

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SULTANATE OF OMAN

The Government of the Kingdom of the Netherlands and the Government of the Sultanate of Oman hereinafter referred to as the Contracting Parties, desiring to strengthen further the friendly relations between their two peoples, to promote the development of economic and technological cooperation and to encourage investments between their two countries, on the basis of equality and mutual benefit.

Have agreed as follows :

Article 1

For the purposes of the present Agreement:

a) the term "investment" shall comprise every kind of asset whether directly or indirectly owned, such as share of capital; movable and fixed assets; rights derived from shares, bonds and other kinds of interests in companies and joint ventures; title to any performance having an economic value; rights in the fields of intellectual property, technical processes and know how.

b) the term "investment" also includes rights granted under public law and agreed upon by special agreements between the concerned parties, which may include rights to prospect, explore, extract and win natural resources.

c) the term "nationals" shall comprise natural persons having the nationality of a Contracting Party in accordance with the law of that Contracting Party.

d) the term "person" shall comprise legal persons controlled directly or indirectly, by nationals of a Contracting Party and constituted in accordance with the law of one of the Contracting Parties.

e) the term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

1) Each Contracting Party shall in its territory promote as far as possible investments by nationals or persons of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2) Each Contracting Party shall ensure fair and equitable treatment to the investments or nationals or persons 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 or persons.

3) More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded either to investments of its own nationals or persons or to investments of nationals or persons of any third State, whichever is more favourable to the investor.

4) If a Contracting Party has accorded special advantages to nationals or persons of any third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals or persons of the other Contracting Party.

5) If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by nationals or persons of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 3

The Contracting Parties shall guarantee the transfer of payments related to an investment. The transfers shall be made in a freely convertible currency, without undue restriction and delay.

Such transfers include in particular though not exclusively:

- a) 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) funds in repayment of loans;
- e) royalties or fees;
- f) earnings of natural persons;
- g) the proceeds of sale or liquidation of the investment.

Article 4

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals or persons of the other Contracting Party of their investments or measures having an equivalent effect 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 specific undertaking which the former Contracting Party may have given;

c) the measures are accompanied by the provision for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected immediately before the date the measures or impending measures became public knowledge and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or persons or in any freely convertible currency accepted by the claimants.

Article 5

Nationals or persons of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or persons or to nationals or persons of any third State, whichever is more favourable to the nationals or persons concerned.

Article 6

If the investments of a national or person of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer into the rights of the said national or person pursuant to the terms of such insurance shall be recognised by the other Contracting Party.

Article 7

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals or persons of the other Contracting Party who are engaged in any economic activity in its territory, a fair and equitable treatment which shall in any case not be less favourable than that accorded to nationals or persons of any third State. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party under an agreement for the avoidance of double taxation, by virtue of its participation in a customs union, economic union or similar institution, or on the basis of reciprocity with a third State.

Article 8

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement shall as far as possible be settled by means of diplomatic negotiations.

2) Any dispute between either Contracting Party and a national or person of the other Contracting Party concerning an investment of that national or person in the territory of the former Contracting Party shall as far as possible be settled in an amicable way.

3) If a dispute as meant in paragraph (1) or (2) cannot be settled within a reasonable lapse of time, it shall, unless the parties to the dispute have otherwise agreed, be submitted, at the request of either party to the dispute, to an arbitral tribunal, composed of three members. Each party to the dispute 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 Contracting Party.

4) If one of the parties to the dispute 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 to the dispute may invite the President of the International Court of Justice to make the necessary appointment.

5) 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 to the dispute may invite the President of the International Court of Justice to make the necessary appointment.

6) If, in the cases provided for in the fourth and fifth 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 Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court available who is not a national of either Contracting Party shall be invited to make the necessary appointments.

7) 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.

8) Unless the parties decide otherwise, the tribunal shall determine its own procedure.

9) 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 9

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 10

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

Article 11

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe and to Aruba, unless the notification provided for in Article 12, paragraph (1) provides otherwise.

Article 12

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 or legally required therefor in their respective countries have been complied with, and shall remain in force for a period of 10 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 5 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) 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.

4) 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 either the part of the Kingdom in Europe or Aruba.

In witness whereof, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done in duplicate at Muscat in the English language, on this nineteenth day of September 1987.

For the Government of the Kingdom of the Netherlands:

J. TH. VAN LEEUWEN

For the Government of the Sultanate of Oman:

QAIS BIN ABDUL MUNIM AL ZAWAWI