

No. 24814

**NETHERLANDS
and
YEMEN**

**Agreement on encouragement and reciprocal protection
of investments (with exchange of letters). Signed at
The Hague on 18 March 1985**

Authentic text: English.

Registered by the Netherlands on 14 May 1987.

**PAYS-BAS
et
YÉMEN**

**Accord relatif à l'encouragement et à la protection réci-
proque des investissements (avec échange de lettres).
Signé à La Haye le 18 mars 1985**

Texte authentique : anglais.

Enregistré par les Pays-Bas le 14 mai 1987.

AGREEMENT¹ ON ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE YEMEN ARAB REPUBLIC

The Government of the Kingdom of the Netherlands and the Government of the Yemen Arab Republic,

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 purposes 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 in respect of every kind of asset;
- (ii) Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
- (iii) Title to money, goodwill and other assets and to any performance having an economic value;
- (iv) Rights in the fields of intellectual property, technical processes and know-how;
- (v) Rights granted under public law, including rights to prospect, explore, extract and win natural resources.

(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 controlled, directly or indirectly, by nationals of that Contracting Party but constituted in accordance with the law of the other Contracting Party.

(c) 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. The Contracting Parties shall, within the framework of their laws and regulations, promote economic cooperation between their nationals through the encouragement of investments by those nationals in the territory of the other Contracting Party.

¹ Came into force on 1 September 1986, i.e., the first day of the second month following the date on which the Parties had informed each other (on 12 November 1985 and 2 July 1986) of the completion of the required constitutional procedures, in accordance with article 13 (1).

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 full security and protection which in any case shall not be less than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the investor.

(3) If a Contracting Party has accorded special advantages to nationals 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, the host State shall not be obliged to accord such advantages to nationals of the other Contracting Party.

Article 4. With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State, whichever is more favourable, of the nationals concerned. 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 5. 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 freely convertible currency of payments resulting from investment activities and in particular of the following items:

- (a) Profits, interest, 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 assetsin 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 6. 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 designated by the claimants concerned and in the currency of the country of which the claimants are nationals in any freely convertible currency by the claimants.

Article 7. Nationals of the 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 to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 8. If the investments of a national 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 pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 9. Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965¹ any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party. A legal person which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares are owned by nationals of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

Article 10. 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 11. (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, unless the Parties have otherwise agreed, be submitted, at the request of either Party, 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

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

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 Contracting 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 available 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 12. As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe.

Article 13. (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 therefor 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 twelve 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) 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 in two originals at The Hague, in the English language, on this 18th day of March, 1985.

For the Government
of the Kingdom of the Netherlands:

R. F. M. LUBBERS

For the Government
of the Yemen Arab Republic:

M. A. AL-GUNAIID

EXCHANGE OF LETTERS

I

MINISTERIE VAN BUITENLANDSE ZAKEN¹

The Hague, 18 March 1985

Excellency,

With reference to the Agreement on encouragement and reciprocal protection of investments, signed today, I have the honour to inform you as follows:

Article 9 of the Agreement provides for a procedure for the settlement of disputes between a national of the one State, and the other State, arising directly out of an investment.

However, in the framework of contracts between nationals of the one State and the other State or a constituent subdivision or agency of that State, disputes may arise which are not within the jurisdiction of the Centre referred to in the said Article because they do not arise directly out of an investment.

With a view thereto I have the honour to propose on behalf of my Government that such disputes, at the request of the nationals concerned in the absence of any other procedure agreed upon in the said contracts, shall be referred to an international court of arbitration which shall be established under the arbitration rules of the International Chamber of Commerce.

I would very much appreciate to learn whether this proposal is acceptable to your Government.

Please accept, Excellency, the assurance of my highest consideration.

[Signed]

R. F. M. LUBBERS
Minister for Foreign Affairs a.i.
of the Kingdom of the Netherlands

To His Excellency Mr. M. A. Al-Gunaid
Minister of Development of the Yemen Arab Republic

¹ Ministry of Foreign Affairs.

II

The Hague, 18 March 1985

Excellency,

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

[See letter I]

I have the honour to inform you that the proposal, set out in your letter, is acceptable to my Government.

Please accept, Excellency, the assurance of my highest consideration.

[Signed]

M. A. AL-GUNAID
Minister of Development
of the Yemen Arab Republic

To His Excellency Mr. R. F. M. Lubbers
Minister for Foreign Affairs a.i.
of the Kingdom of the Netherlands
