

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

The Government of the Republic of Finland 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;

Recognizing the need to protect investments by nationals and companies of both States and to stimulate the flow of capital and individual business initiative with a view to the economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

(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 and any other property rights such as mortgages, liens or pledges;

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

(iii) Title or claim to money or right to any performance having an economic value;

(iv) Copyrights, industrial property rights (such as patents for inventions, trade marks, industrial designs), technical processes, know-how, business 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 or fees;

c) "Nationals" means in respect of Finland and Sri Lanka physical persons who are citizens of either country according to its laws;

d) "Companies" means in respect of Finland and Sri Lanka corporations, firms or associations incorporated or constituted under the law in force in any part of Finland and Sri Lanka respectively;

e) "Territory" means in respect of Finland and Sri Lanka the territory which constitutes the Republic of Finland and the Democratic Socialist Republic of Sri Lanka respectively.

(2) If an investment is envisaged in the territory of one Contracting Party by a company which is not covered by the definition in paragraph (1) (d) of this Article, but in which nationals or companies of the other Contracting Party have a substantial interest, the former Contracting Party shall, if it admits the investment, by mutual agreement between the two Contracting Parties, regard the company as one which enjoys protection under this Agreement in respect of the said investment.

Article 2. Applicability of this Agreement

(1) This Agreement shall only apply to investments made in accordance with the laws, regulations and procedures of the host country.

(2) Subject to the provisions of paragraph (1) of this Article, this Agreement shall apply to all investments made in the territory of a Contracting Party by nationals or companies of the other Contracting Party before or after the entry into force of this Agreement.

Article 3. Protection of Investments

Each Contracting Party shall, subject to its laws and regulations and in conformity with international law, at all times ensure fair and equitable treatment to the investments of nationals and companies of the other Contracting Party.

Article 4. Most-favoured-nation Provisions

Subject to the provisions of Article 5, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of this Agreement 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 nationals or companies of any third State.

Article 5. Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the nationals or companies 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 union or agreement regarding the formation of a free trade area or other forms of regional co-operation 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. Expropriation

(1) Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation, against the investment of a national or a company of the other Contracting Party except under the following conditions:

- a) The measures are taken in the public interest and under due process of law in accordance with international law;
- b) The measures are not discriminatory;
- c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession occurred or became public knowledge and it shall be freely transferable in convertible currencies from the Contracting Party, at the official rate of exchange prevailing on the date used for the determination of value. The transfer shall be effected without undue delay within such a period as normally required for the completion of transfer formalities. The compensation shall include interest until the date of payment at an appropriate rate as applied by the Central Bank of the Contracting Party.

(2) The provisions of paragraph (1) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article 7. Repatriation of Investments

(1) Each Contracting Party shall, subject to its laws and regulations, allow without restrictions or undue delay the transfer in any convertible currency of:

- a) The net profits, dividends, royalties, technical assistance and other technical fees, interest and other returns accruing from any investment of the nationals or companies of the other Contracting Party;
- b) The proceeds from the total or partial liquidation of any investment made by nationals or companies of the other Contracting Party;
- c) Funds in repayment of borrowings by nationals or companies of one Contracting Party from the nationals or companies

of the other Contracting Party which both Contracting Parties have recognized as investments; and

d) With regard to nationals of the other Contracting Party who are employed in connection with an investment in its territory, the earnings of such nationals from the said work.

(2) The Contracting Parties shall also allow free transfer from their territories of movable property constituting part of an investment by a national or company of the other Contracting Party.

(3) The Contracting Parties undertake to accord to transfers referred to in paragraphs (1) and (2) of this Article treatment as favourable as that accorded to transfers originating from investments made by nationals of any third country.

Article 8. Laws

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 and in accordance with such rules of international law as may be applicable.

Article 9. 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 18 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 nationals or companies of the other Contracting Party have substantial ownership subject to the conditions set out in Article 1(2) of this Agreement 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.

(3) If any dispute should arise, and agreement cannot be reached or the dispute cannot be finally disposed of within three 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.

(4) 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 10. 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 and who is not otherwise prevented from discharging the said function 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. The cost of the Chairman and the members of the tribunal 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 11. Subrogation

If a Contracting Party makes a payment to any of its [nationals] or companies under a guarantee it has granted in respect of an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the transfer of any right or title of such national or company to that Contracting Party and the subrogation of that Contracting Party to any right or title.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) The Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain 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.

(3) In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles 1–11 shall continue in effect for a further 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 authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Kandy this 27th day of April 1985, in the Finnish, Sinhala and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Finland:

JERMU LAINE

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

A. C. S. HAMEED