

Memorandum

The Netherlands: Sound and Proven Gateway to the world

Advantages for non-residents of using a Dutch Intermediate Holding/Finance Company

The world is the economic and financial oyster of multinational enterprises and investors. There are many positive sides to such an oyster, but unfortunately it is often true to say that the tastier the fish the riskier it is to devour it. One can think of the Fugu fish which is considered by many the tastiest food that one can buy, but if not properly prepared it is also the deadliest. Certainly, this can also be the case for investments, particularly those investments that are expected to yield a high rate of return. Such investments are frequently made in countries and projects that have a high risk profile. The question that we will try to deal with below is how to make these investments tasty, but with less risks. Risks can be the result of unfriendly acts by foreign governments such as nationalization. Risks can also stem from unexpected and unplanned taxation in one or more countries. Can these risks be reduced? And if that is so, do such risk reducing steps adversely influence the commercial aspects of the investment? We believe that for many outbound investments the answer has been and continues to be found in the use of a simple and proven corporate structure namely the Dutch holding company.

Since decades a multitude of multinational groups and investors are using the Dutch holding company so as to protect their investments as well as possible and in a very tax efficient manner. Although several countries have in recent years tried to introduce similar systems, the combination of tax efficiency and investment protection systems available through Dutch (holding) companies appears unparalleled. Such companies, which are easy to incorporate and maintain, can also offer extra layers of protection to non-residents, both for new investments abroad as well as for investments already made.

Simply put, one may create within a limited period of time and without too much difficulty a Dutch limited liability company. In this memorandum a brief description is given of the main aspects relating to such a company. As will be explained the articles of association of such a company can be tailor-made to meet the requirements of the (ultimate) shareholder.

As a consequence of the above, a non-resident investor can indeed, without many problems, get a Dutch holding company to own his worldwide investments. In doing so the investor may achieve a tax neutral position or, against the background of the vast tax treaty network of the Netherlands, improve his worldwide tax position as compared to the situation in which he would be holding those investments directly. This probably explains why many others have already found and followed this route.

The above does not yet explain why the proposed structure may also help to protect investments against unfriendly acts of the countries in which investments are made. The answer lies in the remarkable network of bilateral investment treaties (BITs) which the Netherlands has with other countries. That is why in this memorandum attention is also paid to BITs. These treaties have proven to provide for a good insurance, the premium of which is limited in the sense that each legal person incorporated under the laws of the Netherlands

can make use of them and the effective protection they offer. So if a non-resident were to invest in third countries through his Dutch holding company, this would not only be simple and tax friendly, but it would also provide a good protection against the adverse effects caused to investments by the unfriendly acts of foreign governments.

Much information can also be found in this memorandum about the general aspects of the Dutch holding. Despite the quite extensive information contained in the memorandum, there may still be a need to set up and maintain a tailor-made structure in specific cases. Please note that this can be done in a matter of weeks through the good cooperation between local advisors, our clients and Loyens & Loeff. The scope of this memorandum does not allow us to expand on the many other possibilities which are available once a particular structure is in place.

The Dutch (Intermediate) Holding Company

1. Introduction

Historically, the Netherlands has been a highly appreciated location for the establishment of holding and financing structures. To a large extent this is caused by the international focus of the Netherlands, which has resulted in many benefits for international groups acting through the Netherlands. Thousands of multinationals from numerous countries around the world acknowledge the advantages of the Netherlands as a sound and proven gateway to the world and are using Dutch (intermediate) Holding Companies (“**DHC**”) in their corporate structures.

2. Advantages of DHC

- (a) Extensive tax treaty network: the Netherlands have concluded some 80 Double Taxation Treaties, which provide for, *inter alia*, reductions of, or exemptions for, applicable withholding taxes on dividends, interest and royalties;
- (b) EU Treaty and EU Directives (e.g. the Parent-Subsidiary Directive) providing for beneficial provisions on intra-EU relations, in particular with a view to the avoidance of domestic discriminatory provisions and other provisions that obstruct free movement of goods and people within the EU, such as withholding taxes;
- (c) Bilateral investment treaties (BITs): the Netherlands has concluded almost 100 BITs (of which 87 are in force), which provide for protection against unjust actions by foreign governments;
- (d) Good international business climate: the Netherlands has a stable and reliable political system, highly qualified service providers and a reliable banking system;
- (e) In addition, the Netherlands has a well known strong and flexible legal system and a beneficial tax regime for international holding and financing activities, which is sound and proven and therefore internationally well-accepted;
- (f) Important aspects of the Dutch tax system include;
 - a 100% participation exemption for dividends and capital gains derived from subsidiaries that carry out business activities;
 - the absence of withholding tax on interest and royalties; and
 - the possibility to obtain advance tax rulings confirming the tax position of Dutch taxpayers in advance.
 - Due to the fact that the Dutch tax regime is a balanced system of benefits with sufficient realistic requirements and anti-avoidance provisions, the Netherlands is generally not considered as a tax haven by other jurisdictions.

3. Structuring Options through the Netherlands

The simplest way of creating a DHC structure would be to set up a Dutch private company with limited liability (a *besloten vennootschap met beperkte aansprakelijkheid* or “**BV**”). The most basic structure would already provide for a number of the benefits that are envisaged:

- (a) a transparent and acceptable structure for international business partners;
- (b) a holding in a strong legal environment;
- (c) protection under BITs;
- (d) a reduction of withholding taxes on incoming and outgoing dividends, interests and royalties;
- (e) tax free dividend income distributed from foreign subsidiaries; and
- (f) a possibility to sell shares in foreign subsidiaries to third parties without taxation of capital gains (due to the participation exemption).

For NON-. investors one can further optimize the (tax) structure if so desired by interposing for example a Luxemburg or Maltese company between DHC and the NON-. investor. As a consequence the overall tax position can really become second to none, while maintaining the above advantages as well as those described later in this memorandum. It goes beyond the scope of this note to go into any further detail. Suffice it to state that a Maltese or Luxemburg company which is held by a NON-. investor, and which in turn owns the DHC forms a strong, proven extremely efficient structure. Such corporate sandwich can make a lot of sense and be very tasty indeed.

Mention should also be made of the possibility for foreign investors in the Netherlands of a variety of possibilities which can be discussed in advance with high ranking representatives of the Dutch Government. Since a number of years a special task force is operational which deals with the future potential tax position and possible incentives for those considering investing in the Netherlands. Binding agreements can be made in advance with the competent Dutch authorities about the future tax situation of the investor and his business. More information about these and related aspects can also be obtained from the representative of the Netherlands Foreign Investment Agency in Dubai. A combination of operational activities and holding and financing activities can certainly result in a strong set up which can be protected by advance rulings which can be obtained in a matter of weeks and at relatively low costs. This advance consultation practice exists in the Netherlands since decades and over this period it has demonstrated to be a very reliable and good tool in planning for the future.

The Participation Exemption

1. Introduction

Historically, the Netherlands has been a highly appreciated location for the establishment of holding and financing structures. To a large extent this is caused by the international focus of the Netherlands, which has resulted in many benefits for international groups acting through the Netherlands. Thousands of multinationals from numerous countries around the world acknowledge the advantages of the Netherlands as a sound and proven gateway to the world and are using DHC's in their corporate structures.

2. The Netherlands: Gateway to the World

Apart from its highly valued extensive tax treaty network (the Netherlands have concluded over 80 Double Taxation Treaties which provide for, *inter alia*, reductions of, or exemptions for, applicable withholding taxes on dividends, interest and royalties), one of the main features of the Netherlands as favoured jurisdiction for (intermediate) holding is the participation exemption facility. The Netherlands has a 100% participation exemption for dividends and capital gains derived from subsidiaries that carry out business activities. In addition, the possibility to obtain tax rulings confirming the tax position of Dutch taxpayers in advance make that the Netherlands is generally recognized as the sound and proven gateway to the world.

3. The Participation Exemption

The participation exemption was introduced in Dutch tax law in the 19th century. Since the early 1970's, the application of the participation exemption has been subject of advance tax rulings. Over the years the rules of the participation exemption have been updated and modernized. The most recent update is the one effective 1 January 2007. A brief overview of the updated rules is shown below.

Generally, the Dutch participation exemption is applicable to shareholdings of at least 5% in the paid up share capital of a company. Holdings of less than five percent will generally not qualify as a participation for the participation exemption, unless a group company already has a qualifying participation.

However, the participation exemption will not be applicable to investments in "low taxed portfolio participations". A low taxed portfolio participation is a subsidiary which (a) holds more than 50% "free investments" (asset test) and (b) is taxed at an effective rate of less than 10% of its profits calculated in accordance with Netherlands tax standards (tax burden test). Hereinafter, we will elaborate on these two tests.

Ad (a) Asset Test

The following remarks may be made in respect of the asset test.

- If more than 50% of the assets of the subsidiary are free investments, the asset test is *not* cleared;
- Assets are free investments if they are not required within the enterprise of their owner. Mortgage-backed loans held by a bank and office properties held by an ordinary business enterprise will not qualify as a free investment for the application of the participation exemption;
- In principle, assets which are used for passive financing activities (loans to affiliated companies) will be deemed as free investments for the asset test;
- Holdings of the subsidiary in other entities of less than 5% are generally deemed to be a free investment;
- All directly and indirectly held assets must be aggregated; and
- The asset test is a continuous test.

Ad (b) Tax Burden Test

Regarding the tax burden test the following remarks may be made.

- The tax burden test is applied at the level of the subsidiary;
- An effective rate of at least 10% on the profits of the subsidiary is required to clear this test;
- The profit estimation should be in accordance with Netherlands standards, i.e. the nominal tax rate is not sufficient to determine the tax burden at the level of the subsidiary; and
- If the subsidiary is subject to a (nominal) tax rate that differs significantly from the Netherlands tax rate or if the rules of profit calculation differ from Netherlands rules, a yearly examination should be made whether this test is cleared.

If both the above mentioned tests can not be cleared, the participation is re-qualified as a “low taxed portfolio participation” as a result of which the participation exemption will not be applicable on the profits distributed by this participation. If one of the two tests can be cleared, the participation exemption is applicable.

Real Estate Subsidiaries

However, despite of being a low taxed portfolio participation, the participation exemption will be applicable if a subsidiary is regarded as a real estate subsidiary. A subsidiary will generally be treated as a real estate participation if more than 90% of its assets, on a consolidated basis, consists of real estate which is not held by a mutual investment fund. Even if the subsidiary is low taxed *and* holds more than 50% free investments (and therefore in principle will qualify a low taxed portfolio participation), the participation exemption will be applicable on profits derived from real estate subsidiaries.

The Legal Framework for a Business in the Netherlands

1. Introduction

One subject to contemplate when establishing a business in the Netherlands is the legal framework. Most foreign investors opt for establishing a separate legal entity or enter into a partnership. Although there are other legal structures that could be considered, by far the most commonly used are:

- (i) The public limited liability company (*naamloze vennootschap* or 'NV'); and
- (ii) The private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid* or 'BV').

In view of the fact that the NV and the BV are used in the vast majority of the cases, the focus below is on these two entities of Dutch corporate law. Mention is made of other entities such as the cooperative which can sometimes offer additional flexibility and opportunities.

2. Characteristics

Dutch law is flexible with respect to the content of the articles of association (the "**Articles**") of a company. These may, to a substantial extent, be tailor made according to wishes of the client. Dutch government is currently endeavouring to strengthen the Dutch international investment climate by, among others, making the BV an even more attractive vehicle. For this, legislation will be enacted (expectedly) effective early 2008 allowing even more flexibility. Particularly in structures where a BV is used as a holding company, this new flexibility will add advantages.

A company's capital is divided in shares, limiting the liability of its shareholders to the nominal value of their shareholding only¹. The minimal nominal share capital is currently 18,000 euro for a BV and 45,000 euro for a NV. By contributing assets as share premium to be paid on existing shares, shareholders can easily further fund the company without new shares having to be issued. Under the proposed legislation, this minimum capital requirement for a BV will be abolished and will lose its relevance in this respect.

A company has at least two corporate bodies: its meeting of shareholders and its management board. Management will in principle be responsible for the day to day business and policy of the company. The meeting of shareholders may indicate general guidelines for the company's policy, leaving the actual policy making, including responsibility therefore, with the management board. Subject to the level of desired control over the management board, a supervisory board may be added. To the supervisory board more elaborate powers may be granted to exercise supervision than to the meeting of shareholders, or to individual shareholders.

3. Incorporation

A company is incorporated by the execution by a civil law notary of a notarial deed of incorporation, holding the Articles. This can be prepared and executed by one of the civil law notaries of Loyens & Loeff. The Articles contain the key elements of the share capital, and corporate governance (e.g. the scope of authority of management, supervisory board members and shareholders) and the objects of the company. To avoid the incorporators having to appear in front of the notary, the deed may be signed on the basis of a power of attorney, granted to e.g. one of the notary's employees.

¹ Save for abuse of corporate authority and a highly active involvement in the company's policy.

In practice the incorporation process can be completed within a few weeks. This may be even swifter if the fast track procedure can be applied. The thresholds to be met to allow for this procedure can be found in the Annex I.

Furthermore Annex I contains a list of documents and information required to initiate the incorporation process, as well as some additional practical information on the incorporation and maintenance of a company.

4. Summary/Conclusion

All in all, it is fair to say that

- the Netherlands provide for a flexible system for the incorporation of a BV or a NV;
- the information requirements are rather limited, and
- incorporation can even take place within a few business days.

The paperwork for the incorporation and registration is taken care of by our team, thereby minimizing the involvement of the client.

The Protection of Outbound Investments through Bilateral Investment Treaties

1. Introduction

Bilateral investment treaties ('**BITs**') are key to modern investment protection. They offer valuable legal protection for cross-border investments. The Netherlands, Belgium and Luxembourg (hereinafter also jointly: the '**Benelux**') have an extensive network of BITs from which non-investors with outbound investments may benefit. Investors often seem to overlook the usefulness of BITs.

The purpose of this memo is to explain how BITs work, to clarify their advantages and to demonstrate how outbound investors may enjoy protection from BITs concluded by the Benelux.

At a quick glance, the specific advantages of BIT protection may be summarized as follows:

- BITs impose international legal obligations on States with respect to foreign investors
- BITs entitle investors to fair compensation if their assets are expropriated
- BITs provide investors with an effective judicial remedy (arbitration) against States which do not meet their obligations towards investors
- BIT protection makes it less easy for States to go back on their agreements with investors and can strengthen the negotiating position of investors as against foreign authorities
- BIT protection may contribute to the legal certainty of investment projects in countries characterized by economic and/or political instability

Although this memo focuses on BIT protection of the Benelux, the outline given below applies, in principle, to any BIT.

2. BITs: General Observations

A BIT is, briefly put, a treaty between two States with respect to the protection of investors and their investments in those States.

The Netherlands has concluded 97 BITs, 87 of which are in force by May 2007 (see Annex II). Belgium and Luxembourg, which collaborate with regard to BIT protection, have concluded more than 85 BITs, more than 60 of which are currently in force.

For reasons to be explained below, the BITs of the Netherlands are considered to be investor friendly. They are much in use with investors seeking to add legal protection to investments in political risk jurisdictions.

To a great extent, BITs are similar in form, substance and legal effects. They generally contain four main elements: the scope of application, the treatment of investors, the expropriation of investments, and the settlement of disputes. Each of these elements is briefly discussed below on the basis of the model BIT used by the Netherlands.

3. The Four Main Elements of BIT Protection

(i) *The Scope of Application*

In order to determine its scope of application, a BIT provides definitions of 'investments', 'investors' and of the 'territory' it covers. The first two of these concepts are usually broadly defined, thus providing for extensive protection.

'Investments' are as a rule defined as every kind of asset, including but not limited to property and rights with a proprietary character, rights derived from shares, bonds and other kinds of interests in companies and joint ventures, claims to money or to any performance having an economic value, rights in the field of intellectual property, and rights granted under public law or contract such as rights to explore, extract and produce natural resources and minerals.²

'Investors' are normally defined as 'nationals'. With regard to the Netherlands, this category comprises (a) natural persons with Dutch nationality, (b) legal persons incorporated under the law of the Netherlands, and (c) legal persons not incorporated under the law of the Netherlands but controlled, directly or indirectly, by persons defined under (a) or (b).³

The general qualification of foreign legal persons which are controlled by Dutch investors as 'nationals' (i.e., investors) under the BITs of the Netherlands is important. It allows for the indirect protection of investments (see also below, Section 6). Such foreign legal persons are also, in principle, entitled to bring claims under the applicable BIT.

Many BITs of the Netherlands even provide that legal persons incorporated under the laws of the State in which the investment was made, will be considered as Dutch investors for the purposes of the BIT, provided that they are controlled by Dutch investors prior to an investment dispute. Depending on the circumstances of the dispute, this may be very useful for the investor.

Normally, BIT protection extends not only to investments which have been made after the BIT entered into force, but also to investments that were made before it took effect.

(ii) *The Treatment of Investors*

BITs impose a duty on the contracting States to treat each other's investors in accordance with certain standards. Central to this treatment is the principle of non-discrimination. Investors are entitled to either 'national' treatment or 'most-favoured-nation' treatment, whichever is the more favourable.

National treatment means that a contracting State may not treat investors of the other contracting State less favourably than its own investors. Most-favoured-nation treatment means that a contracting State may not treat investors of the other contracting State less favourably than other foreign investors.

The treatment standards also include the duty of States to ensure 'fair and equitable treatment' of each other's investments and investors, and in particular the obligation not to impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments. This

² The model agreement used by Belgium and Luxembourg contains a similar definition of investments.

³ The Belgium-Luxembourg model agreement contains definitions of investors similar to those under (a) and (b), but lacks the extension of the definition under (c) of the Dutch model. In practice, however, this extension does appear in Belgian-Luxembourg BITs.

standard of treatment in fact constitutes a minimum standard, which national and most-favoured-nation treatment must in any event meet.

National treatment and most-favoured-nation treatment normally also extend to taxes, fees, charges, tax deductions and exemptions.⁴ In addition, these two forms of treatment also extend to the right of investors to damages with respect to losses resulting from national calamities, such as war and revolution. Another common standard of treatment provides that payments relating to investments must be able to be made without hindrance and that any transfers may be made in freely convertible currency, without any restriction or delay.

(iii) *The Expropriation of Investments*

In accordance with international law, BITs generally do not prohibit expropriation (or nationalization) of investments. Instead, they subject expropriation to strict requirements. A contracting State may only expropriate investments if the expropriation is (a) made in the public interest and under due process of law; (b) not discriminatory or contrary to any concrete obligation of the expropriating State; and (c) made in return for the payment of compensation.

Compensation for expropriation must be *adequate* (i.e., representing the genuine value of the investments, including interest), *prompt* (i.e., made without delay), and *effective* (i.e., payment in the currency of the country of which the claimants are nationals or in any other freely convertible currency accepted by the investor and transferred to a country designated by the investor).

(iv) *The Settlement of Disputes*

The key to effective BIT protection is the right to arbitration, which enables private businesses to invoke and enforce the protective standards of BITs against States.

BITs give investors the right to arbitration in any dispute between an investor and a contracting State. Because the contracting State has already expressly agreed to this when entering into the BIT, *investors do not depend on the consent of the counterparty State* to initiate arbitral proceedings in the event of an investment dispute.

Since BIT protection is based on rules of international law, an investor is not required to have a contractual relationship with the host State in order to invoke the provisions of the BIT, including the dispute settlement clause.

Most BITs allow arbitration under the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter: the '**ICSID Convention**'). If neither or only one of the contracting States is a party to the ICSID Convention, the dispute settlement clause often refers to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law or to the Rules of Arbitration of the International Chamber of Commerce.

The arbitral award given is binding between the State and the investor and may, in principle, be executed in any State where the relevant judicial institutions grant leave.⁵ If the award is an ICSID award, it is immediately enforceable in any State which is a party to the ICSID Convention, just as if it were a final judgment of the

⁴ These will normally have to be States which are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The ability to review an arbitral award before the national courts is not dealt with further here.

⁵ These will normally have to be States which are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The ability to review an arbitral award before the national courts is not dealt with further here.

highest court of that State. Given the fact that at present some 140 countries have ratified this Convention, a favourable ICSID award is a valuable right for an investor.

The arbitration option which BITs provide is generally seen as favourable by investors who would rather not submit their investments disputes with the host State to its domestic courts. There is, generally, no requirement that an investor must have exhausted all national remedies before he can invoke the dispute settlement clause in a BIT.

4. The Advantages of BIT Protection

If the discussion is summarized at this stage, one may note that BITs tie States to rules of international law as against foreign investors. These rules ensure that foreign investors are put legally at par with other investors operating in a contracting State. If the State in whose territory the investments are being made fails to comply with these rules, it will be liable to the investor. For investors operating in countries characterized by economies in transition and/or legal instability BITs may contribute to the stability of their projects.

BITs contain an arbitration clause that guarantees their enforcement. Arbitration enables an investor to have *direct* recourse to the investment protection rules of a BIT, without the intervention of its own government or the consent of the State involved in the investment dispute.

BIT protection is potentially far-reaching. In theory, it means that a contracting State's national policy is subject to general standards of international law, *which can be enforced by private businesses*. In practice, this means that a whole raft of government decisions, such as the restructuring of tax laws, the issuing of environmental decrees, the prohibition and/or suspension of the import or export of toxic substances, the annulment of privatizations or the cancellation of permits for the operation of waste landfills may give rise to successful compensation claims under a BIT.

5. How Effective is BIT Protection?

There is an increasing body of case law, particularly of ICSID awards, which testifies to the effectiveness of BITs. On the one hand many States have come to realize that they cannot unilaterally amend or cancel their agreements with foreign investors without accountability. On the other hand investors have learned that BIT protection can be very useful in the event that their foreign investments are negatively affected by host States.

6. How May Outbound Investments Benefit from BITs?

As has been shown above, the protection that an investor may enjoy in principle does not depend on the BITs that its own government has concluded. Actually, investors may 'shop' for BIT protection: they may benefit from the protection of BITs concluded by other countries by routing their investments through these countries.

For example, outbound investors can achieve BIT protection for their investments in, say, country X by routing them through any country whose government has concluded a favourable BIT with country X. If the country of the non-resident investor, for instance, does not have a BIT with India, the investor who wants to invest in India can nevertheless obtain BIT protection by routing his investment through the Netherlands, which does have a BIT with India.

Basically, this can be done in two ways. In the first place, the investor can opt to make the investment in India directly via a legal person incorporated for that purpose, under the laws of the Netherlands. Alternatively, the investor may decide to make his investment in India indirectly through whatever foreign legal entity which is fully owned by a Dutch legal person. Either way, the investments of the non-resident investor will be protected

by the BIT between the Netherlands and India. The second option of having one or several foreign legal entities in the investment structure may create an opportunity for optimizing tax benefits.

The possibility of enjoying BIT protection by channelling investments through foreign jurisdictions is especially relevant for investors whose own government has concluded fewer BITs than many other countries. These investors may close the gaps in their own country's BIT network by making use of the more extensive BIT network of countries such as the Netherlands, Belgium and Luxembourg.

7. Tax Treatment of BIT Compensation Payments

The tax treatment of any payments of damages arising from successful claims is not explicitly addressed in the BITs themselves or in the tax treaties concluded between the relevant States. From a tax point of view this treatment may depend, for instance, on whether the compensation is to be regarded as a capital gain, a regular income from the investment or as a *sui generis* payment under the BIT.

Different types of investment (immovable property, companies with a capital divided into shares, partnerships, loans, etc.) may be subject to different profit tax rules, giving rise to different tax treatment. The tax rules in both contracting States are important, and sometimes even third country tax rules may be involved if the investment has a tax nexus with a third country, e.g. if the investment belongs to a branch that the investor holds in the third country. BIT payments received by foreign branches in the State where the investments were made may be exempt in the investor's State and taxed in the State where the investments were made. Compensation payments for shareholders' losses may be exempt, in whole or in part, for investors under the tax rules of the relevant investor State. Taxes other than profit tax may also be relevant in this connection. It is conceivable that several countries may claim taxing rights over the same payment.

Investors could consider obtaining clarity about the treatment of a particular situation in advance from the responsible authorities. These may be the authorities in the investor State, the State where the investment is made or even in a relevant third State.

If the compensation payment is taxed, while the income or profit from the investment would have been exempt if the investment had not been expropriated, the investor should consider claiming a grossed up amount in the arbitral proceedings to cover its damages for the additional tax claim (again in both BIT contracting States or even in a relevant third State).

If the investor expects to claim BIT compensation, he should seek timely advice on whether steps can be taken to mitigate the prospective tax burden on the potential compensation. In the Netherlands good and positive experience exists in this area.

ANNEX I

BITs Concluded by the Netherlands

BILATERAL INVESTMENT TREATIES CONCLUDED BY THE NETHERLANDS AS OF MAY 2007

No.	State	Signed	In Force	Journal of Treaties (<i>Tractatenblad</i>)
1	Albania	15-04-1994	01-09-1995	1994, 145
2	Algeria	20-03-2007	–	-
3	Argentina	20-10-1992	01-10-1994	1992, 192
4	Armenia	10-06-2005	01-08-2006	-
5	Bahrain	05-02-2007	–	-
6	Bangladesh	01-11-1994	01-06-1996	1992, 010
7	Belarus	11-04-1995	01-08-1996	1995, 142
8	Belize	20-09-2002	01-10-2004	2003, 017
9	Benin	13-12-2001	–	2002, 039
10	Bolivia	10-03-1992	01-11-1994	1992, 081
11	Bosnia-Herzegovina	13-05-1998	01-01-2002	1998, 172
12	Brazil	25-11-1998	–	1998, 283
13	Bulgaria	06-10-1999	01-03-2001	2000, 004
14	Burkina Faso	10-11-2000	01-01-2004	2001, 014
15	Cambodia	23-06-2003	01-03-2006	2003, 135
16	Cameroon	06-07-1965	07-05-1966	1973, 107
17	Cape Verde	11-11-1991	25-11-1992	1993, 007
18	Chile	30-11-1998	–	1999, 007
19	China	26-11-2001	01-08-2004	2002, 024
20	Costa Rica	21-05-1999	01-07-2001	1999, 127
21	Croatia	28-04-1998	01-06-1999	1998, 137
22	Cuba	02-11-1999	01-11-2001	1999, 211
23	Czech Republic	29-04-1991	01-10-1992	1992, 146
24	Dominican Republic	30-03-2006	–	-
25	Ecuador	27-06-1999	01-07-2001	1999, 127
26	Egypt	17-01-1996	01-03-1998	1996, 066
27	El Salvador	12-10-1992	01-03-2001	1999, 197
28	Eritrea	02-12-2003	–	2004, 041
29	Estonia	27-10-1992	01-09-1993	1993, 101
30	Ethiopia	16-05-2003	01-07-2005	2003, 125
31	Gambia	25-09-2002	01-04-2007	2003, 050
32	Georgia	03-02-1998	01-04-1999	1998, 060
33	Ghana	31-03-1989	01-07-1991	1991, 099
34	Guatemala	18-05-2001	01-09-2002	2001, 109
35	Honduras	15-01-2001	01-09-2002	2001, 060
36	Hong Kong	19-11-1992	01-09-1993	1993, 109
37	Hungary	02-09-1987	01-06-1988	1987, 172
38	India	06-11-1995	01-12-1996	1995, 286
39	Indonesia	06-04-1994	01-07-1995	1994, 238
40	Ivory Coast	26-04-1965	08-09-1966	1965, 173

41	Jamaica	18-04-1991	01-08-1992	1991, 093
42	Jordan	17-11-1997	01-08-1998	1998, 006
43	Kazakhstan	27-11-2002	-	-
44	Kenya	11-09-1970	11-06-1979	1979, 107
45	Kuwait	29-05-2001	31-05-2002	2001, 115
46	Laos	16-05-2003	01-05-2005	2003, 124
47	Latvia	14-03-1994	01-04-1995	1994, 079
48	Lebanon	02-05-2002	01-03-2004	2002, 118
49	Lithuania	26-01-1994	01-04-1995	1994, 054
50	Macedonia	07-07-1998	01-06-1999	1998, 203
51	Malawi	11-12-2003	-	2004,028
52	Malaysia	15-06-1971	13-09-1972	1972, 099
53	Mali	13-07-2003	01-03-2005	-
54	Malta	10-09-1984	01-07-1985	1985, 091
55	Mexico	13-05-1998	01-10-1999	1998, 183
56	Moldova	26-09-1995	01-05-1997	1995, 299
57	Mongolia	09-03-1995	01-06-1996	1995, 156
58	Montenegro	29-01-2002	01-03-2004	-
59	Morocco	23-12-1971	27-07-1978	1978, 094
60	Mozambique	18-12-2001	01-09-2004	2002, 044
61	Namibia	26-11-2002	01-10-2004	2003, 134
62	Nicaragua	28-08-2000	01-01-2003	2000, 117
63	Nigeria	02-11-1992	01-02-1994	1994, 085
64	Oman	19-09-1987	01-02-1989	1989, 002
65	Pakistan	04-10-1988	01-10-1989	1988, 149
66	Panama	28-08-2000	01-09-2001	2000, 113
67	Paraguay	29-10-1992	01-08-1994	1994, 170
68	Peru	27-12-1994	01-02-1996	1995, 021
69	Philippines	27-02-1985	01-10-1987	1987, 178
70	Poland	07-09-1992	01-02-1994	1992, 156
71	Romania	19-04-1994	01-02-1995	1994, 116
72	Russian Federation	05-10-1989	20-07-1991	1991, 126
73	Senegal	03-08-1979	05-05-1981	1981, 139
74	Serbia	16-04-2007		
75	Singapore	16-05-1972	07-09-1973	1973, 136
76	Slovakia	29-04-1991	01-10-1992	1992, 146
77	Slovenia	24-09-1996	01-08-1998	1996, 296
78	South Africa	09-05-1995	01-05-1999	1998, 162
79	South Korea	12-07-2003	01-03-2005	-
80	Sri Lanka	26-04-1984	01-05-1985	1985, 057
81	Sudan	22-08-1970	27-03-1972	1972, 052
82	Surinam	31-03-2005	01-09-2006	-
83	Tajikistan	24-07-2002	01-04-2004	2002, 166
84	Tanzania	31-07-2001	01-04-2004	2002, 021
85	Thailand	06-06-1972	03-03-1973	1972, 080
86	Tunisia	11-05-1998	01-08-1999	1998, 138
87	Turkey	27-03-1986	01-11-1989	1986, 053
88	Uganda	30-05-2000	01-01-2003	2000, 062
89	Ukraine	14-07-1994	01-06-1997	1994, 181

90	Uruguay	22-09-1988	01-08-1991	1991, 123
91	Uzbekistan	14-03-1996	01-07-1997	1996, 113
92	Venezuela	22-10-1991	01-11-1993	1993, 154
93	Vietnam	10-03-1994	01-02-1995	1994, 082
94	Yemen	18-03-1985	01-09-1986	1985, 085
95	Yugoslavia	29-01-2002	01-03-2004	2002, 083
96	Zambia	30-04-2003	-	2003, 092
97	Zimbabwe	11-12-1996	01-05-1998	1997, 261