

AGREEMENT ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

PREAMBLE

The Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Islamic Republic of Iran, hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation to the mutual benefit of both States;

Intending to utilize their economic cooperation to the mutual benefit of both States;

Intending to utilize their economic resources and potential facilities in the area of investments and also to create and maintain favourable conditions for investments of the investors of one Contracting Party in the territory of the other Contracting Party; and

Recognizing the need to promote and protect investments of the investors of one Contracting Party in the territory of the other Contracting Party;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement the following terms shall have the meanings as provided below:

1. The term "investment" means every kind of property or asset, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereinafter referred to as the host Contracting Party) and in particular though not exclusively includes:

(a) Movable and immovable property as well as rights related thereto such as mortgages, liens or pledges;

(b) Shares, stocks and debentures or any other similar forms of participation in companies;

(c) Title to money or to any performance under contract, having an economic value;

(d) Industrial and intellectual property rights such as patents, utility models, industrial designs or models, trade marks and names, know-how and goodwill;

(e) Rights to search for, extract and exploit natural resources as well as other business rights given by law or by contract in accordance with laws.

2. The term "investor" with regard to either Contracting Party means the following persons who invest in the territory of the other Contracting Party:

(a) Natural persons who, according to the laws of one Contracting Party, having its nationality and are not nationals of the other Contracting Party,

(b) Legal entities of either Contracting Party which are formed and incorporated under the laws of one Contracting Party and have their seat together with their substantial economic activities in the territory of that same Contracting Party.

3. The term "returns" means the amounts legally yielded by an investment such as profit derived from investment, financial costs, dividends, royalties and fees.

4. The term "territory" means the territory under sovereignty or jurisdiction of each Contracting Party, and also includes their relevant maritime areas.

Article 2. Admission of Investments

1. Either Contracting Party shall, subject to its laws and regulations, admit investments of investors of the other Contracting Party in its territory.

2. Each Contracting Party after the admission of an investment shall grant authorisation or permits which are necessary, in accordance with its laws and regulations, for the proper realisation of the said investment.

Article 3. Promotion of Investments

1. Either Contracting Party shall encourage and create favourable conditions for its nationals and legal entities to invest in the territory of the other Contracting Party.

2. Either Contracting Party shall, subject to its laws and regulations, encourage and create favourable conditions for nationals and legal entities of the other Contracting Party to invest in its territory.

Article 4. Protection and Treatment of Investments

1. Investments of investors of one Contracting Party effected within the territory of the other Contracting Party shall receive in the other Contracting Party full legal protection and security.

2. Each Contracting Party shall accord to investments of investors of the other Contracting Party fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of any third State.

3. If a Contracting Party accords special rights, advantages, privileges or preference to one or more investors of any third State by virtue of an existing or future agreement establishing a free trade area, a customs union, a common market or a similar regional organisation and/or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such rights, advantages, privileges or preference to investors of the other Contracting Party.

Article 5. Expropriation and Compensation

1. Investments of investors of one Contracting Party shall not be expropriated, nationalised or subjected to similar measures having an effect equivalent to expropriation or nationalisation by the other Contracting party except for a public purpose, in accordance with due process of law in a non-discriminatory manner, and upon payment of prompt and effective compensation.

2. The amount of compensation shall be equivalent to the market value of the investment immediately before the action of expropriation, nationalisation or other similar measure was taken or became public knowledge. Any losses arising from delay in the payment of compensation shall be borne by the expropriating party subject to the banking regulations in force in that Contracting Party.

Article 6. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses due to war or any armed conflict, revolution or similar state of emergency in the territory of the other Contracting Party shall be accorded by the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any other third country whichever is the most favourable treatment as regards compensation, restitution and indemnification in relation to such losses.

Article 7. Repatriation and Transfer

1. Each Contracting Party shall permit in good faith all transfers related to investments admitted under this Agreement, to be made freely and without unreasonable delay. Such transfers include:

(a) Returns;

(b) Proceeds from the sale or liquidation of all or part of an investment;

- (c) Royalties and fees related to transfer of technology agreements;
 - (d) Sums paid pursuant to Article 5 and 6;
 - (e) Loan instalments related to an investment as well as any costs thereto;
 - (f) Monthly salaries, wages and other remuneration received by nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits relating to an investment;
 - (g) Payments arising from a dispute relating to an investment.
2. Transfers shall be promptly effected in a convertible currency and at the official exchange rate prevailing on the day the transfer is made.

Article 8. Subrogation

If a Contracting Party or its designated agency subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non-commercial risks;

- (a) Such subrogation shall be recognised by the other Contracting Party;
- (b) The subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;
- (c) Disputes between the subrogee and the host Contracting Party shall be settled in accordance with the provisions of Article 11 of this Agreement.

Article 9. Observance of Commitments

Either Contracting party shall guarantee the observance of the commitments it has entered into with respect to investments of investors of the other Contracting Party.

Article 10. Applicability of the Agreement

1. This Agreement shall only apply to investments or any re-investment approved by the Competent Authorities of the host Contracting Party:

(a) In respect of Sri Lanka, to all investments made by investors of the Islamic Republic of Iran which are specifically approved in writing by the Government of Sri Lanka, the Board of Investments or by any other designated agencies and upon such conditions, if any, as it shall deem fit,

(b) In respect of the Islamic Republic of Iran the Competent Authority is:

Organisation for Investment, Economic and Technical, Assistance of Iran (O.I.E.T.A.I), 15, The Khordad Square, Tehran, Iran. However, the O.I.E.T.A.I. may specify certain conditions under which the investment has been approved. 2. This Agreement shall also be applicable to the investments made prior to its entry into force, subject to approval of the Competent Authority of the host Contracting Party.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. In the event of occurrence of a dispute between a Contracting Party in whose territory an investment is made and one or more investors of the other Contracting Party with respect to an investment, the Contracting Party in whose territory the investment is made and the investor(s) shall primarily endeavour to settle the dispute in an amicable manner through negotiation and consultation.

2. In the event that the Contracting Party in whose territory an investment is made and the investor (s) are unable to agree within six months from the notification of the claim by one party to the other, each of them may refer the dispute to competent courts of the Contracting Party in whose territory the investment is made, or, with due regard to its own laws and regulations, refer the dispute to a three member arbitration board in accordance with paragraph 5 below.

3. A dispute primarily referred to the competent courts of the Contracting Party in whose territory the investment is made as long as it is pending, cannot be referred to arbitration save with the parties agreement and subject to the permission of

court. In the event that a final judgement is rendered it cannot be referred to arbitration.

4. Any dispute after referring to arbitration shall not be submitted by the parties to the dispute to the jurisdiction of the national courts. However, the provisions of this paragraph do not bar the successful party from the enforcement of the arbitral award before national courts.

5. Each Contracting Party in whose territory an investment is made or the investor(s) of the other Contracting Party that desire to refer a dispute to arbitration shall appoint an arbitrator through a written notice sent to the other party. The other party shall appoint an arbitrator within sixty days from the date of receipt of the said notice and the appointed arbitrators shall within sixty days from the date of the last appointment, appoint the umpire. In the event that each of the parties fails to appoint its arbitrator within the mentioned period or that the appointed arbitrators fail to agree on the umpire, each of the parties may request the President of the International Arbitral Tribunal of the International Chamber of Commerce to appoint the failing party's arbitrator or the umpire, as the case may be. In any event the umpire shall be appointed amongst nationals of a country having diplomatic relations with both Contracting Parties.

Article 12. Settlement of Disputes between the Contracting Parties

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled by amicable consultation. In the case of disagreement, either of the Contracting Parties may, subject to the observance of its laws and regulations, submit the dispute, by sending a notice to the other party, to a board of arbitration of three members consisting of two arbitrators appointed by the Contracting Parties and an umpire.

In case of submission of the dispute to arbitration, either of the Contracting Parties shall appoint an arbitrator within 60 days from the receipt of the notification and the arbitrators appointed by the Contracting Parties shall appoint the umpire within 60 days from the date of the last appointment. If any of the Contracting Parties does not appoint its own arbitrator or the appointed arbitrators do not agree on the appointment of the umpire within the said periods, either of the Contracting Parties may request the President of the International Court of Justice, to appoint the arbitrator on behalf of the failing party or the umpire, as the case may be. However, the umpire shall have to be a national of a country having diplomatic relations with both Contracting Parties at the time of arbitration. 2. In the case of appointment of the umpire by the International Court of Justice, if the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President of the International Court of Justice, and if the Vice-President is also prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the senior member of the said court who is not a national of either Contracting Party.

3. The arbitral tribunal shall reach its decision by a majority of votes. Such decisions 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 and place of arbitration.

Article 13. Validity of the Agreement

1. This Agreement shall be ratified by the Competent Authorities of either Contracting Party in accordance with their laws and regulations.

2. This Agreement shall enter into force for a period of 10 years as from 30 days after the date of the last notification of either Contracting Party for the coming into force of the Agreement under their relevant laws and regulations. After the expiration of the said period, this Agreement shall remain in force thereafter unless one of the Contracting Parties notify in writing by a prior six months notice, the other Contracting Party of its expiration or termination.

3. With respect to investments made or acquired prior to the expiration of validity of this Agreement, the provisions of all the other articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of expiration.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Tehran this 25th day of July 2000 corresponding to 4 Mordad 1379 (Solar Hijri). in Persian, Sinhalese and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Democratic Socialist Republic of Sri Lanka

For the Government of the Islamic Republic of Iran