

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Singapore and the Government of the Democratic Socialist Republic of Sri Lanka,

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to stimulating individual business initiative and increasing prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means every kind of asset, including, though not exclusively, any:

- (a) Movable and immovable property and other property rights such as mortgage, usufruct, lien or pledge;
- (b) Share, stock, debenture and similar interests in companies;
- (c) Title to money or to any contract having an economic value;
- (d) Copyright, industrial property right, technical process, trade mark and goodwill; and
- (e) Business concession conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources.

(2) The term "returns" means monetary returns yielded by an investment including any profit, interest, capital gain, dividend, royalty or fee.

(3) The term "national" means:

- (a) In respect of Sri Lanka, a person who is a citizen of Sri Lanka according to its laws;
- (b) In respect of Singapore, any citizen of Singapore within the meaning of the Constitution of the Republic of Singapore.

(4) The term "company" means:

- (a) In respect of Sri Lanka, a corporation, firm or association incorporated or constituted under the law in force in any part of Sri Lanka;
- (b) In respect of Singapore, any company, firm, association or body, with or without legal personality, incorporated, established or registered under the laws in force in the Republic of Singapore.

(5) The term "territory" means:

- (a) In respect of Sri Lanka, the territory which constitutes the Democratic Socialist Republic of Sri Lanka;
- (b) In respect of Singapore, the island of Singapore and all islands and territories within the sovereignty or jurisdiction of the Republic of Singapore.

Article 2. Applicability of this Agreement

(1) This Agreement shall only apply:

(a) In respect of investments in the territory of Sri Lanka, to all investments made by nationals and companies of the Republic of Singapore which are specifically approved in writing by the Government of Sri Lanka or by any of its designated agencies, and upon such conditions, if any, as it or they shall deem fit;

(b) In respect of investments in the territory of Singapore, to all investments made by nationals and companies of Sri Lanka which are specifically approved in writing by the Government of the Republic of Singapore and upon such conditions, if any, as it shall deem fit.

(2) The provisions of the foregoing paragraph shall apply to all investments made by nationals and companies of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals and companies of the other Contracting Party to make in its territory investments that are in line with its general economic policy.

(2) Investments approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

Article 4. Most-favoured-nation Provisions

(1) Subject to paragraph (2) of this Article and to Article 5, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals and companies of any third State.

(2) Investments of nationals and companies of either Contracting Party and the returns therefrom shall not be entitled to any treatment or privilege which is not available, on a reciprocal basis, to investments or returns of nationals and companies of the other Contracting Party.

Article 5. Exceptions

(1) The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the nationals and companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals and companies of the other the benefit of any treatment, preference or privilege resulting from any regional arrangement for customs, monetary, tariff or trade matters or any agreement designed to lead in future to such a regional arrangement.

(2) The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

Article 6. Expropriation

(1) Investments of nationals and companies of either Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalised, except for any purpose authorised by law and against adequate, effective and prompt payment of compensation.

(2) Such compensation shall represent the market value of the investments involved on the date of expropriation or nationalisation.

Article 7. Repatriation

Each Contracting Party shall guarantee to nationals and companies of the other Contracting Party the free transfer of their capital and the returns from any investments, and any compensation obtained under Article 6.

Article 8. Laws

For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 9. Subrogation

(1) In the event that either Contracting Party, as a result of a guarantee consistent with this Agreement, makes payment to its own nationals and companies in respect of any of their claims under this Agreement, the former Contracting Party shall be entitled to subrogation of such claims.

(2) Any such payment made by one Contracting Party to its nationals and companies shall not affect the right of such nationals and companies to make their claims against the other Contracting Party in accordance with Article 10.

Article 10. Reference to the International Centre for Settlement of Investment Disputes

(1) Any legal dispute arising directly out of an investment between either Contracting Party and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If any such dispute cannot be so settled within six months of it being raised by either party to the dispute, it shall upon the request of either party to the dispute, unless such parties have otherwise agreed, be submitted 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 and Nationals of other States opened for signature at Washington on 18th March, 1965⁽¹⁾ (called "the Convention" in this Agreement).

(3) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise as an objection the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance policy an indemnity in respect of some or all of its losses.

(4) Except as provided in Article 27 (2) of the Convention, neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

(a) The Secretary-General of the Centre finds that the dispute is manifestly outside the jurisdiction of the Centre as provided in Article 28 (3) or Article 36 (3) of the Convention, or the Conciliation Commission or Arbitral Tribunal constituted under the Convention decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other Contracting Party shall fail to abide by or to comply with the terms of any award of the Arbitral Tribunal.

Article 11. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If any such dispute cannot be settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be the Chairman of the tribunal, appointed by agreement of the Contracting Parties.

(3) Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.

(5) The tribunal shall establish its own rules of procedure.

(6) The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

(7) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall be ratified and shall enter into force on the exchange of instruments of ratification.

(2) Subject to the following paragraphs, this Agreement shall remain in force for a period of ten years.

(3) Unless either of the Contracting Parties notifies the other Contracting Party through diplomatic channels the former's confirmation of the expiry of this Agreement at least six months before the end of the said ten years, this Agreement shall be automatically renewed for further periods of ten years at a time. Either Contracting Party may, by giving at least six months' notice before the expiry of any ten year period subsequent to the first ten years mentioned in paragraph (2) of this Article, terminate this Agreement with effect from the date of expiry of any such subsequent ten year period.

(4) On expiry or termination of this Agreement, investments made while the Agreement was in force shall continue to enjoy protection for a further period of ten years.

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

DONE at Singapore, in duplicate, in the English and Sinhala languages on [9 May 1980]. Both texts are equally authoritative, but in the case of divergence the English text shall prevail.

GOH CHOK TONG

For the Government of the Republic of Singapore

C. GUNASINGHAM

For the Government of the Democratic Socialist Republic of Sri Lanka