

Revised Netherlands draft model BIT presented to Dutch Parliament

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On 26 October 2018, a revised *Netherlands Model Investment Agreement* was published by the Dutch Parliament. The model agreement is an update to the draft agreement published for consultation by the Dutch government in May 2018 (see *Legal update, Netherlands new draft model BIT out for consultation*). The model agreement is intended to be used as the basis for negotiating future investment agreements.

The published model agreement has not changed significantly compared to the May 2018 draft. Apart from some textual changes and clarifications, the key changes include:

- A revised provision on the contracting parties' obligations as members of an economic integration agreement.
- Provisions on responsible investment and sustainable economic development.
- Requirements protecting against business-related human rights abuse and environmental protection.

The revised model agreement also confirms the position on the avoidance or evasion of taxes and includes a revised provision on compensation for damages and the applicable interest rate.

As regards the heavily-debated investor-state dispute settlement provision, the only material changes in the revised model agreement concern a provision stipulating that both parties to a dispute may seek a consolidation order from a tribunal in cases where two or more claims have been submitted to arbitration separately (as opposed to only the claimant having such right) and a duty on the tribunal to strive for gender and geographic diversity when appointing members of the tribunal. Lastly, the provision on the constitution of a tribunal now includes a detailed clause on challenging the appointment of a tribunal member where there is an alleged conflict of interest.

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