

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

The Government of the Republic of Korea and the Government of the Democratic Socialist Republic of Sri Lanka;

Desiring to create favourable conditions for greater economic cooperation between them and in particular to encourage investments by nationals and companies of one State in the territory of the other State;

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

Have agreed as follow:

Article 1. Definitions

For the purposes of this Agreement

1. "Investment" means every kind of asset and, in particular, though not exclusively, includes:

- a. Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- b. Shares, stock and debentures of companies or interests in the property of such companies;
- c. Claims to money or to any performance under contract having a financial value;
- d. Copyrights, industrial property rights (such as patents for invention, trademarks, industrial designs), know-how, trade-names and goodwill;
- e. Any business concessions, which have been or may be granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit natural resources;

2. "Returns" means the amounts yielded by an investment and, in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees:

3. "Nationals" means;

- a. In respect of the Republic of Korea: physical persons who are deemed to be national of the Republic of Korea in accordance with its laws;
- b. In respect of Sri Lanka: a person who is a citizen of Sri Lanka according to its laws;

4. "Companies" means:

- a. In respect of the Republic of Korea: Juridical persons or companies or associations, whether or not with limited liability and whether or not for pecuniary profit, incorporates in the territory of the Republic of Korea and existing in accordance with its laws;
- b. In respect of Sri Lanka: corporations, firms or associations incorporated or constituted under the law in force in any part of Sri Lanka.

5. "Territory" means:

- a. In respect of the Republic of Korea: the territory over which the Republic of Korea has sovereignty or jurisdiction;
- b. In respect of Sri Lanka: the territory which constitutes the Democratic Socialist Republic of Sri Lanka.

Article 2. Applicability of this Agreement

1. This Agreement shall only apply:

a. In respect of investments in the territory of Sri Lanka, to all investments made by nationals and companies of the Republic of Korea 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 it or their shall deem fit;

b. In respect of investments in the territory of the Republic of Korea, to all investments made by nationals and companies of Sri Lanka which are specifically approved in writing by the Government of the Republic of Korea or by any of its designated agencies, and upon such condition, if any, as it or they shall deem fit.

2. The provisions of the foregoing paragraph shall apply to all investments made by nationals and companies of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement.

Article 3. Promotion and Protection of Investment

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 make in its territory investments that are in line with its general economic policy.

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.

Article 4. National Treatment and Most-favoured-nation Provisions

1. Subject to the provisions of paragraph (2) of this Article and Article 5 neither Contracting Party shall in its territory:

a. Subject investment 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, or

b. 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.

2. Provided its laws so provide in respect of all foreign nationals and companies and in relation to particular matters, a Contracting Party may accord to the nationals or companies of the other Contracting Party treatment less favourable than that which it accords to its own nationals or companies.

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 of the other the benefit of any treatment, preference or privilege resulting from:

a. Any existing or future customs union, free trade area, or common external tariff area or a monetary 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 or any domestic legislation relating wholly or mainly to taxation.

Article 6. Compensation for Losses

1. Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State.

2. Without prejudice to paragraph (1) of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a. Requisitioning of their property by its forces or authorities, or

b. Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity the situation, shall be accorded restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 7. Expropriation

1. Investments of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest until the date of payment, shall be made without delay, be effectively realized and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to a 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 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 8. 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 financial or economic circumstances to exercise equitably and in good faith powers conferred by its laws.

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 18 March 1965 any legal dispute arising between that Contracting Party and a national or a 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 one 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 purposes 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 twelve 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.

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 such a dispute 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 an 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 procedures.

Article 12. Subrogation

1. 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.

2. 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 13. Entry Into Force

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

Article 14. 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 Colombo this 28th day of March 1980 in the Korean, Sinhala, and English languages, all texts being equally authoritative. In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA