

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

The Government of the Kingdom of Thailand and the Government of the Democratic Socialist Republic of Sri Lanka, (hereinafter referred to as "the Contracting Parties",

DESIRING to create favourable conditions for greater economic cooperation 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 with a view to the economic prosperity of both States,

HAVE AGREED AS FOLLOWS:

Article I. Definitions

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, stock and debentures of companies or interests in the property of such companies;
- (iii) Claims to money or to any performance under contract having financial value;
- (iv) Intellectual and industrial property rights 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:

- (i) In respect of Sri Lanka, a person who is a citizen of Sri Lanka according to its laws;
- (ii) In respect of Thailand, any person who possesses Thai nationality under the law in force in the Kingdom of Thailand.

(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 Thailand, juridical persons incorporated or constituted under the law in force in the Kingdom of Thailand.

(e) "territory" means:

- (i) In respect of Sri Lanka, the territory which constitutes the Republic of Sri Lanka;
- (ii) In respect of Thailand, the territory over which Thailand has sovereignty or jurisdiction.

Article II. 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 Thailand 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 shall deem fit;

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

(2) Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of any investment whether made before or after the entry into force of this Agreement.

Article III. 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 IV. Treatment of Investment

(1) Subject to the provisions of paragraph (3) of this Article and Article V, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article II or returns of nationals or companies therefrom 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) Each Contracting Party shall in its territory accord to nationals or companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own nationals and companies or to the nationals and companies of any third State.

(3) Investments of nationals or companies of either Contracting Party and the returns therefrom shall not be entitled to any treatment which is not available on a reciprocal basis, to investments or returns of nationals or companies of the other Contracting Party.

Article V. 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 Contracting Party the benefit of any treatment or preference which may be extended by the former Contracting Party by virtue of:

(a) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or

(b) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(c) Any arrangement with a third state or states in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(d) The grant to a particular person or company of the status of a "promoted person" under the laws of Thailand on the promotion of investment; or

(e) Any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

Article VI. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be subjected, directly or indirectly, to any measure of nationalization or expropriation in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against adequate and effective compensation. Such compensation shall amount to the market value of the investment nationalized or expropriated on the day the measure was taken, and shall be made without delay and be effectively realizable.

The national or company affected shall have the right, to the extent permitted by the law of the Contracting Party making the expropriation, 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 forth 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 compensation in respect of their investments to such nationals or companies of the other Contracting Party who are owners of those shares.

(3) Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals or companies of any third State with respect to the matters set forth in the provisions of paragraphs (1) and (2) of the present Article.

Article VII. Compensation for Losses

Where investments of a national or company of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Contracting Party, the national or company concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than would be accorded in the same circumstances to a national or company of the other Contracting Party or to a national or company of any third State.

Article VIII. Transfers of Investments and Returns

Each Contracting Party shall guarantee to the nationals and companies of the other Contracting Party the free transfer of the capital of and the returns from, their investments, as well as the payment of compensation under Article VI and Article VII without undue delay in freely convertible currencies at the market rate of exchange prevailing on the date of the transfer, subject to the right of each Contracting Party to exercise equitably and in good faith powers conferred by its laws.

Article IX. 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 X. Disputes between the Contracting Party and a National or Company of the other Contracting Party

(1) In case of disputes with respect to investments between a Contracting Party and nationals or companies of the other Contracting Party, consultations shall take place between the parties concerned with a view to solving the case amicably.

(2) If these consultations do not result in a solution within three months from the date of request for settlement, the nationals or companies may submit the disputes, at their choice, for settlement to:

(a) The competent courts of the Contracting Party in the territory of which the investment has been made;

(b) The International Centre for Settlement of Investment Disputes in case both Contracting Parties are Contracting States to the Convention on the Settlement of Investment Disputes between States and Nationals of other States open for signature at Washington D.C. on March 18, 1965.

Article XI. 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 period 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 functions, 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 procedure.

Article XII. Subrogation

If either Contracting Party makes payments 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 recognize:

(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 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 XIII. Consultations

Either Contracting Party may propose to the other Contracting Party consultations on any matter concerning the review or affecting the operation of the present Agreement.

Article XIV. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other Contracting Party in writing that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

(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.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this

Agreement.

DONE in duplicate at Bangkok on this 3rd day of January 1996 in the English Language, both texts being equally authoritative.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

(H.E. M.R. Kasem S. Kasemsri)

Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

(H.E. Mr. Lankshman Kadirgamar)

Minister of Foreign Affairs