

INCOME TAX TREATY BETWEEN SRI LANKA AND THE UNITED STATES

THE TREATY BELOW ENTERED INTO FORCE ON JANUARY 1, 2004

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

ARTICLE 23 Limitation on Benefits

- 1) A person (other than an individual) which is a resident of one of the Contracting States shall not be entitled under this Convention to relief from taxation in the other Contracting State pursuant to Articles 10 (Dividends), 11 (Interest), and 12 (Royalties) unless:
 - 2)
 - (a) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
 - (i) individuals who are residents of United States;
 - (ii) citizens of the United States;
 - (iii) individuals who are residents of Sri Lanka;
 - (iv) companies as described in subparagraph (b); and
 - (v) the Contracting States;
 - (b) it is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or
 - (c) the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the purpose of obtaining benefits under the convention.
- 3) For the purposes of subparagraph 1(b), the term "a recognized stock exchange" means
 - (a) the NASDAQ system owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934;

- (b) the Colombo Brokers Association of Sri Lanka; and
- (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

PROTOCOL

THE PROTOCOL BELOW, SIGNED ON SEPTEMBER 20, 2002, ENTERED INTO
FORCE ON JULY 12, 2004

Article XV

Article 23 (Limitation on Benefits) of the Convention shall be deleted and replaced by the following:

- “1) A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.
- 2) A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:
 - (a) an individual;
 - (b) a qualified governmental entity;
 - (c) a company, if
 - (i) all the shares in the class or classes of shares representing more than 50 percent of the voting power and value of the company are regularly traded on a recognized stock exchange, or
 - (ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by companies entitled to benefits under clause (i), provided that in the case of indirect ownership, each intermediate owner is a person entitled to benefits of the Convention under this paragraph;
 - (d) a person described in subparagraph 1(c)(i) of Article 4 (Resident);
 - (e) a person described in subparagraph 1(c)(ii) of Article 4 (Resident),

provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

- (f) a person other than an individual, if:
 - (i) On at least half the days of the taxable year persons described in subparagraphs (a), (b), (c), (d) or (e) own, directly or indirectly (through a chain of ownership in which each person is entitled to benefits of the Convention under this paragraph), at least 50 percent of each class of shares or other beneficial interests in the person, and
 - (ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State (unless the payment is attributable to a permanent establishment situated in either State), in the form of payments that are deductible for income tax purposes in the person's State of residence.

3)

- (a) A resident of a Contracting State not otherwise entitled to benefits shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if:
 - (i) the resident is engaged in the active conduct of a trade or business in the first-mentioned State,
 - (ii) the income is connected with or incidental to the trade or business, and
 - (iii) the trade or business is substantial in relation to the activity in the other State generating the income.
- (b) For purposes of this paragraph, the business of making or managing investments will not be considered an active trade or business unless the activity is banking, insurance or securities activity conducted by a bank, insurance company or registered securities dealer.
- (c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that are related to the activity that generated the income in the other State, and the average of the three ratios exceeds 10 percent.

- (d) Income is derived in connection with a trade or business if the activity in the other State generating the income is a line of business that forms a part of or is complementary to the trade or business. Income is incidental to a trade or business if it facilitates the conduct of the trade or business in the other State.
- 4) A resident of a Contracting State not otherwise entitled to benefits may be granted benefits of the Convention if the competent authority of the State from which benefits are claimed so determines.
- 5) For purposes of this Article the term “recognized stock exchange” means:
 - (a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934; and
 - (b) the Colombo Stock Exchange; and
 - (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.”