

NETHERLANDS MODEL AGREEMENT ON ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and

The Government of the Kingdom of the Netherlands and the Government of

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations and to encourage investments on the basis of equality and to the mutual benefit of both countries,

Have agreed as follows:

Article 1.

For the purpose of the present Agreement:

(a) the term "investments" shall comprise every kind of asset and more particularly, though not exclusively:

(i) movable and immovable property as well as any other rights in rem;

(ii) shares or other kinds of interests in companies;

(iii) title to money or to any performance, such as goodwill, having a 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 holder a legal position or some duration.

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

(i) natural persons having the nationality of that Contracting Party 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 controlled, directly or indirectly, by nationals of that Contracting Party but constituted in accordance with the law of the other Contracting Party.

Article 2.

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 3.

(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 it accords either to those of its own nationals or to those nationals of any third state, whichever is more favourable to the investor.

Article 4.

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 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
 - li. 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 5.

Neither Contracting Party shall take any measures 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 provision 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 6.

Without prejudice to any special fiscal advantage accorded by the one Contracting Party by virtue of an agreement for the avoidance of double taxation, by virtue of its participation in customs unions, economic unions or similar institutions, or on the basis of reciprocity that Contracting Party shall, with respect to the levying of taxes, fees or charges and to the enjoyment of fiscal deductions and exemptions, accord to nationals of the other Contracting Party engaged in any economic activity in its territory a treatment not less favourable than that accorded to its own nationals or to those of any third country, whichever is more favourable to the national concerned.

Article 7.

Nationals of either Contracting Party shall, in the field of the protection of industrial property, enjoy in the territory of the other Contracting Party a protection not less favourable than that enjoyed by their own nationals, without prejudice to the provisions of international conventions in this field binding on the Contracting Parties.

Article 8.

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 the 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 9.

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, [to the Centre established by the Convention of Washington of March 1965 on the settlement of investment disputes between States and nationals of other States] [to a tribunal constituted or to a commission composed in accordance with the Rules of arbitration and conciliation for settlement of international disputes between two parties of which only one is a State, elaborated by the Bureau of the Permanent Court of Arbitration in February 1962] [to the Court of Arbitration or to the Administrative Commission for Conciliation of the International Chamber of Commerce in accordance with the Rules of conciliation and arbitration of that Chamber], any dispute that may arise in connection with the investment.

Article 10.

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments which have been made before that date.

Article 11.

Either Contracting Party may propose the other Party to consult on any matter affecting the operation of the present Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 12.

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 13.

(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 paragraphs 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 bono* 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 14.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe and to

the Netherlands Antilles, unless the notification provided for in Article 15, paragraph (1) provides otherwise.

Article 15.

(1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefore in their respective countries have been complied with, and shall remain in force for a period of 15 years.

(2) 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 periods of 10 years, 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.

(3) Any such termination shall have no effect on the fulfilment of contracts Made under the provisions of the present Agreement.

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

(5) Subject to the period mentioned in paragraph (2) 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 the Netherlands Antilles.

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

DONE in duplicate at, in the English language, on day of 1979.

For the Government of