

Netherlands to Modernize Model BIT



The Netherlands is currently modernizing its model bilateral investment treaty (*model BIT*) and [has recently published the draft of the new model BIT](#) that the government intends to use as a basis for (re-)negotiating their existing and future bilateral investment treaties with non-EU Member States.

Following numerous recent criticisms involving investment protection and investment arbitration, the new draft model BIT is clearly aimed at striking a better balance between the rights and duties of host States, on the one hand, and investors, on the other hand. To this end, the draft model BIT introduces some interesting developments. In particular, it introduces stricter requirements for investors seeking protection.

With respect to investment arbitration, the draft model BIT provides for the following key changes:

- The draft model BIT provides that the arbitral tribunal “*shall endeavor to issue its final award within 24 months of the date the claim is submitted*” (Article 22(1));
- The arbitration proceedings cannot (in principle) be bifurcated. The arbitral tribunal shall “*consider issues of*

jurisdiction and merits together” (Article 20(9));

- The draft model BIT provides that similar claims can be consolidated (Article 19(7));
- One of the most significant changes brought about by the draft model BIT is the fact that neither the investor nor the host State will be able to appoint their respective arbitrators to the tribunal. The model BIT provides that all members of the arbitral tribunal will be appointed by the Permanent Court of Arbitration (PCA) or by the International Center for the Settlement of Investment Disputes (ICSID);
- The draft model BIT also makes explicitly clear that the provisions on arbitration contained within it will be replaced if and when an international agreement providing for a multilateral investment court enters into force;

The Dutch government launched an online public consultation seeking opinion from civil society on the draft model BIT. The public consultation ended on 18 June 2018. The results of this public consultation will certainly be made public in the coming weeks.

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