

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF SRI LANKA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the People's Republic of China and the Government of the Republic of Sri Lanka (each hereinafter referred to as a "Contracting Party"),

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 based on the principles of equality and mutual benefit;

Recognising that reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative and increasing prosperity in both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means every kind of asset permitted by each Contracting Party in accordance with its laws and regulations, including, though not exclusively, any:

(a) Movable and immovable property and other property rights such as mortgages, usufructs, liens or pledges;

(b) Share, stock, debenture and similar interests in the property of companies;

(c) Claims to money or to any performance under contract having a financial or economic value;

(d) Copyright, industrial property rights (such as patents for inventions, trade marks, industrial design) rights with respect to know-how, technical processes, trade names and goodwill; and

(e) Business concession conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources including those which are located in the maritime zones over which one of the Contracting Party exercise the sovereignty, sovereign rights or jurisdiction.

2. The term "returns" means monetary return yielded by an investment including any profit, interest, capital gain, dividend, royalty or fee.

3. The term "national" means:

(a) In respect of the People's Republic of China any physical person who is a citizen of the People's Republic of China according to its laws;

(b) In the respect of the Republic of Sri Lanka any physical person who is a citizen of the Republic of Sri Lanka according to its laws.

4. The term "company" means:

(a) In respect of People's Republic of China, a company or other juridical person incorporated or constituted and having its seat in its territory accordance with its laws;

(b) In respect of the Republic of Sri Lanka, a company of other juridical person incorporated or constituted and having its seat in its territory accordance with its laws.

## **Article 2. Applicability of this Agreement**

1. This Agreement shall only apply:

(a) In the respect of investments in the territory of the People's Republic of China, to all investments made by nationals and companies of the Republic of Sri Lanka which are approved in writing by the competent authority designated by the Government of the People's Republic of China and upon such conditions, if any, as it shall deem fit;

(b) In respect of investments in the territory of the Republic of Sri Lanka, to all investments made by nationals and companies of the People's Republic of China which are approved in writing by the competent authority designated by the Government of the Republic of Sri Lanka 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 in the territory of the other Contracting Party, after the 7th September, 1978 in Sri Lanka and after 8th of July, 1979 in China.

## **Article 3. Promotion and Protection of Investment**

1. Each Contracting Party shall 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 approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement. Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

## **Article 4. Most Favoured Nation Provisions**

Subject to Article 5, 6 and 11, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals and companies of any third States.

## **Article 5. Exceptions**

The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the nationals and companies of any third State shall not be constructed so as to oblige one Contracting Party to extend to the nationals and companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any regional or international arrangement for customs, monetary, tariff of trade matters (including a free area) or any agreement designed to lead in future to such an arrangement;

(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. Neither Contracting Party shall take any measure of expropriation, nationalization or other measures having effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation) against the investment of nationals or companies of the other Contracting Party unless the measures are taken for any purpose authorized by law, on a non-discriminatory basis, in accordance with its laws and against compensation which shall be effectively realisable and shall be made without unreasonable delay. Such compensation shall, subject to the laws of each Contracting Party, be the value immediately before the expropriation. The compensation shall be freely convertible and transferable.

2. The legality of any measure of expropriation may at the request of the national or company affected be reviewed by the competent court of the Contracting Party taking the measures in the manner prescribed by its laws.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the laws 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 compensation as specified therein 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 compensation as specified therein to such nationals or companies of the other Contracting Party who are owners of those shares.

## **Article 7. Compensation for Losses**

Nationals or companies of the 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, 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, if any, no less favourable than that which the latter Contracting Party accords to nationals or companies or any third State.

