

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

THE Government of the Democratic Socialist Republic of Sri Lanka and the Government OF oo. eeeeeeeec scene (hereinafter referred to as the "Contracting Parties");

DESIRING to create conditions favourable for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

HAVE agreed as follows:

Article 1. DEFINITIONS

1. The term "investment" means every kind of property or asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party (hereinafter referred to as the host Contracting Party) in particular though not exclusively includes:

(a) movable and immovable property and any other rights such as mortgages liens or pledges;

(b) shares, stocks and debentures of companies or any other similar forms of interests in such companies;

(c) claims to money or any performance under contract, having a financial value;

(d) industrial and intellectual property rights such as patents, utility models, industrial designs or models, trade marks and names, know-how and goodwill;

(e) business concessions conferred by law or under contract including concessions to search for, cultivate, extract and exploit natural resources;

2. The term "investor" with regard to either Contracting Party means the following persons who invest in the territory of the other Contracting Party:

(a) natural persons who, having the nationality of one Contracting Party, in accordance with its laws and are not nationals of the other Contracting Party.

(b) legal entities of either Contracting Party which are formed and incorporated under the laws of one Contracting Party and have their seat together with their substantial economic activities in the territory of that same Contracting Party.

3. The term "nationals" means

(a) in respect of the Republic of Sri Lanka : persons who are citizens of Sri Lanka according to its laws;

(b) in respect of the Government Of

4. The term "returns" means the amounts legally yielded by an investment such as profit derived from investment, financial costs, dividends, royalties and fees.

5. The term "territory" means the territory under sovereignty or jurisdiction of each Contracting Party, and also includes their relevant maritime areas.

Article 2. PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall, subject to its rights to exercise powers conferred by its laws, encourage and create favourable conditions for nationals and companies of the other Contracting Party to invest in its territory, and subject to the same rights, shall admit such investments.

2. Investments of nationals or 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. 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 3. MOST-FAVOURED-NATION PROVISION

1. Neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals or companies of the other Contracting Party 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.

2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

Article 4. EXCEPTIONS

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State 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 or preference which may be extended by the former Contracting Party by virtue of:

(a) the formation or extension of a customs or a free trade area or a common external tariff area or a monetary union or a regional association for economic co- operation; or

(b) the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(c) any arrangement with a third State or States in the same geographical region designed to promote regional co-operation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(d) any international agreement or arrangement, or any domestic legislation relating wholly or mainly to taxation.

Article 5. COMPENSATION FOR LOSSES

Investors of either Contracting Party whose investments suffer losses due to war or any armed conflict, revolution or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any other third country whichever is the most favourable treatment as regards compensation, restitution and indemnification in relation to such losses. Resulting payments shall be freely transferable.

Article 6. EXPROPRIATION

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

2. Investments by nationals or companies of either Contracting Party shall not be expropriated, nationalized or directly or indirectly subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for a public purpose and against prompt and effective compensation. Such compensation shall be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure became publicly known and shall include interest at a normal commercial rate until the date of payment. The compensation shall be paid without delay and shall be effectively realizable and freely transferable. Provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The national or company affected shall have a right to prompt review by a judicial or other independent authority of the

Contracting Party making the expropriation, of this or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

3. Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own nationals or companies as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

4. Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 7. REPATRIATION OF INVESTMENT

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer of their capital and of the returns from it, subject to the right of each Contracting Party in exceptional balance of payments difficulties to exercise equitably and in good faith powers conferred by its laws; in conformity with its responsibilities and commitments as a member of the International Monetary Fund.

Article 8. SETTLEMENT OF INVESTMENT DISPUTES BETWEEN a CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. Any dispute between a Contracting Party and an investor of the other Contracting Party shall be notified in writing including a detailed information by the investor to the host party of the investment, and shall, if possible, be settled amicably.

2. If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1 above, it may be submitted upon request of the investor either to:

(a) The competent tribunal of the Contracting Party in whose territory the investment was made ; or

(b) the International Centre for the Settlement of Investment Disputes (ICSID) established by the convention the settlement of investment disputes between States and Nationals of the other states opened for signature in Washington D.C. on 18" March 1965; or

(c) the Regional Centre for International Commercial Arbitration in Cairo;

(d) the Regional Centre for Arbitration - Kuala Lumpur;

(e) The International Arbitration Institute of Stockholm Chamber of Commerce; or

(f) the Ad-hoc Court of Arbitration established under the arbitration rules of procedures of the United Nations Commission for International Trade Law.

3. The arbitration tribunal shall decide in accordance with:

The provisions of this agreement;

The national law of the Contracting Party in whose territory the investment was made;

Principles of International Law;

4. The arbitration decision shall be final and binding for the parties in the dispute. Each Contracting Party shall execute them in accordance with its laws.

Article 9. DISPUTES BETWEEN THE CONTRACTING PARTIES

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.

Article 10. SUBROGATION

If either Contracting Party or its designated agency makes a payment to its own investors under an insurance agreement or guarantee agreement against non-commercial risks it has accorded in respect of investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim from the party indemnified to the former Contracting Party or its designated Agency; and

(b) that the former Contracting Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such a party, provided that such Contracting Party shall not be entitled under this paragraph to exercise any rights other than such rights as the national or company would have been entitled to exercise.

The former Contracting Party (or its designated Agency) shall accordingly if it so desires be entitled to assert any such right or claim to the same extent as its predecessor in title either before a Court or tribunal in the territory of the latter Contracting Party or in any other circumstances. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by assignment under the terms of an indemnity, the former Contracting Party shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of companies or nationals of the latter Contracting Party or of any third State deriving from investment activities similar to those in which the party indemnified was engaged. Such amounts and credits shall be freely available to the former Contracting Party concerned for the purpose of meeting its expenditure in the territory of the other Contracting Party.

Article 11. ENTRY INTO FORCE

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

Article 12. APPLICABILITY OF THE AGREEMENT

This Agreement shall also apply to the investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party, consistent with the host Contracting Party's laws.

Article 13. DURATION AND TERMINATION

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve 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 ten 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, duly authorised thereto by their respective Governments, have signed this

Agreement.

Done in duplicate at this0..... day Ofeeeeeeeeee seen eerie ee in the Sinhalese, and English languages, all texts being equally authentic. In the event of divergence of interpretation the English text shall prevail.

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