

AGREEMENT BETWEEN THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN FOR THE PROMOTION AND PROTECTION OF INVESTMENT

The Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Islamic Republic of Pakistan hereinafter referred to as the Contracting Parties;

Desiring to create favourable conditions for greater economic cooperation between them and in particular for investment by nationals of one State in the territory of the other State:

Recognising the need to protect investments by nationals and companies of both States and to stimulate the flow of capital with a view to the economic prosperity of both States:

Have agreed as follows:

Article 1. Definitions

(a) "investment" means every kind of asset established or acquired, including changes in the form of such investments invested in accordance with laws of the State in the territory in which the investment is made, in particular, though not limited to the following:

(i) Movable and immovable property and any other property rights 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, industrial designs), know-how, trade names 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 in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and technical assistance fee.

(c) "nationals" means;

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

(ii) In respect of Islamic Republic of Pakistan a person who is a Citizen of Pakistan according to its laws.

(d) "companies" means,

(i) In respect of Sri Lanka Corporations, firms or associations incorporated or constituted under the law in force in any part of Sri Lanka.

(ii) In respect of Islamic Republic of Pakistan Corporations, firms or associations incorporated or constituted under the laws in force in any part of Pakistan.

(e) "territory" means;

(i) In respect of Sri Lanka the territory which constitutes the Republic of Sri Lanka.

(ii) The term Pakistan used in the geographical sense means Pakistan as defined in the constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and International Law is an area within which Pakistan exercises sovereign rights with respect to the natural resources of the sea-bed, sub-soil and super-jacent waters".

Article 2. Applicability of this Agreement

(1) This Agreement shall only apply;

(i) In respect of investments in the territory of Sri Lanka, to all investments made by nationals and companies of Pakistan 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.

(ii) In respect of investments in the territory of Pakistan, to all investments made by nationals and companies of Sri Lanka which are specifically approved in writing by the Government of Pakistan 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 after the coming into force of this Agreement and to all investments made by Pakistan in Sri Lanka under the Grater Colombo Economic Commission Law No. 4 of 1978, whether made before or after the coming into force of this Agreement and investments made by Sri Lanka in Pakistan after 1.9.1954

Article 3. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its Laws and Policy

(2) Investment 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

Article 4. Most - Favoured-nation Provisions

(1) Subject to the provisions of sub section (2) of this Article and Article 5, 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. sub section (2) of this Article and Article 5, 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) Investment of national or 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 or companies of the other Contracting Party.

Article 5. 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 the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs or economic union 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 or any domestic legislation relating wholly or mainly to taxation.

Article 6. Expropriation

(1) Investment of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation on 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 in accordance with

Law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge and shall include interest until the date of payment. Payments of compensation shall be made without delay and shall be freely transferable 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 taking 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 investment in accordance with the principles set out in this paragraph.

(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. 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. 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 without unreasonable delay and on a non-discriminatory basis.

Article 8. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a State of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 9. 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 10. Reference to International Centre for Settlement of Investment Disputes

(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 opened for signature at Washington on 18th March, 1965 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. Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18th March, 1965 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 the 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, 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 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.

(3) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless;

(a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 11. 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.

Article 12. Subrogation

If either Contracting Party makes payment under an indemnity it has given in respect of an investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognise;

(a) The assignment, whether under law or pursuant to a legal transaction, 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 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 13. 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) 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.

DONE in duplicate at Islamabad on this 20th day of December 1997 in the English Language.

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN