CONVENTION BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Democratic Socialist Republic of Sri Lanka

Desiring to create favourable conditions for investment in Sri Lanka and France, in Sri Lanka

Recognizing that the promotion and protection of such investments will be conducive to stimulate the flow of capital and technology between the two countries in the interest of their economic prosperity,

Have agreed as follows:

Article 1.

For the purposes of this Convention:

(a) The term "investment" means assets of every kind, and particularly but not limited to:

1. Movable and immovable property as well as any other rights in rem such as mortgages, privileges and guarantees;

2. Shares, bonds and debentures of companies or interests in the property of such companies;

3. Claims and rights to any performance under contract having a financial value; or

4. Copyrights, industrial property rights, such as patents, licences, industrial designs, trademarks, technical processes, trade names and goodwill;

5. Business concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources including those situated in maritime areas falling under the jurisdiction of either party.

(b) The term "returns" means the amounts yielded by an investment including but not limited to, any interests, capital, profits, dividends, royalties, or fees.

(c) The term "national" means:

1. As regards France, natural persons with nationality;

2. In respect of Sri Lanka, natural persons having the citizenship of Sri Lanka in accordance with the laws of that country.

d) The term "companies" means:

1. As regards France, any juridical person in the territory of the French in accordance with domestic law and having its registered office;

2. In respect of Sri Lanka, companies, corporations or associations incorporated or constituted under the law in force in the set of Sri Lanka.

e) The term "territory" means:

1. As regards France, the territory of the French Republic;

2. In respect of Sri Lanka, the Territory which constitutes the Republic of Sri Lanka.

f) Any alteration of the form in which assets are invested shall not affect their classification as investment provided that such alteration is not contrary to the legislation of the State in whose territory the investment is made and the approval granted to the initial investment.

Article 2.

1. This Agreement shall apply only:

a) In respect of investments made in the territory of Sri Lanka, all investments of nationals or companies of France made in accordance with the laws and regulations in force in the territory of Sri Lanka.

b) In respect of investments made in the territory of France, all investments of nationals or companies of Sri Lanka made in accordance with the laws and regulations in force in the territory of the French.

2. The provisions of paragraph 1 of this Article shall apply to all investments made by companies and nationals of either Contracting Party in the territory of the other Contracting Party after 7 September 1978.

Article 3.

Each Contracting Party shall promote as far as possible in its territory investments of nationals or companies of the other Contracting Party and admits such investments in accordance with its general economic policy.

Article 4.

Each Contracting Party undertakes to provide in its territory fair and equitable treatment and in conformity with the general principles of international law, to investments of nationals and companies of the other Party, and to ensure the enjoyment of the rights thus recognizes are not hampered in either law or in fact.

Article 5.

Each Contracting Party shall grant in its territory to nationals or companies of the other Contracting Party as regards their investments and activities associated with such investments, treatment no less favourable than that it accords to its own nationals or companies of the most favoured nation.

Article 6.

The provisions of this Agreement relating to the grant of not less favourable treatment than that accorded to nationals and companies of the most favoured nation, does not apply to treatment, preference or privileges granted by either Contracting Party by virtue of:

a) Any customs union or common market, existing or similar international agreement to which either of the Contracting Parties is or becomes a member.

b) Any international agreement or arrangement relating wholly or partially to taxation.

Article 7.

1. Investments made by companies or nationals of either Contracting Party shall enjoy full protection and security, in the territory of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is, directly or indirectly dispossessing nationals and companies of the other Party and their investments in its territory, except for a public purpose and provided that they are neither discriminatory nor contrary to a treaty between the Contracting Parties.

The dispossession measures that might be taken shall be subject to the payment of just compensation which shall correspond to the market value of the investments affected the day of dispossession.

Such compensation, its amount and payment procedures shall be set at the latest from the date of dispossession unless otherwise agreed between the parties concerned. The compensation shall be paid without delay, and effectively realisable freely transferable.

3. Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory of the other Contracting Party, shall benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors.

Article 8.

1. Each Contracting Party shall ensure to nationals and companies of the other Contracting Party the free transfer of their capital and returns of their investments.

2. The nationals of either Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin an appropriate proportion of their remuneration.

3. The transfers referred to in the preceding paragraphs shall be effected without delay and officially normal rate of exchange applicable on the date of transfer.

Article 9.

With regard to this Agreement provides that the covered investments shall be governed by the laws in force in the territory of the Contracting Party in which they have been carried out.

Article 10.

1. If the legislation of either Contracting Party provides a guarantee for investments abroad, the latter may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the territory of the other Party.

2. Investments of nationals and companies of one Contracting Party in the territory of the other party may request the security referred to in the preceding paragraph only if they have previously obtained accreditation of that other Party.

Article 11.

1. Any legal dispute between one Contracting Party and a national or company of the other Contracting Party, directly related to an investment shall, as far as possible, be settled amicably between the two parties concerned.

2. If such a dispute cannot be settled within a period of twelve months from the date on which it was raised by either party to the dispute shall be submitted at the request of either of the parties, unless the parties agree otherwise, to conciliation or arbitration by the International Centre for Settlement of Investment Disputes (called the Centre in this Agreement) established by the Convention on the Settlement of Investment Disputes between States, at Washington on 18 March 1965 (called the Convention in this Agreement). During the twelve-month period mentioned above, each Contracting Party may make its consent to have recourse to conciliation or arbitration by the Centre subject to the exhaustion of domestic administrative and judicial remedies.

3. The Contracting Party, that is Party to the dispute shall at no time impede the conciliation or arbitration proceedings or enforcement of an award, on account of the fact that the national or company also a party to the dispute has received compensation totally or partly of its losses by virtue of an insurance contract.

4. Subject to the provisions of article 27 (2) of the Convention, neither Contracting Party will use the diplomatic channels in respect of a dispute referred to the Centre unless:

a) The Secretary-General of the Centre does not find, in accordance with Articles 28 (3) or 36 (3) of the Convention, that the dispute is manifestly outside the jurisdiction of the Centre, or the Conciliation Commission or Arbitral Tribunal constituted in accordance with the Convention does not decide that the dispute is not within the jurisdiction of the Centre, or

b) The other contracting party does not comply with the award of the arbitral tribunal or fails to its implementation.

Article 12.

1. If one of the Contracting Parties, by virtue of a guarantee given in conformity with the present Convention makes payment to one of its nationals or its companies, it is thereby entered into the rights and claims of the national or company.

2. Such payments shall not affect the rights of the holder of the security to use the I.C.S.I.D. in accordance with the provisions of Article 11, or to carry out the measures introduced to until the end of the procedure.

Article 13.

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If a dispute cannot be settled in this way, it shall be submitted, at the request of either Contracting Party to an arbitral tribunal.

3. The Tribunal shall be constituted for each individual case in the following way: within two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. The two Members shall appoint a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, shall invite the Secretary-General of the U.N. to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General of the U.N. will be invited to make the necessary appointments. If he is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General or Assistant Secretary-General next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitration tribunal shall take its decision by a majority of votes. Such decisions shall be final and enforceable automatically in respect of the two Contracting Parties. Each Contracting Party shall bear the costs of its own member of the Tribunal and of its counsel in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. However, the arbitral tribunal may decide that one of the Parties shall assume a higher proportion of costs and this decision shall be binding on both Contracting Parties. the tribunal shall determine its own rules of procedure.

Article 14.

1. This Agreement shall be ratified or approved in accordance with the constitutional procedures applicable for each of the two States and shall enter into force on the date of the exchange of instruments of ratification or approval.

2. This agreement is concluded for an initial period of ten years and shall continue in force thereafter the term unless one of the Parties denounces it in writing with 12 months notice. on expiry of the period of validity of this Convention, investments made during that it was in force will continue to benefit from the protection of its provisions for a further period of ten years, without prejudice to the application, upon expiration of this period, of the general principles of international law.

In WITNESS WHEREOF the undersigned duly authorised thereto by their respective Governments have signed this Agreement.

For the Government of the French Republic:

René Monory

Minister of Economy

For the Government of the Democratic Socialist Republic of Sri Lanka

Ronnie de Mel

Minister of Finance and Planification