## **Article 8. Repatriation**

1. Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer in accordance with its laws and regulation and on a non-discriminatory basis, of their capital and the return from any investments, after payment of taxes, other legal dues and deduction of other reasonable living expenses spent therein, including:

- (a) Profits, capital gain, dividends, royalties, interests and other current income accruing from any investments;
  - (b) The proceeds of the total or partial liquidation of any investments;
  - (c) Repayments made pursuant to a loan agreement in connection with investments;
  - (d) Licence fees in relation to the matters in Article 1 (1) (d);Article 1 (1) (d);
  - (e) Payments in respect of technical assistance, technical service and management fees;
  - (f) Payments in connection with Contracting projects;
  - (g) Earnings in nationals of the Contracting Party who work in connection with an investment in the territory of the former Contracting Party.
2. Nothing in paragraph (1) of this Article shall affect the free transfer of compensation paid under Article 6 of this Agreement.paragraph (1) of this Article shall affect the free transfer of compensation paid under Article 6 of this Agreement.
3. Without prejudice to the paragraph (1) of this Article, each Contracting Party may in exceptional balance of payments difficulties exercise effectively and in good faith and for a limited period of time, powers conferred by its laws.paragraph (1) of this Article, each Contracting Party may in exceptional balance of payments difficulties exercise effectively and in good faith and for a limited period of time, powers conferred by its laws.

## **Article 9. Exchange Rate**

The transfers referred to in Articles 6 to 8 of this Agreement shall be effected at the Prevailing market rate in freely convertible currency on the date of transfer. In the absence of such a market rate the official rate of exchange shall apply.

## **Article 10. 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 investments are made.

## **Article 11. Prohibitions and Restrictions**

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its national interests or to the protection of public health or the prevention of diseases and pests in animals or plants.

## **Article 12. Subrogation**

1. In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it ) as a result of an indemnity it has given in respect of an investments or any part thereof makes payment to its own nationals and companies in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals and companies. The subrogated right or claim

shall not be greater than the original right or claim the said investor.

2. Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its nationals and companies shall not affect the right of such nationals and companies to make their claims against the other Contracting Party in accordance with Article 13. Article 13.

### **Article 13. Investment Disputes**

1. Any dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation resulting from expropriation mentioned in Article 6 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national or company concerned, it may be submitted at the request of either party to an international arbitral tribunal established by both parties. The provisions of this paragraph shall not apply if the national or company concerned has resorted to the procedure specified in the paragraph (2) of this Article. Article 6 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national or company concerned, it may be submitted at the request of either party to an international arbitral tribunal established by both parties. The provisions of this paragraph shall not apply if the national or company concerned has resorted to the procedure specified in the paragraph (2) of this Article.

4. The international arbitral tribunal mentioned above shall be especially constituted in the following manner: each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint a third arbitrator as Chairman. The arbitrators shall be appointed within two months and the Chairman within four months from the date on which one party concerned notifies the other party of its submission of the dispute to arbitration.

5. If the necessary appointments are not made within the period specified in paragraph (4), either party may, in the absence of any other agreement request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments. paragraph (4), either party may, in the absence of any other agreement request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

6. The arbitral tribunal shall, apart from what is stated below, determine its own arbitral procedures with reference to the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" done at Washington on 18th March, 1965. "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" done at Washington on 18th March, 1965.

7. The tribunal shall reach its decision by a majority of votes.

8. The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award.

9. The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party.

10. Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

11. The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article 14 where a dispute concerns the interpretation or application of this Agreement. Article 14 where a dispute concerns the interpretation or application of this Agreement.

### **Article 14. Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If any such dispute cannot be settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party

and the third, who shall be the Chairman of the tribunal, appointed by agreement of the Contracting Parties.

3. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

4. If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice President may be invited to do so. If the Vice President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.

5. The tribunal shall reach its decision by a majority of votes.

6. The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

7. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

8. Apart from the above the tribunal shall establish its own rules of procedure.

## **Article 15. Other Obligations**

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investments by nationals of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its laws additional to those specified in this Agreement entered into by the Contracting Party, its nationals or companies with nationals or companies of the other Contracting Party as regards their investments.

## **Article 16. Entry Into Force, Duration and Termination**

1. Each Contracting Party shall notify shall notify the other Contracting Party of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the thirtieth day from the date of the notification of the latter Contracting Party.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of nine years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 15 shall remain in force for a further period of ten years from that date. Article 1 to 15 shall remain in force for a further period of ten years from that date.

DONE at Colombo on 13th March, 1986, in duplicate, in the Chinese, Sinhala and English languages, all three texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

(Chen Muhua) For the Government of the People's Republic of China

For the Government of the Democratic Socialist Republic of Sri Lanka