



# **Bilateral Investment Treaty between Netherlands and Singapore**

**DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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# Agreement on economic cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Singapore

The Government of the Kingdom of the Netherlands  
and  
the Government of the Republic of Singapore,

Desiring to strengthen their traditional ties of friendship, to extend and intensify their economic relations and to encourage investments on the basis of equality in order to develop the industrial and commercial activities of their countries,

Have agreed follows:

## Article I

In this Agreement 'investments' includes every kind of asset, in particular:

- (a) movable and immovable property as well as any other rights *in rem*;
- (b) shares or other kinds of interests in companies;
- (c) title to money or to any performance, such as goodwill, having an economic value;
- (d) rights in the fields of intellectual property, technical processes and know how; and
- (e) such business concessions under public law, including concessions regarding the prospecting for, or the extraction or the winning of natural resources, which give to their holders a legal position of some duration.

'nationals' in respect of either Contracting Party means:

- (a) natural persons having the nationality of that Contracting Party;
- (b) legal persons constituted in accordance with the laws of that Contracting Party; or
- (c) legal persons controlled directly or indirectly by nationals of that Contracting Party and constituted in accordance with the laws of the other Contracting Party.

'intellectual property' means the rights relating to:

- (a) literary and scientific works;
- (b) phonograms;
- (c) inventions in all fields of human endeavour;
- (d) scientific discoveries;

- (e) industrial designs;
- (f) trademarks, service marks, and commercial names and designations;
- (g) protection against unfair competition; and
- (h) all other rights resulting from intellectual activity in the industrial, scientific or literary fields.

## Article II

- 1) The Contracting Parties shall promote and develop economic cooperation between their respective countries.
- 2) In particular they undertake to promote cooperation between their nationals and to facilitate, within the framework of their respective legislation, the participation of their nationals in the establishment of industrial and commercial activities and the provision of services in their respective countries which would contribute towards the improvement of the standard of living in and the prosperity of their countries.

## Article III

- 1) To further the achievement of the aims of the present Agreement, each Contracting Party is prepared, within the limits of its legislation, to authorize their nationals to deliver capital goods to and carry out public works for governmental and private enterprises, in the territory of the other Contracting Party, against payment by instalments.
- 2) Either Contracting Party shall authorize, subject to its legislation, the transfer, when due, of the sums owing to creditors who are nationals of the other Contracting Party.

## Article IV

- 1) The Contracting Parties undertake to promote the development of international merchant shipping services. In doing so they shall maintain free and normal competitive conditions. Either Contracting Party shall refrain from taking any discriminatory measures against, and from restricting the free participation in international traffic of merchant vessels flying the flag of the other Contracting Party and operated by nationals of that Contracting Party or merchant vessels chartered by nationals of the latter Contracting Party.

- 2) Either Contracting Party shall accord in its ports to the merchant vessels flying the flag of the other Contracting Party and operated by nationals of that Contracting Party or merchant vessels chartered by nationals of the latter Contracting Party the same treatment as it accords to its own vessels. This provision applies, without prejudice to the provisions of international conventions binding on the Contracting Parties, to custom formalities, port fees and port charges, the free entry into ports, the assignment of berths, facilities for loading and unloading, and to all other facilities accorded to shipping and to economic activities in connection with merchant vessels, their crews, their passengers and the cargoes they carry.
- 3) From the provisions of the foregoing paragraphs of this Article shall be excepted
  - (a) fisheries;
  - and
  - (b) coastal shipping in the non-European parts of the Kingdom of the Netherlands, to which only the internal regulations of these parts of the Kingdom shall apply.

## Article V

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

## Article VI

Each Contracting Party undertakes to facilitate with regard to the other Contracting Party, to the extent permitted by the former Contracting Party's legislation and without prejudice to the provisions of international conventions binding on the Contracting Parties:

- (a) the holding in its territory by the other Contracting Party or by its nationals of economic and commercial exhibitions and displays;
- (b) the importation, duty-free, of goods, materials and equipment to be used for economic and commercial exhibitions and displays, on condition that they are re-exported within a limited period;

- (c) the importation, duty-free, of professional equipment, and of goods, materials and equipment to be used for technical work on behalf of governmental bodies or private enterprises, on condition that they are re-exported within a limited period;
- (d) the re-exportation, duty-free, of goods, materials and equipment referred to in (b) and (c); and
- (e) the disposal of goods, materials and equipment referred to in (b) and (c) in the territory where they have been used, subject to the payment of duty.

## Article VII

- 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 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 to those of its own nationals or to those of nationals of third countries, whichever is more favourable to the investor.

## Article VIII

Recognizing the principle of the freedom of transfer, each Contracting Party shall authorize, subject to its relevant most favourable laws and regulations, 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:

- (a) net 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. for the replacement of 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; and
- (h) royalties.

## Article IX

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 to the particular nationals concerned; and
- (c) the measures are accompanied by provisions for the payment of just compensation. Such compensation shall be paid and made transferable, without undue delay, to the country of the nationals affected and in the currency of that country.

## Article X

The Contracting Party in the territory of which an investment has been made, in respect of which investment the other Contracting Party or a national thereof has granted any financial security against non-commercial risks, shall recognize the subrogation of the grantor of that security into the rights of the investor as to damages if payment has been made under that security.

## Article XI

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

## Article XII

- 1) The present Agreement shall apply:
  - (a) in respect of investments in the Republic of Singapore, to all investments made by nationals of the Kingdom of the Netherlands whose applications for the investments concerned have been approved in writing by the Government of the Republic of Singapore;
  - (b) in respect of investments in the Kingdom of the Netherlands, to all investments made by nationals of the Republic of Singapore.
- 2) The provisions of the foregoing paragraph of this Article shall apply to all investments referred to therein irrespective of whether those investments were made before or after the coming into force of the present Agreement.

## Article XIII

- 1) The Contracting Parties agree to establish a Joint Committee which will meet at the request of either Contracting Party for the purpose of:
  - (a) discussing any matter pertaining to the implementation of the present Agreement;  
and
  - (b) considering means of promoting economic cooperation between their countries.
- 2) The composition and procedure of the Joint Committee shall be mutually agreed upon by the Contracting Parties.

## Article XIV

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

## Article XV

- 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 either Contracting Party, to an arbitral tribunal composed of three members. Each Contracting 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 Contracting Party.
- 2) If one of the Contracting Parties fails to appoint its arbitrator within two months after an invitation from the other Contracting Party to make such appointment, the latter Contracting 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 appointments, on the choice of the third arbitrator, either Contracting 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 functions or is a national of either Contracting Party, the Vice-President shall make the necessary appointments. If the Vice-President is prevented from discharging the said functions or is a national of either Contracting Party, the most senior member of the said Court who is not a national of either Contracting Party shall make the necessary appointments.
- 5) The tribunal shall decide on the basis of respect for the law. Before the tribunal makes a decision, it may at any stage of the proceedings propose to the Contracting 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 Contracting Parties so agree.
- 6) Unless the Contracting 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 Contracting Parties.
- 8) Each Contracting Party shall bear the cost of its own arbitrator and of its representatives in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

## Article XVI

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the territory of the Kingdom in Europe, to Surinam and to the Netherlands Antilles, unless the Diplomatic Note of the Government of the Kingdom of the Netherlands, provided for in paragraph (1) of Article XVII of the present Agreement, stipulates otherwise.

## Article XVII

- 1) The present Agreement shall come into force on the thirtieth (30th) day after the date of the exchange of Diplomatic Notes by the Contracting Parties confirming that all formalities for the coming into force of the present Agreement have been fulfilled in the respective countries, and shall remain in force for a period of five (5) years. Unless written 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 five (5) years, and so on, each Contracting Party reserving the right to terminate the present Agreement upon written notice of at least six months before the date of expiry of the current period of validity.
- 2) Subject to the periods 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 Surinam or the Netherlands Antilles.
- 3) Notwithstanding anything in paragraphs (1) and (2) of this Article, the provisions of the present Agreement shall continue to apply to investments made before the date of its termination for a period of fifteen (15) years from that date.

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

DONE at [place] on [date], in duplicate, in the English language.

For the Government of  
the Kingdom of the Netherlands:

For the Government of  
the Republic of Singapore:

## Protocol

At the time of signing the Agreement on economic cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Singapore, the undersigned representatives confirm that their respective Governments have reached the understanding that:

- (a) In respect of Article XIV of the said Agreement, any right accorded by the Government of the Republic of Singapore shall mean any right accorded by the said Government after the coming into force of the Constitution (Amendment) Act, 1965, (Act No. 8 of 1965) on the 9th day of August, 1965.
- (b) This Protocol shall form an integral part of the said Agreement.

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

DONE at [place] on [date], in duplicate, in the English language.

For the Government of  
the Kingdom of the Netherlands:

For the Government of  
the Republic of Singapore: