be regulated in a separate agreement.

Article 18

Waiver of immunity

(1) Privileges and immunities are conferred under this Agreement in the interest of the Bank and not for the personal benefit of the individuals themselves.

(2) The Bank may waive to such extent, and upon such conditions as it may determine, any of the privileges, immunities and exemptions conferred under this Agreement in cases where such action would, in its opinion, be appropriate and in the best interests of the Bank. The President shall have the right and duty to waive any privilege, immunity or exemption in respect of any Staff of the Bank or any Expert or Consultant performing services for the Bank, other than the President or a Vice-President, where, in her or his opinion, the privilege, immunity or exemption would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive any privilege, immunity or exemption in respect of the President and a Vice-President.

(3) The Bank shall co-operate at all times with the Government to facilitate the proper administration of justice, secure the observance of the laws of Brazil and prevent the occurrence of any abuse in connection with the immunities and privileges granted in this Agreement.

Article 19
Settlement of disputes

Any dispute between the Bank and the Government arising out of or relating to this Agreement, including tax-related matters, shall be settled amicably by negotiation or other mode of settlement as may be agreed.

Article 20
Interpretation

This Agreement shall be interpreted in accordance with the rules of interpretation provided for in the 1969 Vienna Convention on the Law of Treaties. This Agreement shall not modify or derogate from the provisions of the Agreement on the New Development Bank.

Article 21
Entry into force, amendment and termination

(1) This Agreement may be amended by mutual consent of the Parties. Amendments shall take the form of a written agreement which shall enter into force in the same manner as this Agreement.

(2) The Parties may enter into such supplementary agreements as may be necessary within the scope of this Agreement.

(3) This Agreement shall enter into force on the date of receipt by the Bank of written notice by which the Federative Republic of Brazil informs the fulfillment of its internal legal procedures required for the entry into force of this Agreement, which shall remain in force until it is terminated pursuant to paragraph 5 of this Article.

(4) In case of conflict between this Agreement and the Agreement on the New Development Bank, the Agreement on the New Development Bank shall prevail.

(5) The Agreement may be terminated by either Party. Termination shall have effect 1 (one) year after the receipt, through diplomatic channels, of a note indicating such intent, or after any other extended period as may be agreed to by the Parties.

(6) In the event of the termination of this Agreement, all relevant provisions shall continue to be applicable for a reasonable period, as agreed to by the Parties, required for settlement of the affairs of the Bank and disposal of its property in Brazil.


IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have on

behalf of the Parties signed and sealed this Agreement in duplicate in the Portuguese and English languages, both the texts being equally authentic.


Done at Johannesburg on this day of July of 2018.

FOR THE FEDERATIVE REPUBLIC OF BRAZIL

FOR THE NEW DEVELOPMENT BANK



Aloysio Nunes Ferreira
Minister of Foreign Affairs



K.V. Kamath
President



Eduardo Guardia
Minister of Finance