

Agreement between the Kingdom of the Netherlands and the Democratic Socialist Republic of Sri Lanka for the promotion and protection of investments

The Government of the Kingdom of the Netherlands and the Government of the Democratic Socialist Republic of Sri Lanka,

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

Recognizing the need to protect investments made by nationals and companies of the one State within the territory of the other State, and to stimulate the flow of capital with a view to the economic prosperity of both States;

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

(a) "Investment" means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property as well as any other rights in rem such as mortgages, liens or pledges;

(ii) Shares, stock and debentures of companies or interests in the property of such companies;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Copyrights, industrial property rights (such as patents for inventions, trade marks, trade-names, industrial designs), know-how and goodwill;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(b) "Returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profits, interests, capital gains, dividends, royalties or fees.

(c) "Nationals" means:

(i) In respect of the Kingdom of the Netherlands any person having its nationality in accordance with its law.

(ii) In respect of Sri Lanka a person who is a citizen of Sri Lanka according to its laws;

(d) "Companies" means:

(i) In respect of the Kingdom of the Netherlands any legal person constituted in accordance with its law and having its seat under the Articles of Incorporation in the Kingdom.

(ii) In respect of Sri Lanka, corporations, firms or associations incorporated or constituted under the law in force in any part of Sri Lanka;

(e) "Territory" means:

(i) In respect of the Kingdom of the Netherlands the territory which constitutes the Kingdom of the Netherlands.

(ii) In respect of Sri Lanka the territory which constitutes the Republic of Sri Lanka;

Article 2.

Each Contracting Party shall, subject to its rights to exercise powers conferred by its laws and regulations, 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.

Article 3.

(1) The present Agreement shall apply to:

(a) Investments by nationals and companies of Sri Lanka in the territory of the Kingdom of the Netherlands which are made in accordance with the laws and regulations in the Kingdom of the Netherlands. Investments by nationals and companies of Sri Lanka in the territory of the Kingdom of the Netherlands which are made in accordance with the laws and regulations in the Kingdom of the Netherlands.

(b) Investments by nationals and companies of the Kingdom of the Netherlands in the territory of Sri Lanka 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 shall be deemed fit;

(2) Notwithstanding the provisions of paragraph 1 of this Article, the present Agreement shall also apply to investments by nationals and companies of either Contracting Party in the territory of the other Contracting Party, made before the coming into force of this Agreement.

Article 4.

(1) Investments of nationals and companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.

Article 5.

(1) Without prejudice to the provisions of Article 4, neither Contracting Party shall in its territory subject investments of nationals and companies of the other Contracting Party, admitted in accordance with the provisions of Article 3, or returns of such nationals or companies, to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State, whichever is more favourable to the investor.

(2) The provisions of paragraph (1) shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or

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

Article 6.

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the needs of that Party and on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge and shall include interest at a normal commercial rate until the date of payment. Payments of compensation shall be made without delay and shall be freely transferable in a freely convertible currency to the country designated by the claimant concerned at the official rate of exchange prevailing on the date used for the determination of value. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation to prompt determination of the amount of compensation either by law or by agreement between the parties and to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investments in accordance with the principles set out in this paragraph without prejudice to

the procedure contained in Article 8 of this Agreement.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 7.

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer in a convertible currency to the country designated by those nationals or companies, of their investments and of the returns from it, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period of time to exercise equitably and in good faith and in a manner consistent with its rights and obligations as a member of the International Monetary Fund, the powers conferred by its laws and regulations. However such powers shall not be used to impede the transfer of profits, interests, dividends, royalties or fees.

Article 8.

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965,¹ any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former.

(2) A company which is incorporated or constituted under the law in force in the territory of a Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purpose of the Convention as a company of the other Contracting Party. If any such dispute should arise, and agreement cannot be reached or the dispute cannot be finally disposed of within 12 months between the parties to this dispute through pursuit of local remedies or otherwise, then, the national or company affected having also consented in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national or company affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

Article 9.

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by 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 within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party, or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral

proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

(6) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the Parties so agree.

Article 10.

If the investments of a national or a company of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer into the rights of the said national or company pursuant to the terms of such insurance shall be recognized by the other Contracting Party, provided however that the insurer or the re-insurer shall not be entitled to exercise any rights other than the rights which the national or the company would have been entitled to exercise.

Article 11.

Either Party may propose to the other Party to consult on any matter affecting the operation of the present Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation. The consultation shall take place by means of a Joint Committee, to be established by the two Parties. The Joint Committee shall be composed of representatives to be appointed by the respective Governments.

Article 12.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe only.

Article 13.

(1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with.

(2) The Agreement shall remain in force for a period of fifteen years. Thereafter it shall continue in force until the expiration of six months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE in duplicate at Colombo this 26th day of April 1984 in the Dutch, Sinhala and English languages, all three texts being equally authoritative. In the event of any divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of the Netherlands:

For the Government of the Democratic Socialist Republic of Sri Lanka: