

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF THE ITALIAN REPUBLIC SRI LANKA DEMOCRATIC SOCIALIST FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Italian Republic and the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the Contracting Parties),  
DESIRING to intensify economic cooperation between the two countries,  
INTENDING to create favorable conditions for investors from each country to invest in the territory of the other country,  
RECOGNISING that the promotion and protection of such investments will be beneficial for the economic prosperity of both countries.

HAVE AGREED AS FOLLOWS:

## **Article 1.**

Each Contracting Party shall best promote investments in its territory by investors of the other Contracting Party, shall permit such investments in accordance with its laws and regulations and shall accord such investments fair and reasonable treatment.

## **Article 2.**

For the purposes of this Agreement:

1) The term "investment" includes any type of use of assets permitted in accordance with the relevant laws and regulations of each Contracting Party and more particularly, though not exclusively:

- (a) ownership of immovable or movable property and any other rights in rem such as mortgage, lien, usufruct and similar rights;
- (b) shares, securities and bonds of companies and any interest in the property of such companies;
- (c) rights in respect of money used for the purpose of creating economic value or in respect of any service having economic value;
- (d) copyrights, industrial property rights (including trademarks), technical processes, know-how rights and trade names;
- (e) legal concessions, including concessions for research, extraction, or exploitation of natural resources.

Any permitted change in the form in which the assets are invested shall not affect their classification as an investment provided that such change is not contrary to the law of the State in whose territory the investment was made.

(2) The term "income" means the amounts derived from an investment, for a specified period of time, by way of profits, interest, capital gains, dividends, royalties, emoluments and other legitimate income.

3) The term "investor" means the nationals and companies of each Contracting Party.

(a) The term nationals means natural persons who, under the laws of each Contracting Party, are considered to be nationals of that State.

(b) Companies or firms means companies or firms or associations established or founded in accordance with the laws in force in each Contracting Party, whether or not they have limited liability and whether or not they are profit-making and

have their registered offices in the territory of each Contracting Party.

4. The term "territory" means, with respect to Italy and Sri Lanka, the territory which constitutes the Republic of Italy and the Republic of Sri Lanka respectively.

### **Article 3.**

1) The treatment accorded to investments made by investors of each Contracting Party in the territory of the other Contracting Party shall be no less favourable than that accorded to investments made by investors from any third country.

2) The treatment accorded to investment-related activities of investors of each Contracting Party shall not be less favourable than that accorded to investment-related activities of investors from any third country.

3) The above treatment shall not extend to advantages granted to investors of a Third Country by each Contracting Party on the basis of that Contracting Party's membership of a Customs Union, Common Market or Free Trade Area or International Multilateral Economic Convention or on the basis of an agreement concluded between that Contracting Party and a Third Country to avoid double taxation or to facilitate border trade.

### **Article 4.**

1) The investments of investors of each Contracting Party shall enjoy adequate protection in the territory of the other Contracting Party.

2) Investments made by the investors of each Contracting Party shall not be expropriated or nationalised or be subject to measures having equivalent effect to expropriation or nationalisation (hereinafter referred to as expropriation) in the territory of the other Contracting Party except in the public interest and against compensation. Such compensation shall be equivalent to the market value of the investments calculated, at the time the expropriation was declared, on the basis of internationally accepted parameters. The relevant payment shall be convertible, freely transferable and without undue delay.

3) If the investments of investors of each Contracting Party suffer losses as a result of war, other armed conflicts, states of emergency or similar events in the territory of the other Contracting Party, they shall receive appropriate compensation.

### **Article 5.**

1) Disputes on what is mentioned in paragraph 2 of Article 4 concerning the conformity of the expropriation with the laws and regulations of the Contracting Party that carried out the expropriation may, at the request of the interested party, be submitted to the competent Court of the Contracting Party that carried out the expropriation.

2) Disputes on the amount of the compensation mentioned in paragraph 2 of Article 4 shall be settled in accordance with the provisions of point 4 (Ad Article 5) of the Protocol.

### **Article 6.**

Each Contracting Party shall ensure, within the framework of its laws and regulations, the free transfer of assets relating to investment made in its territory by investors of the other Contracting Party, which are as follows:

1) income

2) royalties deriving from intangible rights defined in letters d) and e) of paragraph 1 of Article 2,

3) repayment instalments on loans intended for direct participation in investments;

4) expenses for the management of the investment in the territory of the other Contracting Party;

5) additional funds necessary to maintain the investment in the territory of the other Contracting Party;

6) the proceeds of the total or partial sale and/or liquidation of the investment, including liquidation resulting from any event mentioned in paragraph 3 of Article 4.

Nationals of each Contracting Party working in the territory of the other Contracting Party in connection with an investment made by the other Contracting Party shall be permitted to transfer to their country all the remainder of their wages, after the payment of taxes, all other legally due remuneration and the deduction of maintenance costs incurred there.

## **Article 7.**

Where a Contracting Party has given any security against non-commercial risks in connection with an investment by its investors in the territory of the other Contracting Party and has made payments to such investors under the security, the other Contracting Party shall recognise the transfer of such investors' rights to the first Contracting Party and the subrogation of each Contracting Party in such rights shall not exceed the original rights of the investor. With respect to the transfer of sums (or amounts) due to the Contracting Party as a result of such subrogation, Articles 4 and 6 shall apply respectively.

## **Article 8.**

The transfers referred to in Articles 4, 6 and 7 will be made without undue delay after fulfilment of the tax obligations.

Such transfers will be made in convertible currency at the official exchange rate applicable on the date of the transfer.

## **Article 9.**

If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific contractual provisions or arrangements is more favourable than that provided for in this Agreement, the most favourable treatment shall be granted.

## **Article 10.**

This Agreement shall also apply to investments made before the entry into force of this Agreement by Sri Lankan investors in the territory of Italy in accordance with its applicable laws and regulations, as well as to investments by Italian investors in the territory of Sri Lanka in compliance with its laws and regulations in force.

## **Article 11.**

1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled by friendly consultations between the two Parties through diplomatic channels.

2) If such disputes cannot be settled within six months of the date on which each Contracting Party notifies the other Contracting Party in writing, they shall, at the request of either Contracting Party, be submitted for settlement to an ad hoc International Arbitration Tribunal.

3) The ad hoc international arbitral tribunal referred to above shall be composed as follows: the arbitral tribunal shall consist of three arbitrators. Each Contracting Party shall appoint an arbitrator; the two arbitrators shall propose by mutual agreement the third arbitrator who is a national of a third country having diplomatic relations with both Contracting Parties and the third arbitrator shall be appointed as President of the Tribunal by both Contracting Parties.

4) If the appointments of the members of the arbitral tribunal are not made within six months of the date of the request for arbitration, any Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court has the nationality of a Contracting Party, or is unable to make the appointment for other reasons, this task shall be entrusted to the Vice-President of the Court or to the senior Judge who is not a national of any of the Contracting Parties.

5) The Arbitral Tribunal shall determine its own procedure.

The Arbitral Tribunal shall make its decision and majority of votes. Such decision shall be final and binding on both Contracting Parties.

6) Each Contracting Party shall bear the costs of its arbitrator and its sponsor in the arbitration proceedings. The cost of the President and the remaining costs shall be borne equally by both Contracting Parties.

## **Article 12.**

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations.

## **Article 13.**

1) This Agreement shall enter into force three months after the Contracting Parties have notified each other of the completion of their respective internal procedures.

It shall remain in force for a period of ten years and shall remain in force for a further period of five years and thereafter unless terminated in writing by either Contracting Party one year before its expiry.

2) With respect to investments made before the date of expiry of this Agreement, the provisions of Articles 1 to 12 shall continue in force for a further period of five years after the date of expiry of this Agreement.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Colombo on March 25, 1947, in Italian, Sinhalese and English. The three texts are equally authentic. In case of dispute over interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

## **Protocol**

Upon signature of the Agreement between the Government of the Italian Republic and the Government of the Democratic Socialist Republic of Sri Lanka on Mutual Promotion and Protection of Investments, the undersigned Plenipotentiaries also agreed on the following provisions that are to be considered as an integral part of the aforementioned Agreement.

### **1.**

All investments shall, without prejudice to the previous Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

### **2. Ad Article 2**

This Agreement shall also apply to investments made by residents or companies of a Contracting Party in the maritime area or on the continental shelf where the other Contracting Party exercises its sovereignty, sovereign rights or jurisdiction in accordance with international law and its internal laws and regulations.

### **3. Ad Article 3**

The "activities" referred to in Article 3, Paragraph 2 of this Agreement refer to the administration, maintenance, use and enjoyment of an investment as well as the entry, stay and movement of natural persons and goods in connection with the investment.

### **4. Ad Article 5**

(1) If a dispute concerning the amount of compensation for expropriation between a Contracting Party and an investor of the other Contracting Party has not been settled within six months of the date of the request for settlement, the dispute may, at the request of the Contracting Party concerned, be submitted:

(a) before the competent court of the Contracting Party which carried out the expropriation; or

(b) to an ad hoc International Arbitral Tribunal for the purpose of the award;

(c) the International Centre for Dispute Settlement on Investments for arbitration purposes, in accordance with the provisions of the Convention on the Settlement of Disputes on Investments between States and Citizens of other States concluded on 18 March 1965 in Washington.

(2) The ad hoc international arbitral tribunal mentioned above shall be established as follows:

(a) each litigant shall appoint an arbitrator; the two arbitrators shall propose, by mutual agreement, a President who will be

a citizen of a country Third having diplomatic relations with both Contracting Parties.

The arbitrators will be appointed within two months, and the President within four months from the date on which one of the contenders informed the other of the intention to submit the dispute to arbitration.

If the appointments are not made within the period mentioned above, either party may invite the Secretary-General of the International Centre for the Composition of Disputes on the Investments to make the required appointments.

(b) The Arbitral Tribunal shall determine its own arbitration procedure. But it may, when establishing its procedure, refer to the arbitration procedures of the International Centre for Composition of Investment Disputes.

(c) The Arbitral Tribunal shall take its decisions by majority vote. of votes. His praise will be final and binding on both of them. Contracting Parties, and will be executed by the Contracting Parties in accordance with the internal regulations.

(d) The arbitration award will be decided in accordance with the legislation internal, including the Party's conflict of law rules Contractor accepting the investments and in accordance with what provided for in this Agreement as well as with the principles of law generally recognised internationally and adopted by both the Contracting Parties.

(e) Each Party shall bear the costs of its arbitrator and its sponsor in the arbitration proceedings. The costs of the President and the remaining costs of the Arbitral Tribunal shall be borne equally by both parties.

## **5. Ad Article 6**

The reinvested proceeds will enjoy the same protection as the original investment.

## **6. Ad Article 8**

The 'without undue delay' clause in Article 8 shall be deemed to be fulfilled if the transfer takes place within the time normally required in accordance with international financial usage.

Each Contracting Party may, in the event of exceptional balance of payments difficulties, exercise in fact and in good faith and for a limited period of time, the powers conferred on it by its own laws.

## **7. Ad Article 10**

The provisions of Article 10) shall apply to all investments made by investors of each Contracting Party in the territory of the other Party after 7 September 1978.

Done in duplicate in Colombo on March 25th one thousand nine hundred and eighty-seven in Italian, Sinhalese and English. The three texts are equally authentic. In case of dispute over interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC