

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2002 Nr. 118

A. TITEL

*Verdrag inzake de bevordering en de wederzijdse bescherming van
investerings, tussen het Koninkrijk der Nederlanden en de Libanese
Republiek met Protocol;
Beiroet, 2 Mei 2002*

B. TEKST

**Agreement on the encouragement and the reciprocal protection of
investments between the Kingdom of the Netherlands and the
Lebanese Republic**

The Kingdom of the Netherlands
and
the Lebanese Republic,
hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend
and intensify the economic relations between them, particularly with
respect to investments by the investors of one Contracting Party in the
territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such
investments will stimulate the flow of capital and technology and the
economic development of the Contracting Parties and that fair and equi-
table treatment of investments is desirable,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

a) the term “investments” means every kind of asset and more par-
ticularly, 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) claims to money, to other assets or to any performance having an economic value;
- (iv) rights in the field of intellectual property, technical processes, goodwill and know-how;
- (v) rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.
- b) the term “investor” shall comprise with regard to either Contracting Party:
 - (i) natural persons having the nationality of that Contracting Party;
 - (ii) legal persons constituted under the law of that Contracting Party;
 - (iii) legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii), who have made an investment in the territory of the other Contracting Party.
- c) the term “territory” means:
the territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the laws applicable in the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned, in which that Contracting Party exercises jurisdiction or sovereign rights.

Article 2

Promotion of investments

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3

Treatment of investments

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments full security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3. If a Contracting Party has accorded special advantages to investors of any third State:

- a) by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions; or
 - b) on the basis of interim agreements leading to such unions or institutions; or
 - c) under an agreement for the avoidance of double taxation; or
 - d) on the basis of reciprocity with regard to taxation,
- that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors 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 investors 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 4

Free transfer

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- a) profits, interests, dividends and other current income;
- b) capital and additional amounts to maintain or increase the investment;
- c) funds in repayment of loans;
- d) royalties or fees;
- e) earnings of natural persons;
- f) the proceeds of sale or liquidation of the investment;
- g) payments arising under the Articles 5, 6, 9 and 10.

Article 5

Expropriation and compensation

Neither Contracting Party shall take any measures depriving, directly or indirectly, investors 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 Contracting Party which takes such measures may have given;
- c) the measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants. The genuine value of the investment shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

Article 6

Compensation for losses

Investors 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 investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 7

Subrogation

If the investments of an investor of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

Article 8

Application

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, in accordance with the laws and regulations as applicable in the territory of the Contracting Party concerned at the time when the investments were made. The Agreement shall not apply to disputes which have been settled or which have arisen prior to its entry into force.

Article 9

Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

1. In case of disputes regarding investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case, as far as possible, amicably.

2. If these consultations do not result in a solution within three months from the date of written request for settlement, the investor may submit the dispute, at his choice, for settlement to:

a) the competent court of the Contracting Party in the territory of which the investment has been made; or

b) the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, opened for signature at Washington, on March 18, 1965, in case both Contracting Parties have become members of this Convention; or

c) the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules), if one of the Contracting Parties is not a Contracting State of the Convention as mentioned in paragraph 2 b) of this Article; or

d) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article.

3. A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention, for the purpose of the Convention be treated as a national of the other Contracting Party.

4. The choice made as per subparagraphs 2 b, c and d herein above is final.

Article 10

Settlement of disputes between Contracting Parties

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 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 paragraphs (2) and (3) 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 Party the most senior member of the Court available who is not a national of either Party shall be invited to 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 settlement of 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.

Article 11

Territorial application

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

Article 12

Entry into force, duration and termination

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 notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of fifteen 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 ten years, whereby each Contracting Party reserves 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 shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

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

DONE in two originals at Beirut, on May 2, 2002, in the English language, both being equally authentic.

For the Kingdom of the Netherlands:

(sd.) J. P. KLEIWEG DE ZWAAN

For the Lebanese Republic:

(sd.) FOUAD SINIORA

PROTOCOL**to the Agreement****on the encouragement and reciprocal protection of investments
between the Lebanese Republic and the Kingdom of the
Netherlands**

On the signing of the Agreement on the encouragement and reciprocal protection of investments between the Lebanese Republic and the Kingdom of the Netherlands, the undersigned representatives have agreed on the following provisions, which constitute an integral part of the Agreement:

Ad Article 3

The provisions of Article 3, paragraph 2, are not applicable to the acquisition of real estate or real estate rights, under Decree-Law No. 11614, dated January 4, 1969, in the territory of the Lebanese Republic. In this respect investors of the Kingdom of the Netherlands will be treated not less favourable than investors of any third country, which is not a member of the Arab League.

Ad Article 5

For the avoidance of doubt it is confirmed that in case a dispute with respect to the interpretation of the term “public interest” has been submitted to international dispute settlement, the tribunal shall decide in accordance with such rules of law as may be agreed upon by the parties to the dispute. In the absence of such agreement the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws), and such rules of international law as may be applicable.

DONE in two originals at Beirut, on May 2, 2002, in the English language, both being equally authentic.

For the Kingdom of the Netherlands:

(sd.) J. P. KLEIWEG DE ZWAAN

For the Lebanese Republic:

(sd.) FOUAD SINIORA

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 12, eerste lid, in werking treden op de eerste dag van de tweede maand volgende op de datum waarop de Verdragsluitende Partijen elkaar schriftelijk hebben medegedeeld dat aan hun grondwettelijke vereiste procedures is voldaan.

J. GEGEVENS**Verwijzingen**

- | | | |
|---------------------|---|--|
| Titel | : | Statuut van het Internationale Gerechtshof; San Francisco, 26 juni 1945 |
| Tekst | : | <i>Trb.</i> 1971, 55 (herziene vertaling in <i>Trb.</i> 1987, 114) |
| Laatste <i>Trb.</i> | : | <i>Trb.</i> 1997, 106 |
| Titel | : | Verdrag inzake de beslechting van geschillen met betrekking tot investeringen tussen Staten en onderdanen van andere Staten; Washington, 18 maart 1965 |
| Tekst | : | <i>Trb.</i> 1966, 152 (en vertaling) |
| Laatste <i>Trb.</i> | : | <i>Trb.</i> 1994, 126. |
| ICSID | : | Zie het bovengenoemde Verdrag van 18 maart 1965 |
| UNCITRAL | : | Resolutie 2205 XXXI van de Verenigde Algemene Vergadering van de Naties; New York, 17 december 1966 |

Uitgegeven de *eerste* juli 2002.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN