



MINISTER  
INTERNATIONAL RELATIONS AND COOPERATION  
REPUBLIC OF SOUTH AFRICA

Private Bag X152, PRETORIA, 0001, South Africa · OR Tambo Bldg, 460 Soutpansberg Road, Rietondale, PRETORIA · Tel: (012) 351 1000 · Fax: (012) 329 1000  
17th Floor, Room 1703, 120 Plein Street, CAPE TOWN, 8001 · Tel: (021) 464 3700 · Fax: (021) 465 6548 · www.dirco.gov.za

Honourable Chairperson,

**RATIFICATION OF THE INDIA, BRAZIL, SOUTH AFRICA (IBSA) FUND AGREEMENT FOR THE ALLEVIATION OF POVERTY AND HUNGER – STATUS UPDATE**

My department presented the captioned matter to the Portfolio Committee on International Relations and Cooperation on 01 June 2022. The Committee agreed that South Africa could proceed with ratifying the Agreement as it is. This implies that the Agreement can be ratified in its current form, with the intention to amend the text in the preambular paragraph (which referred to the Millennium Development Goals (MDGs) instead of the Sustainable Development Goals (SDGs), after entry into force (post ratification by all three Member States). This approach is in accordance with the advice which South Africa received from the Office of the Chief State Law Adviser: International Law (OCSLA:IL) at DIRCO and the Department of Justice and Correctional Services. A legal opinion recommending the abovementioned course of action is attached as Annexure B for ease of reference.

In addition, South Africa has received a positive response via Note Verbale No. 241/2022 attached as Annexure C from Brazil pertaining to the required process of entry into force of the agreement with the option of amending later as the Brazilian Government has also not ratified the Agreement. However, South Africa is confident that the IBSA partners will support our proposed way forward as both the Governments of Brazil and India have indicated consensus that the proposed amendment by South Africa is valid and acceptable in terms of the provisions of the said Agreement

I submit, Honourable Chairperson, that South Africa should adopt this seamless approach of ratifying the Agreement in its current form and effecting the amendment after entry into force which is in accordance with the provisions of the Agreement signed in 2017.

My office stands ready to provide you with the requisite assistance in bringing this matter to a close.

Yours sincerely,

**Dr GNM Pandor, MP**

Minister of International Relations and Cooperation

Date: 28-7-2022.

Ms S Shaikh  
Chairperson: Select Committee on Security and Justice  
National Assembly  
Cape Town  
8000



# international relations & cooperation

Department:  
International Relations and Cooperation  
**REPUBLIC OF SOUTH AFRICA**

**OFFICE OF THE CHIEF STATE LAW ADVISER (INTERNATIONAL LAW)**  
Private Bag x 152, PRETORIA, 0001 Tel: +27 12 351 0857 Fax: +27 12 329 1721

**21brammerr011502**  
**File: 10/16/32**  
**RO 01/2021**

**Ms G Daya**  
**Directorate: IBSA, IORA, Operation Phakisa**

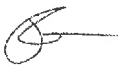
## **RATIFICATION OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA, THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON THE IBSA FUND FOR THE ALLEVIATION OF POVERTY AND HUNGER**

1. We refer to your request for legal advice received on 7 January 2021.
2. South Africa signed the Agreement on the IBSA Fund for the Alleviation of Poverty and Hunger ("Agreement") with India and Brazil on 17 October 2017, and on 14 August 2019, Cabinet approved that the Agreement be tabled in Parliament for ratification. At a meeting of the Parliamentary Portfolio Committee on 27 November 2019, the Chairperson requested that the terms "Millennium Development Goals" contained in the preamble be substituted with "Sustainable Development Goals".
3. This Office has provided a number of legal opinions in this regard, namely RO 292/2019, RO 16/2020, RO 29/2020 and RO36/2020. This opinion should be read in conjunction with the aforementioned legal opinions.
4. The Agreement has not yet entered into force and therefore cannot be amended in accordance with the provisions of the Agreement. In our previous legal opinions, various options were laid out as proposed ways forward.
5. However, following engagements with India, it has been clarified that India has already ratified the Agreement and would prefer not to amend the text, which would require their ratification process to be started afresh, which entails a signature at the Head of State level.
6. This Office has been requested to advise on the way forward regarding the recommendation made by the Government of India that South Africa and Brazil sign and ratify the Agreement as is and undertake the amendment thereafter.
7. We wish to reiterate that where a treaty has not entered into force, it is not possible to amend the treaty pursuant to its own provisions. Where States agree that the text of a treaty needs to be revised, subsequent to the treaty's adoption, but prior to its entry into force, the contracting parties may meet to adopt additional agreements or protocols to address the problem.
8. India has already indicated that it does not want to alter the text of the Agreement at this stage.

### **CONFIDENTIALITY NOTE:**

This legal opinion might contain information that is privileged and confidential. If the reader is not the intended recipient, or the employee or agent responsible for delivering the opinion to the intended recipient you are hereby notified that any dissemination, distribution, or copying the documentation is strictly prohibited. If you have received this communication in error, please notify the Office of the Chief State Law Adviser (IL) immediately by telephone, and return the original message to the Office of the Chief State Law Adviser (IL).

9. As has been indicated in previous opinions, the provision that is to be amended is not a substantive provision and only appears in the preamble of the Agreement.
10. As South Africa wishes to conclude the Agreement, it could proceed with ratifying the Agreement as is, with the option of amending it later, as proposed by India. However, it would be necessary that Brazil also confirm that such an approach is acceptable. Furthermore, the approach of ratification with subsequent amendment must be accepted by Parliament, which will have to approve ratification of the Agreement in its current form (with the understanding that an amendment will be undertaken following entry into force).
11. Should it appear that Parliament will not approve the Agreement in its current form, another option may be to propose that an interpretive declaration be submitted simultaneously upon ratification, wherein South Africa's understanding and interpretation is explained. South Africa could engage India and Brazil to inform them of such intention and confirm whether they would be amenable thereto.
12. A State may make a declaration about its understanding of a matter contained in or the interpretation of a particular provision in a treaty. Interpretative declarations of this kind do not purport to exclude or modify the legal effects of a treaty. The purpose of an interpretative declaration is to clarify the meaning of certain provisions and may be delivered either upon signature or ratification.
13. Legal Privilege and Confidentiality: Kindly be reminded that this communication constitutes legal advice that is legally privileged and confidential. It is intended solely for the consumption of the client, desk or Department, and may not be freely disclosed to any third party, foreign State or international organisation without the express consent of the client, after taking legal advice from Departmental legal advisers. In the event that the client releases this opinion to a party that is legally entitled to it (e.g. auditors) the third party must be informed that they are under a legal obligation to maintain the confidentiality and legal privilege of the legal opinion, and also implement measures that will prevent unauthorised disclosure of the legal opinion.
14. Kindly advise whether this Office could be of any additional assistance.



**R BRAMMER**  
**STATE LAW ADVISER (INTERNATIONAL LAW)**

**PRETORIA**  
**15 JANUARY 2021**

Nº 241/2022

The Embassy of the Federative Republic of Brazil presents its compliments to the **Department of International Relations and Cooperation of the Republic of South Africa** – Directorate: IBSA, IORA, Operation Phakisa – and has the honor to refer to DIRCO's Note 18/1/3/IBSA/A11, dated 26 February 2020.

2. The Brazilian Government expresses its agreement with the amendment proposed by the South African Government, replacing the word "Millennium" with the word "Sustainable" in the preambular paragraph described in the referred Note.

The Embassy of Brazil avails itself of this opportunity to renew to the **Department of International Relations and Cooperation of the Republic of South Africa** the assurances of its highest consideration.



Pretoria, 22 June, 2022