

No. 21844

**FRANCE
and
SRI LANKA**

**Agreement on the reciprocal promotion and protection of
investments (with exchange of letters). Signed at Co-
lombo on 10 April 1980**

Authentic texts: French, English and Sinhalese.

Registered by France on 12 April 1983.

**FRANCE
et
SRI LANKA**

**Convention sur l'encouragement et la protection réciproques
des investissements (avec échange de lettres). Signée à
Colombo le 10 avril 1980**

Textes authentiques : français, anglais et cinghalais.

Enregistrée par la France le 12 avril 1983.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of France and the Government of the Democratic Socialist Republic of Sri Lanka,

Desiring to create favourable conditions for Sri Lanka investments in France and French investments in Sri Lanka,

Recognising that promotion and protection of such investments are apt to stimulate the flow of capital and technology between both states to the benefit of their economic prosperity,

Have agreed as follows:

Article 1. 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 a financial or economic value;
- (iv) Copyrights, industrial property rights (such as patents for inventions, licences, trade marks, industrial designs), know-how, trade-names and goodwill;
- (v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, including those which are located in the maritime zones within the jurisdiction of one of the Parties.

(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 France the natural persons possessing the French nationality;
- (ii) In respect of Sri Lanka a person who is a citizen of Sri Lanka according to its laws.

(d) "Companies" means:

- (i) In respect of France any legal entity constituted in the French territory in conformity with the French legislation and having its registered office therein;
- (ii) In respect of Sri Lanka corporations, firms or associations incorporated or constituted under the law in force in any part of Sri Lanka.

(e) "Territory" means:

- (i) In respect of France the territory which constitutes the Republic of France;
- (ii) In respect of Sri Lanka the territory which constitutes the Republic of Sri Lanka.

¹ Came into force on 19 April 1982 by the exchange of the relevant instruments, in accordance with article 14 (1).

(f) Any modification in the form in which assets are invested shall not affect their classification as an investment provided that such modification is not contrary to the legislation of the state in the territory of which the investment is made and to the approval granted for the initial investment.

Article 2. (1) This Agreement shall only apply:

- (a) In respect of investments in the territory of France, to all investments made by nationals and companies of Sri Lanka which are approved in accordance with the laws, rules and regulations in force in France;
- (b) In respect of investments in the territory of Sri Lanka, to all investments made by nationals and companies of France which are approved in accordance with the laws, rules and regulations in force in Sri Lanka.

(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 of September 1978.

Article 3. Each Contracting Party shall promote as far as possible, within its territory, the investments by nationals or companies of the other Contracting Party and accept such investments as are in accordance with its general economic policy.

Article 4. Each Contracting Party undertakes to ensure fair and equitable treatment and in accordance with the general principles of international law, to the investments of nationals or companies of the other Contracting Party in its territory and also to ensure that the exercise of the right thus recognized is not hindered either in law or in practice.

Article 5. Each Contracting Party shall apply, within its territory, to the nationals or companies of the other Contracting Party, as regards their investments or activities related to such investments, a treatment at least as favourable as that granted to nationals or companies of the most favoured nation.

Article 6. The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of the most favoured nation shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

- (a) Any existing or future customs union, common market 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.

Article 7. (1) Investments made by nationals or companies of either Contracting Party shall enjoy, in the territory of the other Contracting Party, full protection and security.

(2) Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures the effect of which would be to dispossess, directly or indirectly, the nationals and the companies of the other Contracting Party of any investment belonging to them in its territory, except on the grounds of public utility and provided these measures are not discriminatory nor contrary to treaty between the two Contracting Parties.

Dispossession measures which may be taken shall give rise to payment of a fair compensation, the amount of which shall correspond to the market value of the investment concerned on the day of the dispossession.

This compensation, its amount and the payment conditions shall be fixed no later than the day of the dispossession unless otherwise mutually agreed between the parties concerned. This compensation shall be actually convertible, paid without delay and freely transferable.

(3) The investors of one Contracting Party whose investments have suffered losses due to war or to any other armed conflict, revolution, national emergency or revolt occurring in the territory of the other Contracting Party shall receive from the latter Party a treatment no less favourable than that granted to its own investors.

Article 8. (1) 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.

(2) The nationals of each Contracting Party authorized to work in the territory of the other Contracting Party in relation to an agreed investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

(3) The transfers referred to in the preceding paragraphs shall be carried out without delay and at the normal exchange rate officially applicable on the day of the transfer.

Article 9. 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. (1) To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, this guarantee may be granted, within the framework of an examination made case by case, to investments made by nationals or companies of that Party in the territory of the other Party.

