

Agreement between the Kingdom of the Netherlands and the Arab Republic of Egypt on the reciprocal encouragement and protection of investments

The Government of the Kingdom of the Netherlands

and

the Government of the Arab Republic of Egypt,

Taking into account the Agreement on economic and technical co-operation between the Kingdom of the Netherlands and the Arab Republic of Egypt, concluded at Cairo on 10 May 1975,

Desiring to promote the economic co-operation as envisaged by that Agreement, through the encouragement and the protection of investments,

Intending to create favourable conditions for investments by nationals of either country in the territory of the other country,

Have agreed as follows:

Article I.

For the purposes of the present Agreement:

a) the term "investments" shall comprise every kind of asset invested in accordance with the laws and regulations of either Contracting Party and more particularly, though not exclusively:

i) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructo and similar rights;

ii) shares or other kinds of interests in companies;

iii) title to money or to any performance, such as goodwill, having an economic value;

iv) rights in the fields of the industrial property, technical processes and know how;

v) such business concessions under public law, including concessions regarding the prospecting for, or the extraction or the winning of natural resources, as give to their holders a legal position of some duration.

b) the term "nationals" shall comprise with regard to either Contracting Party:

i) natural persons having the nationality of that Contracting Party in accordance with its law;

ii) without prejudice to the provisions of (iii) hereafter legal persons constituted in accordance with the law of that Contracting Party;

iii) legal persons, in which nationals of that Contracting Party have a substantial interest, and controlled by nationals of that Contracting Party, but constituted in accordance with the law of the other Contracting Party.

Article II.

The Contracting Parties shall, within the framework of their laws and regulations, promote economic co-operation between their nationals through the encouragement of investments by those nationals in the territory of the other Contracting Party.

Article III.

1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals.

2) More particularly, each Contracting Party shall accord to such investments the same security and protection as it accords either to those of its own nationals or to those of nationals of any third State, whichever is more favourable to the investor.

3) Notwithstanding the provisions of paragraphs 1 and 2 each Contracting Party is free because of its membership in or association with a customs union, a common market or free trade area, to accord special privileges to investments of nationals of the other member states concerned.

Article IV.

Recognizing the principle of the freedom of transfer each Contracting Party shall authorize, in conformity with its relevant most favourable rules, the transfer, without undue restriction and delay, to the country of the other Contracting Party and in the currency of that country or any other convertible currency, of payments resulting from investment activities and in particular of the following items:

- a) net profits, interests, dividends and other current income;
- b) funds necessary
 - i) for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - ii) to replace capital assets in order to safeguard the continuity of an investment;
- c) additional funds necessary for the development of an investment;
- d) earnings of natural persons;
- e) the proceeds of liquidation of capital;
- f) funds in repayment of loans;
- g) management fees;
- h) royalties.

Article V.

Neither Contracting Party shall take any measures, such as nationalization, confiscation or sequestration etcetera, depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- a) the measures are taken in the public interest and under due process of law;
- b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- c) the measures are accompanied by provisions for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected. and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country of which those claimants are nationals and in the currency of that country.

Article VI.

The Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment, shall assent to any demand on the part of such national to submit, for arbitration or conciliation, after the exhaustion of all internal administrative and judicial remedies, to the Centre established by the Convention of Washington of March 18, 1965 on the settlement of investment disputes between States and nationals of other States, any dispute that may arise in connection with the investment.

Article VII.

If a national of the one Contracting Party has transferred any rights and securities to that Party or to another national of that Party because of that Party's or the latter national's obligation, under a legal system of guaranteeing against non-commercial risks, to reimburse the former national as to damage in respect of an investment made by that national in the territory of the other Contracting Party, the latter Contracting Party recognizes the subrogation of the grantor into the said rights and securities of the investor.

Article VIII.

The present Agreement shall apply to all investments, whether or not within the framework of a joint-venture, made in the territory of the one Contracting Party by a national of the other Contracting Party, irrespective whether they were made before or after the entry into force of the present Agreement.

Article IX.

- 1) The Contracting Parties hereby establish a Joint Committee, composed of representatives appointed by them.
- 2) The Joint Committee shall meet at the request of one of the Contracting Parties, to discuss any matter pertaining to the implementation of the present Agreement. It shall make recommendations to the respective Governments in cases where the objectives of the Agreement might be furthered.

Article X.

In respect of any matter governed by the present Agreement nothing in this Agreement shall prevent a national of the one Contracting Party from benefiting from any right more favourable to him and accorded by the other Contracting Party.

Article XI.

- 1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which cannot be settled, within a reasonable lapse of time, by means of diplomatic negotiations, shall be submitted, at the request of any party to the dispute, to an arbitral tribunal, composed of three members, Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.
- 2) If one of the parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other party to make such appointment, the latter party may invite the President of the International Court of Justice to make the necessary appointment.
- 3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either party may invite the President of the International Court of Justice, to make the necessary appointment.
- 4) If, in the cases provided for in the second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either party, the Vice-President should make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either party, the most senior member of the Court who is not a national of either party should make the necessary appointments.
- 5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the parties that the dispute be settled amicably, The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute ex aequo et bone if the parties so agree.
- 6) Unless the parties decide otherwise, the tribunal shall determine its own procedure.
- 7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article XII.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the Kingdom as a whole, unless the notification of the Government of the Kingdom of the Netherlands, provided for in Article XIII, (1), stipulates otherwise.

Article XIII.

1) The present Agreement shall enter into force on the first day of the second month following the date on which the two Contracting Parties have informed each other by a written notification that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of 10 years. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for another period of 10 years, and so on, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

2) Subject to the period mentioned in paragraph 1 of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any constituent part of the Kingdom.

3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at Cairo this thirtieth day of October 1976.

For the Government of the Kingdom of the Netherlands:

(sd.) G. W. VAN

BARNEVELD KOOY

For the Government of the Arab Republic of Egypt:

(sd.) M. Z. SHAFEI

Letters exchanged

Nr. I

Excellency,

With reference to Articles IV and V of the Agreement on the reciprocal encouragement and protection of investments signed today, I have the honour to confirm the following understanding between us:

1. For transfers in the framework of Articles IV and V mentioned above, from the Arab Republic of Egypt to the Kingdom of the Netherlands, the official rate of exchange in force in the Arab Republic of Egypt will be applied.

2. For transfers in the framework of Articles IV and V mentioned above, from the Kingdom of the Netherlands to the Arab Republic of Egypt, the rate of exchange will be applied quoted on the exchange market at the date of transfer of the currency in which the transfers shall be carried out.

3. As regards transfers in the framework of Article IV, such transfers may, notwithstanding the relevant provisions of that article, be effectuated in the currency in which the original investment was made, In case the original investment was made by means of movable property, imported into the Arab Republic of Egypt in accordance with its relevant laws and regulations, the transfers shall be effectuated in a convertible currency.

Your confirmation of the above-mentioned understanding will be very much appreciated, Accept, Excellency, the assurance of my highest consideration.

(sd.) M. Z. SHAFEI

His Excellency Mr. G. W. van Barneveld Kooy, Netherlands Ambassador, Cairo.

Nr. II

Excellency,

I have the honour to confirm the receipt of your letter of today which reads as follows:

(zoals in Nr. I)

I have the honour to inform you that the contents of this letter are acceptable to the Kingdom of the Netherlands. Accept, Excellency, the assurance of my highest consideration.

(sd.) G. W. VAN BARNEVELD KOOY

His Excellency Mr, Mohamed Zaki Shafei, Minister of Economy and Economic Cooperation, Cairo.

Nr. III

Excellency,

With regard to the term "or intends to make an investment" mentioned in Article VI of the Agreement between the Kingdom of the Netherlands and the Arab Republic of Egypt on the reciprocal encouragement and protection of investments, signed to-day, I have the honour to inform you as follows:

Nationals of the Kingdom of the Netherlands who intend to make an investment in the territory of the Arab Republic of Egypt have to obtain prior approval of the competent Egyptian investment authority on the application for the investment concerned. Before having obtained that approval, there is no liability on the part of the Government of the Arab Republic of Egypt. In such case the Government of the Arab Republic of Egypt may decline any demand on the part of such nationals to follow the procedure provided for by Article VI.

Your confirmation of the above will be very much appreciated.

Accept, Excellency, the assurance of my highest consideration.

(sd.) M, Z. SHAFEI His Excellency Mr. G. W. van Barneveld Kooy,

Netherlands Ambassador, Cairo.

Nr. IV

Excellency,

I have the honour to confirm the receipt of your letter of today which reads as follows:

(zoals in Nr. IN)

I have the honour to inform you that the contents of this letter are acceptable to the Kingdom of the Netherlands. Accept, Excellency, the assurance of my highest consideration.

(sd.) G. W. VAN BARNEVELD KOOY

His Excellency Mr. Mohamed Zaki Shafei,

Minister of Economy and Economic Cooperation, Cairo.