

Treaty – between the Federal Republic of Germany and Ceylon for the Promotion and Reciprocal Protection of Investments

THE FEDERAL REPUBLIC OF GERMANY AND CEYLON

DESIRING to foster and strengthen economic cooperation between the two States.

INTENDING to encourage investments by nationals and companies of either State in the territory of the other State, and

RECOGNIZING that encouragement and contractual protection of such investments are likely to promote investment for the mutual benefit of the two States.

HAVE AGREED AS FOLLOWS:

Article 1.

Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and endeavour to admit such investments in accordance with its legislation and regulations framed there under. It shall in any case accord such investments fair and equitable treatment.

Article 2.

Neither Contracting Party shall, in its territory, subject investments owned by, or under the control of, nationals or companies of the other Contracting Party or any activities carried on in connection with such investments to any discriminatory treatment on the ground that ownership or control of the investment concerned is vested in nationals or companies of the latter Contracting Party, unless specific stipulations are made in the document of admission as provided in paragraph b) of Protocol Number 2.

Article 3.

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

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose and against full compensation. It shall be actually realizable, freely transferable, and shall be made without delay. Provision shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and the giving of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review by due process of law.

(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 Party accords to nationals or companies of any third State, as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

Article 4.

Either Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer of the capital, of the returns from it and, in the event of liquidation, of the proceeds from such liquidation.

Article 5.

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party as well as the subrogation of that Contracting Party to any such right or claim, which that Contracting Party shall be entitled to assert on the same conditions and to the same extent as its predecessor in title. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of such assignment, paragraphs 2 and 3 of Article 3 as well as Article 4 shall apply *mutatis mutandis*.

Article 6.

(1) To the extent that those concerned have not made another arrangement admitted by the appropriate agencies of the Contracting Party in whose territory the investment is situated, transfers under paragraphs 2 or 3 of Article 3, under Article 4 or Article 5 shall be made without undue delay and at the rate of exchange effective for current transactions on the day the Transfer is made.

(2) The rate of exchange effective for current transactions shall be based on the par value agreed with the International Monetary Fund and shall lie within the margins above or below parity admitted under section 3 of Article IV of the Articles of Agreement on the International Monetary Fund.

(3) If at the date of transfer no rate of exchange within the meaning of paragraph 2 above exists in respect of either Contracting Party, the official rate fixed by such Contracting Party for its currency in relation to the US Dollar or to another freely convertible currency or to gold shall be applied. If no such rate has been fixed, the appropriate agencies of the Contracting Party in whose territory the investment is situated shall admit a rate of exchange that is fair and equitable.

Article 7.

(1) If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to the present Treaty, contain a regulation, whether general or specific entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Treaty, such regulation shall to the extent that it is more favourable prevail over the present Treaty.

(2) Either Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 8.

(1) The term "investment" shall comprise all categories of assets including all categories of rights and interests.

(2) The term "returns" shall mean the amounts derived from investments as profits or interest for a specified period.

(3) The term "nationals" shall mean

a) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law for the Federal Republic of Germany;

b) In respect of Ceylon, a person who is a citizen of Ceylon according to its laws.

(4) The term "companies" shall mean

a) In respect of the Federal Republic of Germany: any juristic person as well as any commercial or other company or association with or without legal personality, having its seat in the territory of the Federal Republic of Germany and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not its activities are directed at profit;

b) In respect of Ceylon: any juristic person or any company or association, incorporated in the territory of Ceylon and lawfully existing in accordance with its legislation.

Article 9.

The present Treaty shall apply to all investments made on or after November 8, 1963, by nationals or companies of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 10.

(1) Disputes concerning the interpretation or application of the present Treaty should, if possible, be settled by the Governments of the two Contracting Parties.

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

(3) Such arbitral tribunal shall be constituted for each individual case as follows: Each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Contracting Party has informed the other Contracting Party that it wants to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the 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 should 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 should make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11.

The provisions of the present Treaty shall remain in force also in the event of a dispute or a conflict arising between the Contracting Parties, without prejudice to the right of taking such temporary measures as are permitted under the general rules of international law. Measures of this kind shall be repealed without undue delay after the date of the actual termination of the dispute or conflict but not later than one year thereafter.

Article 12.

With the exception of the provisions in Protocol Number 7, referring to air transport, the present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of Ceylon within three months from the entry into force of the present Treaty.

Article 13.

(1) The present Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Bonn.

(2) The present Treaty shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of five years and shall continue in force thereafter for an unlimited period unless notice of termination is given in writing by either Party one year before the expiry. After the expiry of the period of five years, the present Treaty may be terminated at any time by either Party giving one year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, the provisions of Articles 1 to 12 shall continue to be effective for a further period of fifteen years from the date of termination of the present Treaty.

DONE at Colombo on the Eighth Day of November, One Thousand Nine Hundred and Sixty-Three,

In six originals, two in German, two in Sinhala, two in English, each text being equally authentic. In the event of a divergence between the German and Sinhala texts the Contracting Parties agree to construe the Treaty in accordance with the English text.

For the Federal Republic of Germany:

Dr. Th. Auer

Dr. Kurt Daniel

For Ceylon:

H.E. Tennekoon

On signing the Treaty for the Reciprocal Encouragement and Protection of Investments, concluded between the Federal Republic of Germany and Ceylon, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Treaty:

1. Re: Article 1

Investments made within the framework of the present Treaty in accordance with the legislation of a Contracting Party in its territory by nationals or companies of the other Contracting Party shall enjoy the full protection of the present Treaty. To the extent that any admission procedures are required for making an investment, such investment shall enjoy this protection from the date the admission has been granted. In admitting such investments the Government of Ceylon may also pay due regard to its published plans and policies.

2. Re: Article 2

a) The following shall more particularly, though not exclusively, be deemed 'activity' within the meaning of Article 2: the management, maintenance, use, and enjoyment of an investment. The following shall, in particular, be deemed 'discriminatory treatment' within the meaning of Article 2: restricting the purchase of raw or auxiliary materials, of power or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed 'discriminatory treatment' within the meaning of Article 2.

b) Either Contracting Party may, in admitting an investment by nationals or companies of the other Contracting Party, agree with them on specific stipulations deviating from the treatment provided for in Article 2. If specific stipulations of that nature have been agreed the provisions of Article 2 shall, to that extent, not be applicable. Such stipulations shall only be effective if the deviating measures have been described in detail and laid down individually in the document of admission or, if no such document of admission is required, in a special written agreement made with the nationals or companies of the other Contracting Party prior to effecting the investment.

c) Article 2 shall not apply to entry, sojourn, and activity as an employee.

3. Re: Article 3

The term 'expropriation' within the meaning of paragraph 2 of Article 3 shall also pertain to acts of sovereign power which are tantamount to expropriation, as well as measures of nationalization. Expropriation shall mean the taking away or restricting of any property right which in itself or in conjunction with other rights constitutes an investment.

4. Re: Article 4

'Liquidation' within the meaning of Article 4 shall be deemed to include any disposal effected for the purpose of completely or partly giving up the investment concerned.

5. Re: Article 6

A transfer shall be deemed to have been made 'without undue delay' within the meaning of paragraph 1 of Article 6 if made within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may on no account exceed three months.

6. Re: Article 8

a) Returns from an investment, as well as returns from reinvested returns, shall enjoy the same protection as the original investment.

(b) Without prejudice to any other method of determining nationality, any person in possession of a passport of the Federal Republic of Germany issued by the appropriate authorities shall be deemed to be a German within the meaning of subparagraph a) of paragraph 3 of Article 8.

7. Either Contracting Party shall refrain from any measures which, contrary to the principles of free competition, may prevent or hinder sea-going vessels or aircraft of the other Contracting Party from participating in the transport of goods intended for, or of persons traveling in connection with, an investment within the meaning of the present Treaty. This also applies to goods acquired in the territory of either Contracting Party or of any third State with funds of an enterprise in which capital within the meaning of the present Treaty is invested; it applies furthermore to persons travelling on behalf of such an enterprise.

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