

Treaty for the Establishment of a BRICS Contingent Reserve Arrangement

July 15, 2014, Fortaleza, Brazil

This BRICS Contingent Reserve Arrangement ("CRA") is between the Federative Republic of Brazil ("Brazil"), the Russian Federation ("Russia"), the Republic of India ("India"), the People's Republic of China ("China") and the Republic of South Africa ("South Africa") (henceforth referred to, individually, as "Party", and collectively, as the "Parties").

WHEREAS, the Parties agree to establish a self-managed contingent reserve arrangement to forestall short-term balance of payments pressures, provide mutual support and further strengthen financial stability.

WHEREAS, the Parties agree that this contingent reserve arrangement shall contribute to strengthening the global financial safety net and complement existing international monetary and financial arrangements.

THEREFORE, this Treaty sets out the terms and conditions of such contingent reserve arrangement, as follows:

Article 1 - Objective

The CRA is a framework for the provision of support through liquidity and precautionary instruments in response to actual or potential short-term balance of payments pressures.

Article 2 - Size and Individual Commitments

a. The initial total committed resources of the CRA shall be one hundred billion dollars of the United States of America (USD 100 billion), with individual commitments as follows:

- i. China – USD 41 billion
- ii. Brazil – USD 18 billion
- iii. Russia – USD 18 billion
- iv. India – USD 18 billion
- v. South Africa – USD 5 billion

b. The Parties shall be entitled to make a request to access committed resources at any time. Until such time as one of the Parties (the "Requesting Party") makes such a request and that request is acceded to by the other Parties (the "Providing Parties") and effected through a currency swap, each Party shall retain full ownership rights in and possession of the resources that it commits to the CRA. While commitments shall not involve outright transfers of funds, committed resources shall be made available for any eligible request.

Article 3 - Governance and Decision-Making

a. Governance of the CRA shall be constituted by a Council of CRA Governors (the "Governing Council") and a Standing Committee.

b. The Governing Council shall comprise one Governor and one Alternate Governor appointed by each Party. Governors must be a Finance Minister, Central Bank Governor, or hold an equivalent post. The Governing Council shall take decisions by consensus and shall be responsible for high level and strategic decisions of the CRA. It is hereby authorized to:

i. Review and modify the size of the committed resources of the CRA as well as approve changes in the size of individual commitments;

ii. Approve the entry of new countries as Parties to the CRA;

iii. Review and modify the CRA's instruments;

iv. Review and modify the framework for maturities, number of renewals, interest rates, spreads, and fees;

v. Review and modify the preconditions for drawings and renewals;

vi. Review and modify the provisions concerning default and sanctions;

vii. Review and modify the provisions concerning access limits and multipliers;

viii. Review and modify the percentage of access de-linked from IMF arrangements;

ix. Decide upon the creation of a permanent secretariat or the establishment of a dedicated surveillance unit;

x. Approve its own procedural rules;

xi. Review and modify the rules pertaining to the appointment and functions of the coordinator for the Governing Council and the Standing Committee;

xii. Review and modify voting power and decision rules of the Standing Committee;

xiii. Review and modify the authority and functions of the Standing Committee;

xiv. Approve the procedural rules concerning the functioning of the Standing Committee;

xv. Decide upon any other issues not specifically attributed to the Standing Committee.

c. The Standing Committee shall be responsible for the executive level and operational decisions of the CRA and shall comprise one Director and one Alternate Director appointed by each Party; these shall be appointed from central bank officials unless decided otherwise by the respective Party. It is hereby authorized to:

i. Prepare and submit to the Governing Council its own procedural rules;

ii. Approve requests for support through the liquidity or precautionary instruments;

- iii. Approve requests for renewals of support through the liquidity or precautionary instruments;
- iv. Approve operational procedures for the liquidity and precautionary instruments;
- v. In exceptional circumstances, determine the waiver of conditions of approval, safeguards and required documents under this Treaty;
- vi. Approve a Party's encashment request;
- vii. Decide whether to impose sanctions in case of a breach of this Treaty;
- viii. Carry out other functions attributed to it by the Governing Council.

d. As a matter of principle, the Standing Committee shall strive for consensus on all matters. The decisions of the Standing Committee pertaining to items C.ii and C.iii shall be taken by simple majority of weighted voting of Providing Parties. The decisions pertaining to items C.v, C.vi and C.vii shall be taken by consensus of the Providing Parties. All other decisions of the Standing Committee shall be taken by consensus.

e. Whenever a decision is taken by weighted voting, the weight attributed to each Party's vote shall be determined as follows: (i) 5 percent of total voting power shall be equally distributed among the Parties; and (ii) the remainder shall be distributed among the Parties according to the relative size of individual commitments.

Article 4 - Instruments

The CRA shall include the following instruments:

- i. A liquidity instrument to provide support in response to short-term balance of payments pressures.
- ii. A precautionary instrument committing to provide support in light of potential short-term balance of payments pressures.

Article 5 - Access Limits and Multipliers

- a. The Parties shall be able to access resources subject to maximum access limits equal to a multiple of each Party's individual commitment set forth as follows:
 - i. China shall have a multiplier of 0.5
 - ii. Brazil shall have a multiplier of 1
 - iii. Russia shall have a multiplier of 1
 - iv. India shall have a multiplier of 1
 - v. South Africa shall have a multiplier of 2
- b. The total amount available under both the precautionary and the liquidity instruments shall not exceed the maximum access for each Party.

c. A portion (the "De-linked portion"), equal to 30 percent of the maximum access for each Party, shall be available subject only to the agreement of the Providing Parties, which shall be granted whenever the Requesting Party meets the conditions stipulated in Article 14 of this Treaty.

d. A portion (the "IMF-linked portion"), consisting of the remaining 70 percent of the maximum access, shall be available to the Requesting Party, subject to both:

i. The agreement of the Providing Parties, which shall be granted whenever the Requesting Party meets the conditions stipulated in Article 14, and;

ii. Evidence of the existence of an on-track arrangement between the IMF and the Requesting Party that involves a commitment of the IMF to provide financing to the Requesting Party based on conditionality, and the compliance of the Requesting Party with the terms and conditions of the arrangement.

e. Both instruments defined in Article 4 shall have IMF-linked and De-linked portions.

f. If a Requesting Party has an on-track arrangement with the IMF, it shall be able to access up to 100 percent of its maximum access limit, subject to the provisions under paragraph (d) above.

Article 6 - Inter-central Bank Agreement

In order to carry out the transactions under the liquidity and precautionary instruments mentioned in Article 1, the Central Bank of Brazil, the Central Bank of the Russian Federation, the Reserve Bank of India, the People's Bank of China and the South African Reserve Bank shall enter into an inter-central bank agreement setting out the required operational procedures and guidelines.

Article 7 - Currency Swaps

A Party may request support through one of the instruments specified in Article 4 according to the procedures established by the Standing Committee in accordance with Article 13 of this Treaty. Provision of USD to the Requesting Party shall be effected through currency swaps carried out between the Parties' central banks on the basis of common operational procedures to be defined by the Standing Committee in accordance with Article 3.C.iv and the inter-central bank agreement, entered into pursuant to Article 6.

Article 8 - Definitions

The following terms shall have the respective meanings specified in this Article:

"Requesting Party Currency" shall mean the currency of the Party that requests to draw funds through a currency swap;

"Swap Transaction" shall mean a transaction between the Requesting Party's central bank and a Providing Party's central bank by which the Requesting Party's central bank purchases US dollars (USD) from the Providing Party's central bank in exchange for the Requesting Party Currency, and repurchases on a later date the Requesting Party Currency in exchange for USD;

"Drawing" shall mean the purchase, at the Value Date (defined below), of USD by the Requesting Party's central bank;

"De-linked Drawing" shall mean a Drawing by the central bank of a Party that is not engaged in an IMF arrangement;

"IMF-linked Drawing" shall mean a Drawing by the central bank of a Party that is engaged in an IMF arrangement;

"Business Day" shall mean any day on which markets are open for business in all financial centers needed for the swap transactions to take place;

"Trade Date" of a Drawing or renewal of Drawing shall mean the date in which the spot market exchange rate for the Drawing or renewal of Drawing is established;

"Value Date" of a Drawing or renewal of Drawing shall mean the date the Requesting and Providing Parties' central banks credit each other's accounts. The Value Date shall be the second Business Day after the Trade Date;

"Maturity Date" of a Drawing or renewal of Drawing shall mean the date on which the Requesting Party's central bank shall repurchase the Requesting Party Currency in exchange for USD. If any such Maturity Date should fall on a day which is not a Business Day, the Maturity Date shall be the next Business Day.

Article 9 - Coordination

- a. The Party that chairs the BRICS shall act as coordinator for the Governing Council and for the Standing Committee.
- b. The coordinator shall: (i) convene and chair meetings of the Governing Council and the Standing Committee; (ii) coordinate voting as needed; (iii) provide secretariat services during its term; and (iv) inform the Parties of the activation or renewal of liquidity or precautionary instruments.
- c. Any Party requesting or receiving support through a liquidity or precautionary instrument – Article 4 – or opting out from participating as a Providing Party or asking for encashment of outstanding claims – Article 15(e) – shall not serve as coordinator. In this case, the next chair of the BRICS shall assume the role of coordinator.

Article 10 - Purchase and Repurchase under a Swap Transaction

- a. The exchange rate that shall apply to each purchase and repurchase under a Swap Transaction shall be based on the prevailing exchange rate (hereinafter referred to as "the Swap Exchange Rate") between the Requesting Party Currency and the USD in the Requesting Party's spot market on the Trade Date.
- b. The Requesting Party's central bank shall sell the Requesting Party Currency to the Providing Parties' central banks and purchase USD from them by means of a spot transaction, with a simultaneous agreement by the Requesting Party's central bank to sell USD and to repurchase the Requesting Party Currency from the Providing Parties' central banks on the maturity date. The same

exchange rate (i.e., the rate of the spot leg) shall be applied to both the spot and the forward legs of the Swap Transaction.

c. On the Maturity Date, the Requesting Party's central bank shall transfer the USD plus interest back to the Providing Parties' central banks in exchange for the Requesting Party Currency. No interest shall be accrued on the Requesting Party Currency.

Article 11 - Interest Rate Determination

a. The interest rate to be paid by the Requesting Party on the USD purchased from the Providing Parties shall be an internationally accepted benchmark interest rate for the corresponding maturity of the swap transaction plus a spread. The spread shall increase periodically by a certain margin, up to a predetermined limit.

b. In the case of the precautionary instrument, the amount committed but not drawn shall be subject to a commitment fee, to be specified in the inter-central bank agreement.

Article 12 - Maturities

a. A De-linked Drawing under the liquidity instrument shall have a Maturity Date six months after the Value Date and may be renewed, in whole or in part, three times at most.

b. An IMF-linked Drawing under the liquidity instrument shall have a Maturity Date one year after the Value Date and may be renewed, in whole or in part, two times at most.

c. If the Requesting Party is not engaged in an IMF arrangement, access to the precautionary instrument shall have a tenure of six months and may be renewed, in whole or in part, three times at most.

d. If the Requesting Party is engaged in an IMF arrangement, access to the precautionary instrument shall have a tenure of one year and may be renewed, in whole or in part, two times at most.

e. The maturity of a De-linked Drawing under the precautionary instrument shall be of six months and that of an IMF-linked Drawing shall be of one year. The precautionary instrument, once drawn upon, shall not be renewed.

f. The Requesting Party may repurchase the Requesting Party Currency in exchange for USD at the Swap Exchange Rate before the Maturity Date. In this case, the accrued interest rate shall be calculated on the basis of the actual number of days elapsed from (and including) the Value Date to (but not including) the early repurchase date.

Article 13 - Procedures for Requesting or Renewing Support through the Liquidity or Precautionary Instruments

a. A Party that wishes to request support through the liquidity or precautionary instruments, or renewal of such support, shall notify the members of the Standing Committee of the type of instrument, the amount requested, and the envisaged starting date.

b. The Requesting Party shall provide evidence that it complies with the safeguards specified in Article 14 below.

c. Upon receiving the notification, the CRA coordinator shall convene a Standing Committee meeting to discuss and vote the Requesting Party's request. The Standing Committee shall decide upon the request up to seven days after its submission.

d. Once a request for support through the liquidity instrument is approved, the Requesting Party's central bank and the Providing Parties' central banks shall activate Swap Transactions promptly, in a timeframe to be specified in the inter-central bank agreement.

e. Once a request for a Drawing under an approved precautionary instrument is made, the Requesting Party's central bank and the Providing Parties' central banks shall activate Swap Transactions promptly, in a timeframe to be specified in the inter-central bank agreement.

f. If the Requesting Party wishes to renew support through the liquidity instrument, it shall notify the members of the Standing Committee at least fourteen days before the Maturity Date.

g. If the Requesting Party wishes to renew support through the precautionary instrument, it shall notify the members of the Standing Committee at least seven days before the expiration of access under such instrument.

Article 14 - Conditions of Approval, Safeguards and Required Documents

a. When submitting a request for support through the liquidity or precautionary instrument, or renewal of such support, the Requesting Party shall sign and deliver a letter of acknowledgement committing to comply with all obligations and safeguards under this Treaty.

b. The Requesting Party shall also comply with the following conditions and safeguards:

(i) Submit all required documents and economic and financial data, as specified by the Standing Committee, and provide clarification to comments;

(ii) Ensure that its obligations under this Treaty at all times constitute direct, unsubordinated and unsecured obligations ranking at least *pari passu* in right of payment with all other present or future direct, unsubordinated and unsecured foreign currency-denominated external indebtedness of the Requesting Party;

(iii) Have no arrears with the other Parties or their public financial institutions;

(iv) Have no arrears with multilateral and regional financial institutions, including the New Development Bank (NDB);

(v) Be in compliance with surveillance and provision of information obligations to the IMF as defined, respectively, in Articles IV, Sections 1 and 3, and VIII, Section 5, of the Articles of Agreement of said institution.

Article 15 - Burden Sharing, Opt-out and Encashment Provisions

a. Providing Parties shall share the disbursement of drawings in proportion to their respective commitments to the CRA, subject to paragraphs (b) and (c) of this Article. In no event shall any Party

be required to provide more resources than the amount that it has committed to provide in Article 2(a).

b. The approval of a request for support through the liquidity or precautionary instruments under this Treaty suspends, for as long as such support is in place, the Requesting Party's commitment to participate as a Providing Party in any subsequent request for support through the liquidity or precautionary instruments.

c. When a request for support through the liquidity or precautionary instruments, or for renewal of such support is presented, a Party may opt-out from participating as a Providing Party, provided this is justified by its balance of payments and reserve position or by an event of force majeure, such as a war or natural disaster. The Party opting-out shall provide the necessary information to justify its decision. In this case, the other Providing Parties shall provide resources to allow opt-out in proportion to their commitments to the CRA, subject to paragraph (a) of this Article.

d. A Providing Party may request encashment of outstanding claims provided this is justified by its balance of payments and reserve position or by an event of force majeure, such as a war or natural disaster. The Providing Party applying for encashment shall provide the necessary information to justify its request. If the request is approved, the other Providing Parties shall provide resources to allow encashment in proportion to their commitments to the CRA, subject to paragraph (a) of this Article.

e. A Party that has opted-out or encashed from an outstanding currency swap or has opted out from an outstanding precautionary instrument shall not serve as a coordinator, as defined in Article 9, for the length of the transaction from which the party has opted-out or encashed.

Article 16 - Breaches of Obligations and Sanctions

a. Failure by a Requesting Party to fulfill payment obligations on the Maturity Date of a Drawing or a renewal of Drawing, unless corrected within 7 days, shall result in the following:

(i) all outstanding obligations of the Requesting Party to repay the Providing Parties under this Treaty shall be immediately due and payable;

(ii) the Requesting Party's eligibility to further Drawings or renewals of Drawings under this Treaty shall be suspended;

(iii) any undrawn portion of a precautionary instrument of the Requesting Party shall be cancelled; and

(iv) any payments by the Requesting Party of its overdue obligations to the Providing Parties must be made on the same date and in proportion to the amounts due to each Party.

b. In case of an event of force majeure, the application of the measures above may be suspended.

c. In case of a persistent and/or unjustified delay in settling overdue payment obligations, a Requesting Party's right to participate in any decisions under this Treaty may be suspended. After 30 days of unfulfilled payment obligations, the Providing Parties should consider whether this action is appropriate.

- d. If, after the expiration of a reasonable period following the decision under paragraph (c), the Requesting Party persists in its failure to settle overdue payment obligations, the Governing Council may require the Requesting Party to withdraw from this Treaty.
- e. The Requesting Party in breach of a payment obligation should agree to take measures that preserve the net present value of its obligations if the Providing Parties collectively decide to exercise this option.
- f. In case the Providing Parties decide by consensus at the Governing Council level, the Requesting Party in breach of a payment obligation should agree to a novation of its obligations under this Treaty, including by issuing marketable debt securities that would not be subject to the Requesting Party's jurisdiction. The Requesting Party should not unreasonably withhold consent to terms and conditions of such debt securities as shall be required by the Providing Parties.
- g. The Requesting Party would be liable to a late fee in addition to the interest rate applied to the swap transaction to which payment is overdue. This late fee should increase periodically by a certain margin, up to a predetermined limit.
- h. In case of a breach of any obligation under this Treaty, other than failure by a Requesting Party to fulfill payment obligations, the following sanctions may apply:
- (i) all outstanding payment obligations under this Treaty shall be immediately due and payable;
 - (ii) eligibility to further Drawings or renewals of Drawings under this Treaty shall be suspended;
 - (iii) any undrawn portion of a precautionary instrument shall be cancelled;
 - (iv) the right to participate in any decisions under this Treaty may be suspended;
 - (v) after the expiration of a reasonable period following the decision under item (iv), the Governing Council may require the Party to withdraw from this Treaty.
- i. The sanctions applied should be commensurate with the severity of the breach.

Article 17 - Language and Communications

- a. The official language of the CRA shall be English. The English language versions of this Treaty and of any documentation under it shall be the official versions. All written and oral communication between the Parties shall be in English, unless the Parties otherwise agree in writing.
- b. Any notice, request, document or other communication submitted under this Treaty shall be in writing, shall refer to this Treaty, and shall be deemed fully given or sent when delivered in accordance with the contact details that shall be provided separately by each Party.

Article 18 - Representation and Warranties

Each of the Parties hereby warrants and represents that:

- a. It has the full power and authority to enter into and perform its obligations under this Treaty and shall provide evidence of such authority if requested by any other Party;

- b. This Treaty and the performance by it of its obligations under this Treaty do not contravene any law or other restriction binding upon it or any of its property, and there is no legal or regulatory hindrance which could affect the legality, validity or enforceability of this Treaty or of obligations hereunder or have a material adverse effect upon its ability to perform such obligations;
- c. All transactions under this Treaty shall be exempt from any administrative or legal obstacles to their completion;
- d. All payments by it under this Treaty shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of its country or any authority therein or thereof having power to tax. In the event that the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law, it shall pay such additional amounts as may be necessary in order that the net amounts received by the other Parties after such withholding or deduction shall equal the amounts which would have been received under this Treaty in the absence of such withholding or deduction; and
- e. It shall not assign, transfer, delegate, charge or otherwise deal in its obligations under this Treaty without prior written consent of the other Parties.

Article 19 - Legal Status of the CRA

The CRA does not possess independent international legal personality and cannot enter into agreements, sue or be sued.

Article 20 - Dispute Settlement

- a. Any disputes relating to the interpretation of this Treaty shall be solved by consultations in the Governing Council.
- b. If any dispute, controversy or claim relating to the performance, interpretation, construction, breach, termination or invalidity of any provision in this Treaty shall arise and not be resolved amicably by the Governing Council within a reasonable period, it shall be settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (excluding Article 26 thereof) in effect on the date of this Treaty (the "UNCITRAL Arbitration Rules"). In case of resorting to arbitration, the language to be used in the proceedings shall be English and the number of arbitrators shall be three.
- c. The Parties agree that in any such arbitration and in any legal proceedings for the recognition of an award rendered in an arbitration conducted pursuant to this Article, including any proceeding required for the purposes of converting an arbitral award into a judgment, they shall not raise any defense which they could not raise but for the fact that they are sovereign state entities.

Article 21 - Withdrawal from and Termination of the Treaty

a. A Party may withdraw from this Treaty by giving notice of such intention to the other Parties six months prior to the date of the envisaged withdrawal. However, withdrawal from the Treaty by any Party is not allowed for a period of five years from its entry into force.

b. During this six-month period, the Party that has given notice of such intention shall provide the other Parties with an opportunity to express views on its intention but does not have the right to request or the obligation to provide resources.

c. In the event that any obligation under this Treaty, including any obligation for the payment of money, remains outstanding at the time of termination of or withdrawal from this Treaty, all the terms and conditions of this Treaty (except for those entitling the Parties to any Drawing or renewal of a Drawing) shall continue to apply until such obligation has been fulfilled.

Article 22 - Acceptance, Depositary and Amendments

a. This Treaty shall be subject to acceptance, ratification or approval, according to the respective domestic procedures of the Parties.

b. The instruments of acceptance, ratification or approval shall be deposited with the Federative Republic of Brazil, which shall be the depositary of this Treaty.

c. The depositary shall promptly inform all Parties of: (i) the date of deposit of each instrument of acceptance, ratification or approval (ii) the date of the entry into force of this Treaty and of any amendments and changes thereto, and (iii) the date of receipt of a withdrawal notice.

d. If the Party that acts as depositary decides to withdraw from this Treaty, all the terms and conditions of Article 21 shall apply, with the exception that: (i) the depositary shall give notice of its intention to the other Parties; and (ii) as of the date of receipt of the depositary's withdrawal notice, the role of depositary shall be assumed by one of the other Parties, as agreed upon by them.

e. This Treaty shall not be subject to unilateral reservations.

f. Any proposal to amend this Treaty shall be communicated to the Party that acts as coordinator for the Governing Council, which shall then bring the proposal before the Governing Council. If the proposed amendment is approved, the coordinator shall ask all Parties whether they accept the proposed amendment. If a Party, according to its domestic procedures, accepts the proposed amendment, it shall notify the depositary accordingly. The amendment shall become effective on the date of receipt of the last notification. Any decision of the Governing Council related to modifying Article 2 shall be considered an amendment.

Article 23 - Entry into Force

This Treaty shall enter into force 30 (thirty) days after the deposit of the fifth instrument of acceptance, according to each Party's legal requirements.

Done in Fortaleza on the 15th of July of 2014, in five originals in English, one for each Party.

Source: [Ministry of External Relations of Brazil](#)