(2) The investments of nationals or companies of one of the Contracting Parties in the territory of the other Contracting Party may not obtain the guarantee referred to in the above paragraph unless they have previously obtained the agreement of the latter Party.

Article 11. (1) Any legal dispute arising directly out of an investment between either Contracting Party and a national or a company of the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If any such dispute cannot be so settled within 12 months of it being raised by either Party to the dispute, it shall upon the request of either Party to the dispute, unless such Parties have otherwise agreed, be submitted to conciliation or arbitration by the International Centre for Settlement of Investment Disputes (called "the Centre" in this Agreement) established by the Convention on the Settlement of Investment Disputes between States at Washington on 18th March 1965¹ (called "the Convention" in this Agreement). However, each Contracting Party hereby requires the exhaustion of local administrative or judicial remedies, during the 12 month period referred to above, as a condition of its consent to conciliation or arbitration by the Centre.

(3) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise as an objection the fact that the national or the company which is the other Party to the dispute has received in pursuance of an insurance policy an indemnity in respect of some or all of its losses.

(4) Except as provided in article 27 (2) of the Convention, neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

- (a) The Secretary General of the Centre finds that the dispute is manifestly outside the jurisdiction of the Centre, as provided in article 28 (3) or article 36 (3) of the Convention, or the Conciliation Commission or Arbitral Tribunal constituted under the Convention decides that the dispute is not within the jurisdiction of the Centre; or

¹ United Nations, *Treaty Series*, vol. 575, p. 159.

(b) The other Contracting Party shall fail to abide by or to comply with the terms of any award of the Arbitral Tribunal.

Article 12. (1) In the event that either Contracting Party, as a result of a guarantee consistent with this Agreement, makes payment to its own nationals or companies in respect of any of their rights and actions under this Agreement, the former Contracting Party shall be entitled to subrogation of such rights and actions.

(2) The said payments do not affect the rights of the beneficiary of the guarantee to resort to the ICSID in accordance with the provisions of article 11, or to proceed with actions brought before it until the outcome of the proceedings.

Article 13. (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 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 Secretary-General of the United Nations to make any necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, an Under-Secretary-General of the United Nations shall be invited to make the necessary appointments. If the Under-Secretary-General is a national of either Contracting Party, or if he too is prevented from discharging the said function, the Under-Secretary-General or an Assistant Secretary-General 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 final and legally 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 two 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 14. (1) This Agreement shall be ratified or approved in accordance with the constitutional requirements applicable in both States and shall enter into force on the exchange of instruments of ratification or approval.

(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 Colombo this 10th day of April 1980 in the Sinhalese, French and English languages, all texts being equally authoritative.

For the Government
of the Republic of France:

[Signed]

RENÉ MONORY
Minister of Economy

For the Government
of the Democratic Socialist Republic
of Sri Lanka:

[Signed]

RONNIE DE MEL
Minister of Finance and Planning

EXCHANGE OF LETTERS

I

H. EXC. MR. RONNIE DE MEL
MINISTER OF FINANCE AND PLANNING OF THE GOVERNMENT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Excellency,

I have the honour to refer to the Agreement signed today between the Government of the Republic of France and the Government of the Democratic Socialist Republic of Sri Lanka on the reciprocal promotion and protection of investments and to inform you that the interpretation of article 8 of this Agreement is the following:

Each Contracting Party shall in respect of investments, guarantee to nationals or companies of the other Contracting Party the free transfer of their investments and returns, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period and on a non-discriminatory basis to exercise equitably and in good faith powers conferred by its laws in conformity with its responsibilities and commitments as a member of the International Monetary Fund.

I would be very much obliged if you would confirm the agreement of your Government regarding the contents of this letter.

Accept, Excellency, the assurances of my highest consideration.

[Signed]¹

April 10, 1980

H. Exc. Mr. René Monory
Minister of Economy of the Government
of the French Republic

¹ Signed by Ronnie de Mel.

II

H. EXC. MR. RENÉ MONORY
MINISTER OF ECONOMY OF THE GOVERNMENT
OF THE FRENCH REPUBLIC

Excellency,

I acknowledge receipt of your today's letter which reads as follows:

[See letter I]

I have the honour to confirm the agreement of my Government regarding the contents of this letter.

Accept, Excellency, the assurances of my highest consideration.

[Signed]¹

April 10, 1980

H. Exc. Mr. Ronnie de Mel
Minister of Finance and Planning of the Government
of the Democratic Socialist Republic
of Sri Lanka

¹ Signed by René Monory.